



**Sergon v Kigen & 5 others (Environment and Land Case Civil Suit 2242 of 2007) [2024] KEELC 4771 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4771 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 2242 OF 2007**

**OA ANGOTE, J**

**JUNE 13, 2024**

**BETWEEN**

**MICHAEL ARAP SERGON ..... PLAINTIFF**

**AND**

**JOSEPH KIPCHUMBA KIGEN ..... 1<sup>ST</sup> DEFENDANT**

**SANNEX ENTERPRISES ..... 2<sup>ND</sup> DEFENDANT**

**REBECCA KIBOWEN ..... 3<sup>RD</sup> DEFENDANT**

**JOHN SERGON ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF REGISTRAR OF TITLES ..... 5<sup>TH</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. The Plaintiff, through an Amended Plaint dated 19<sup>th</sup> October 2017 has sought the following orders against the Defendants:
  - a. A permanent injunction restraining the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants by themselves, their agents, servants and employees from evicting, from entering upon the Plaintiff’s property namely Title Number Nairobi Block 76/545 from selling, transferring, mortgaging, charging, subdividing, leasing out or otherwise interfering with or dealing with the said property.
  - b. A declaration that the purported sale and transfer of the Plaintiff’s property known as Title Number Nairobi/Block/76/545 to the First Defendant on 15<sup>th</sup> December 2006 is null and void, and be set aside and the register rectified to read the plaintiff name.



- c. That arising from the foregoing, the 6<sup>th</sup> and 7<sup>th</sup> Defendants be ordered to rectify the register to remove the 1<sup>st</sup> Defendant's name and reinstate the plaintiff's name into the register as the proprietor to the Title Number Nairobi/Block 76/545.
  - d. Damages for breach of contract to be assessed by this Honourable Court.
  - e. Cost of this suit with interest thereon.
  - f. Any other or further relief that this Honourable Court deems fit.
2. The Plaintiff asserts that he was the owner of the suit property, title number 76/545 comprising approximately 0.04144 hectares, where he had a rent paying tenant, who vacated the suit premises.
  3. The Plaintiff's claim is that there was no sale agreement between himself and the 1<sup>st</sup> Defendant regarding the sale and purchase of the suit property within the meaning of Section 3(3) of the [Law of Contract Act](#) and that the purported sale agreement was typed by the 4<sup>th</sup> Defendant, and not Katwa & Kemboy Advocates.
  4. The Plaintiff averred in the Plaint that the alleged deposit of Kshs. 1,500,000 was made to his account by the 3<sup>rd</sup> Defendant and without his authority or consent. He urges that the same was paid in a scheme to deprive him of his house with no justifiable cause and that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant's purported to effect the transfer of the suit property in the 1<sup>st</sup> Defendant's name.
  5. The Plaintiff avers that in July 2005, the 4<sup>th</sup> Defendant and the 3<sup>rd</sup> Defendant, his wife, had approached him with a view of persuading him to sell the suit premises to raise money for a joint venture proposed by the same parties and that he told them that he did not wish to engage in the venture.
  6. According to the Plaintiff, around the same time, the National Bank of Kenya had not released his title document and he authorized the bank to release the documents to his then lawyers, M/S Katwa and Kemboy Advocates and that the deposit that was paid was never intended to effect a sale or transfer to the 1<sup>st</sup> Defendant at all.
  7. The Plaintiff averred that in September 2005, while he was away in Mwanza Tanzania, the 3<sup>rd</sup> Defendant, who is his sister-in-law, without his authority or approval, collected a cheque from M/S Katwa Kigen and Kemboy Advocates and deposited the same in his account at Standard Chartered Bank.
  8. Upon his return in October 2005, the Plaintiff averred, the 3<sup>rd</sup> Defendant presented to him documents drawn by M/S Katwa and Kemboy Advocates for his signature, which he did not sign and that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants thereafter went to the suit premises and verbally harassed his wife, alleging that the house belonged to them and wanted it vacant.
  9. The Plaintiff asserts that the title was changed from his name to that of the 1<sup>st</sup> Defendant, yet the said sale was fictitious and a nullity, as it was done without his signature and that his alleged signature on the transfer of lease was forged by the 1<sup>st</sup> Defendant or other person.
  10. According to the Plaintiff, the passport-size photographs attached to the transfer form were obtained without his consent; that the balance of the purported purchase price has never been paid and that the 1<sup>st</sup> Defendant, who was his previous advocate took advantage of the fiduciary relationship he had with him to fraudulently transfer the suit property to himself.
  11. The Plaintiff averred in the Plaint that on 10<sup>th</sup> September 2007, the 2<sup>nd</sup> Defendant, on instructions from the 1<sup>st</sup> Defendant purported to distrain for rent alleging that he is now the landlord of the property.



12. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants, through their Amended Defence and Counterclaim dated 10<sup>th</sup> January 2018, opposed the Plaintiff's suit and asserted that the Plaintiff approached the 1<sup>st</sup> Defendant in his office to negotiate the sale and that thereafter, they entered into a sale agreement drawn by Katwa and Kemboy Advocates in 2015, which was duly executed by both parties.
13. It was averred by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the deposit of Kshs. 1,500,000 was made with the consent and knowledge of the Plaintiff and that the Plaintiff instructed his advocates M/S Kiptui Mbabu & Co. Advocates to request for an undertaking for payment of the balance, through letters dated 19<sup>th</sup> October 2005, 14<sup>th</sup> November 2005 and 23<sup>rd</sup> November 2005.
14. The 1<sup>st</sup> Defendant asserted that the Plaintiff signed the sale agreement and the transfer form, which was duly witnessed and that the Plaintiff availed his photographs for purposes of appending to the transfer form and therefore, the transfer was effected procedurally and lawfully.
15. It was the 1<sup>st</sup> Defendant's case that the transfer was drawn by the firm of Katwa and Kemboy Advocates; that the title documents were deposited with the 1<sup>st</sup> Defendant for purposes of transferring the land and the discharge of title from National Bank Limited was merely part of the sale transaction to ensure transfer of a clean title free from any encumbrance.
16. The 1<sup>st</sup> Defendant asserted that he is the purchaser and registered owner of the house and he is not aware of any interest that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have in the said property, as alleged by the Plaintiff. Further, he averred, that he instructed M/S Sannex Enterprises, the 2<sup>nd</sup> Defendant, to effect proclamation in respect of rent due from the tenant in occupation of the house.
17. It was the averment of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that that the Plaintiff had asked the 1<sup>st</sup> Defendant to effect the proclamation to secure vacant possession.
18. In the 1<sup>st</sup> Defendant's Counterclaim, he claimed for the rent from the date the Plaintiff was to give vacant possession on 1st October 2005 up to the time of vacant possession at the rate of Kshs. 25,000 per month and for costs and outgoings expended to effect transfer of the property for and on behalf of the Plaintiff in the sum of Kshs. 96,194.60, which is to be recovered from the balance of the sale price.
19. The Plaintiff filed a Reply to the Defence and Defence to the Counterclaim dated 7<sup>th</sup> June 2018, in which he asserted that there was no sale agreement of land but a scheme, fraud, illegality, nullity and irregular process that roped in the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
20. The Plaintiffs denied that the sale agreement and the transfer of the suit property were duly signed and witnessed and denied that Messrs Kiptui Mbabu was involved in the alleged sale agreement of the suit property and never requested for any undertaking.
21. In his response to the Counterclaim, the Plaintiff averred that the 1<sup>st</sup> Defendant is not entitled to the rental income from 1<sup>st</sup> October 2005 to the time vacant possession is granted or at all, as the transfer of the suit property to the 1<sup>st</sup> Defendant was not preceded by a sale agreement. He sought that the counterclaim be dismissed.
22. Vide a Statement of Defence dated 9<sup>th</sup> April 2018, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants claimed that the suit property was initially owned by the Plaintiff, prior to the sale and subsequent transfer to the 1<sup>st</sup> Defendant. They denied all claims of fraud or illegality attributed to them by the Plaintiff to them.
23. In their statement of Defence dated 29<sup>th</sup> June 2018, the 5<sup>th</sup> and 6<sup>th</sup> Defendants denied the Plaintiff's case and put him to strict proof thereof. They stated that without prejudice, any registration of the suit property was done procedurally and in good faith.



## Hearing and Evidence

24. The Plaintiff, PW1, relied on his witness statement dated 19<sup>th</sup> November 2021 as his evidence in chief. In his statement, PW1 stated that he is the legal owner of the suit property; that whereas he had a tenant before, the suit property is currently occupied by him and his family.
25. PW1 informed the court that there was no sale agreement between himself and the 1<sup>st</sup> Defendant regarding sale of the suit property and that the alleged deposit of KShs. 1,500,000/- was made to his account by the 3<sup>rd</sup> Defendant without his authority or consent.
26. PW1 denied ever signing any documents and denied supplying the completion documents to the 1<sup>st</sup> Defendant. In cross examination, PW1 stated that in the meeting he had with Mr. Katwa, the 1<sup>st</sup> Defendant, in July 2005, he only instructed him to do a discharge of charge.
27. PW1 stated that he did not pay Mr. Katwa for the discharge and that the latter settled some charges in his favour. While Mr. Katwa was to recover the charges, PW1 denied that he was to recover the same from the purchase price.
28. PW1 informed the court that while the agreement indicates that it was signed on 5<sup>th</sup> June 2005, he was out of the country on that date; that the transfer was also signed on 5<sup>th</sup> June 2005, but it was not witnessed and that he did not sign the two documents.
29. PW1 admitted that the 2011 statement, he stated that he had verbally rescinded the contract and wanted to refund the 1<sup>st</sup> Defendant the money and interest paid to him and offered to give Kshs. 2,500,000. While PW1 denied negotiating the sale, he was referred to page 98 of the 1<sup>st</sup> Defendant's bundle which contained a handwritten note, which he confirmed he wrote. In the note he indicated the details of the suit property and the details of the seller (himself).
30. PW1 produced two bundles of documents marked PEXB1 and PEXB2, which included his diplomatic passport, the transfer document dated 5<sup>th</sup> June 2006 and copies of the title deeds of Nairobi/ Block 76/545.
31. PW2, Grace Chemutai Kiptui, an advocate of the High Court of Kenya averred that she was familiar with this matter to some extent. She adopted her statement dated 4<sup>th</sup> February 2022 as her evidence in chief. She also produced a bundle of documents marked as PEXB2.
32. PW2 averred that she was involved in the transaction for two months, from October 2005; that the Plaintiff is her nephew and that she is related to the 1<sup>st</sup> Defendant through marriage; that the Plaintiff approached her with respect to the suit property passing to the 1<sup>st</sup> Defendant and that at that time there was an agreement, which was incomplete as it was not dated or witnessed, but had signatures.
33. PW2 stated the agreement was forwarded to her on 5<sup>th</sup> October 2005. She stated that the agreement in possession of the 1<sup>st</sup> Defendant was not the same agreement that was sent to her because the one with the Defendants was dated 5<sup>th</sup> June 2005 and was attested.
34. She averred that the agreement had several issues, including the fact that it did not indicate the balance of the purchase price; that it indicated that they were to provide a professional undertaking and that it did not have a date or attestation of the signatures.
35. She stated that she requested for a professional undertaking through the letter dated 25<sup>th</sup> November 2005, which was not given to her; that she later called for a family meeting to understand what was



- happening; that the 1<sup>st</sup> Defendant did not attend the meeting and that there was a redrawn agreement of 21<sup>st</sup> August 2005, which is in the 1<sup>st</sup> Defendant's bundle.
36. According to PW1, there was also a proposed undertaking dated 24<sup>th</sup> October 2005 by Kemboy advocate, which was not satisfactory as the 90 days suggested was too long and the balance was not stated. PW2 stated that the undertaking was not acceptable and she stated so through her letter dated 14<sup>th</sup> November 2005.
  37. While the 1<sup>st</sup> Defendant responded through a letter dated 29<sup>th</sup> November 2005, seeking further instructions, it was her testimony that she did not respond because she had already stated what she needed to say in her earlier letter.
  38. DW1, the 1<sup>st</sup> Defendant, relied on his statement dated 22<sup>nd</sup> December 2021. He also produced two bundles of documents marked DEXB1A and DEXB1B. He stated that they had negotiated with the Plaintiff for the sale of the house and that Kshs. 1,750,000 out of the agreed Kshs.2,700,000 was paid to the Plaintiff.
  39. It was the evidence of DW1 that the Plaintiff personally availed to him a copy of the lease certificate dated 21<sup>st</sup> July 1978 and wrote several handwritten notes dated 5<sup>th</sup> July 2005, 18<sup>th</sup> July 2005 and 27<sup>th</sup> July 2005, and in the latter, asked the tenant to give vacant possession. He also availed his PIN and photographs.
  40. He asserted that he conducted a search on 25<sup>th</sup> August 2005 and noted that the property had been charged to National Bank. According to DW1, he instructed Mr. Julius Kemboy Advocate to conduct the conveyance on his behalf and paid the discharge fees to obtain the title and that a letter dated 1<sup>st</sup> August 2005 was sent to the Plaintiff to approve the agreement. DW1 asserted that the Plaintiff signed the sale agreement in quadruplicate and later signed the transfer forms.
  41. The 1<sup>st</sup> Defendant referred to a verifying affidavit which the Plaintiff signed in the lower court and in this case, which showed that the Plaintiff admitted selling the suit property to him and receipt of the deposit. He stated that it was a term of the agreement that he was to be given vacant possession by 1<sup>st</sup> October 2005.
  42. DW1 testified that the date on the sale agreement was wrong; that the agreement was signed by a set of four, but the same were undated; that he instructed the 2<sup>nd</sup> Defendant to distrain for rent, based on the Plaintiff's instructions as he had given him vacant possession; that he was asked to effect both the discharge and the transfer of land for Kshs. 2,500,000 and that he paid the Plaintiff Kshs. 1,750,000, and Kshs. 1,500,000 in August 2005, Kshs. 250,000 in May 2005 and KShs.100,000 in August 2007.
  43. In cross-examination, he stated that the agreement was signed in 2005 but not on the date indicated; that he has not paid the balance of the purchase price because the Plaintiff failed to comply with the clause requiring him to give vacant possession and that the clause on being granted vacant possession was an oral agreement.
  44. DW1 averred that an undertaking was issued but the advocate wanted a different undertaking but did not give them the format or terms thereof and that the Plaintiff went with the 1<sup>st</sup> Defendant's clerk to process the discharge and the said clerk came back with the discharge documents and gave them to Mr. Kemboy Advocate.
  45. He averred that the Plaintiff went to their office and he (DW1) was present when he signed one set of transfer documents before Mr. Kemboy Advocate. DW1 admitted that the transfer documents were not attested and that the transfer of lease was only witnessed on the purchaser's part but not on the vendor's side.



46. DW1 asserted that the Plaintiff received Kshs. 1,500,000 and Kshs. 250,000 was given to the 3<sup>rd</sup> Defendant, according to the Plaintiff's instructions on phone. He added that he assisted the Plaintiff to obtain clearances, although the agreement did not provide for the deductions of the same from the purchase price. DW1 asserted that he was ready to complete the transaction.
47. DW2, Wilson Melita Rampei, relied on his statement dated 7<sup>th</sup> June 2016. He stated that he conducted searches and assisted in getting clearances for the suit property. It was the evidence of DW2 that he met the Plaintiff and they discharged his title, obtained clearances and obtained the title from the Bank. DW1 stated that the Plaintiff introduced him to the National Bank of Kenya so that the bank could give him the title.
48. DW2A, Julius Kemboy Advocate, deponed that he is an advocate, who practices at Kemboy Law Advocates; that previously, he was with the law firm of Katwa and Kemboy Advocates; that he acted for Mr. Katwa Kigen, the 1<sup>st</sup> Defendant in the preparation of the sale agreement and the correspondences and that he sat in the meetings which discussed the contents of the sale agreement.
49. It was the evidence of DW2A that the Plaintiff as well as John Serگون and Rebecca, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants attended the meetings; that he knew the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as they used to visit the 1<sup>st</sup> Defendant; that he witnessed the Plaintiff and the 1<sup>st</sup> Defendant sign the sale agreement and that the date of 5<sup>th</sup> June 2005 on the agreement is an error, because as at 31<sup>st</sup> August 2005, the agreement had not been signed.
50. DW2A asserted that the Plaintiff signed the transfer in his presence; that although the transfer is dated 5<sup>th</sup> June 2006, he did not date it himself; that there were four copies of the transfer; that the agreement must have been signed in early September and that the Plaintiff gave him a copy of his PIN certificate.
51. It was the evidence of DW2A that he did not give the Plaintiff the agreement on 31<sup>st</sup> August 2005; that he must have given it to the 3<sup>rd</sup> or 4<sup>th</sup> Defendant; that he gave the Plaintiff the professional undertaking and according to him, he accepted it and that the balance was not paid because issues were raised by the Plaintiff's advocate.
52. DW3, a forensic document examiner of more than 30 years asserted that he examined which he received from the firm of Katwa and Kemboy Advocates; that he received a bundle of known signatures, which were the signatures in the affidavits and witness statements of the Plaintiff and the sale the agreement and transfer which had the questioned signatures.
53. In his report dated 1<sup>st</sup> December 2021, DW3 found that the signatures were similar and indistinguishable. In cross-examination, he stated that his report was based on the examination of photocopies of the agreement and the transfer, and not the original documents, which were not made available to him. He asserted that the copies were clear and legible, and that he did not extract the known signatures from the Plaintiff.
54. DW4, Gildine E.Korani, a Principal Land Registrar attached to the Court Section relied on her statement dated 23<sup>rd</sup> February 2022 and the bundle of documents dated 11<sup>th</sup> February 2022, which she produced as DEXB2.
55. She stated in cross-examination that the transfer of lease dated 5<sup>th</sup> June 2006 was signed by the transferor but it was not attested on the side of the transferor, nor does it indicate who drew the transfer, which was irregular and that the photo of the transferor is also not the Ministry of Lands.
56. According to DW4, despite the irregularities, the intention of the parties was clear, and that the registration was done procedurally and in good faith.



57. DW5, John Kibowen Sergon, the 4<sup>th</sup> Defendant, adopted his witness statement as his evidence in chief. He averred that the Plaintiff and the 1<sup>st</sup> Defendant lawfully entered into an agreement of sale sometime in 2005; that the Plaintiff requested his wife, the 3<sup>rd</sup> Defendant, to collect the cheque of Kshs. 1,500,000 from the 1<sup>st</sup> Defendant and that she was given the account number and she deposited the cheque on his behalf.
58. DW5 stated that while he discussed a possible joint venture with the Plaintiff, this was not related to the suit property; that he did not play any part in the agreement between the Plaintiff and the 1<sup>st</sup> Defendant and that the purchase price was not paid in full and vacant possession was not given.
59. DW5 admitted that he received Kshs. 100,000 and his wife, the 3<sup>rd</sup> Defendant, received Kshs.150,000. He denied that he was a necessary party to the suit but admitted that he attended the negotiations between the Plaintiff and the 1<sup>st</sup> Defendant.
60. DW6, the 3<sup>rd</sup> Defendant, relied on her written statement. She asserted that the land was for Kshs. 2,700,000 but was not paid in full; that the Plaintiff asked her to pick the cheque from DW1 and to deposit it into his account; that she also picked cash of Kshs. 250,000, which she asserts she also deposited into his account. She denied having access to the Plaintiff's accounts.
61. DW6 stated that she shared an office with the Plaintiff, and that the Plaintiff informed her that he was looking for someone to buy his house; that she referred him to the 1<sup>st</sup> Defendant and that was later informed by her husband that the 1<sup>st</sup> Defendant had an issue accessing the house.
62. DW6 denied drafting the agreement or stealing the Plaintiff's documents. She stated that the suit against her and her husband was in bad faith and that there has never been a complaint against her for fraud.

### **Submissions**

63. Counsel for the Plaintiff submitted that while the Plaintiff and the 1<sup>st</sup> Defendant had an engagement with respect to the sale of the suit property in 2005, there was no valid sale agreement between the parties. If there was any, it was submitted, the sale agreement was voided by the 1<sup>st</sup> Defendant's actions.
64. Counsel submitted that the Plaintiff did not sign the sale agreement on 5<sup>th</sup> June 2015 as he was out of the country at that time; that the balance of the purchase price of Kshs. 1.2 million has never been paid and that the 1<sup>st</sup> Defendant has never been given vacant possession of the suit property.
65. According to counsel, the purchaser's advocate failed to issue a professional undertaking; that at the time the contract was drafted, the suit property was still charged; that Special Conditions B,C and D of the contract provide that in the case of non-completion of the contract, the vendor is to refund the deposit received and that the Defendants cannot introduce oral or parole evidence to add to, vary and contradict a written agreement.
66. Counsels relied on the case of Thrift Homes Limited vs Kays Investment Limited [2015] eKLR and Universal Education Trust Fund vs Monica Chopeta [2012] eKLR.
67. It was submitted that the parties were not at consensus ad idem with regards to the transaction over the suit property; that the 1<sup>st</sup> Defendant's argument that the contract was re-drawn on 31<sup>st</sup> August 2005 was not logical, as any amendments ought to have been in an addendum and that the 1<sup>st</sup> Defendant's case has been caught up by the doctrines of *ex turpi causa non oritur action* and *ex dolo malo non oritur action*, which mean that no action should be founded on illegal or immoral conduct, and the contract must be construed and performed in full.



68. It was Counsel's submission that the 1<sup>st</sup> Defendant was not entitled to the reliefs sought in the counterclaim. They urge that the 1<sup>st</sup> Defendant cannot fail to pay the full purchase price and purport to transfer the suit property to himself, and now turn to the court and seek eviction of the Plaintiff from the suit property.
69. Counsel relied on *National Bank of Kenya Ltd vs Pipe Plastic Samkolit (K) Ltd* (2002) 2 E.A. 503 (2011) eKLR, *Pius Kimaiyo Langat vs Co-operative Bank of Kenya Ltd* (2017) eKLR and *Macharia Mwangi Maina & 87 Others vs Davidscon MWangi Kagiri* [2014] eKLR.
70. Counsel emphasized that parties are bound by their pleadings. They relied on the cases of *Vijay Morjaria vs Nansingh Madhusingh Darbar, Hulaship Nansingh Darbar Civil Appeal No. 106 of 2000* and *Evans Gundo vs Naftali Sule Civil Appeal 234 of 1999*.
71. Counsel submitted that this court should allow the plea of cancellation and/or rectification of the irregular and unprocedural transfer, and reinstatement of the Plaintiff's name on the title. Counsel relied on the case of *Macfoy vs United Africa Co. Limited* (1961) 3 ALL 1169 where the court held that if an act is void, then it is in law a nullity.
72. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the sale agreement was preceded by a meeting of the minds, as evidenced by the signing of the sale agreement and the transfer form, which justifies that the transfer was effected on 15<sup>th</sup> December 2006; that the Plaintiff received the deposit of Kshs. 1,750,000 from the 1<sup>st</sup> Defendant and that the Plaintiff committed and made writings with a view to give the 1<sup>st</sup> Defendant vacant possession so as to be able to complete the payments.
73. Counsel relied on the determination of the Supreme Court of the United Kingdom in *RTS Flexible Systems Ltd vs Molkerei Alois Miller GmbH & Co. KG(UK Productions)* [2010] UKSC14, where it articulated what constituted a meeting of minds. He also relied on the Court of Appeal's decision in *Alfred M.O. Michira vs M/S Gesima Power Mills Limited Civil Appeal No. 197 of 2001* which held that where there is no meeting of the minds, the contract is incapable of performance.
74. Counsel submitted that a constructive trust has been created in favor of the 1<sup>st</sup> Defendant, as the deposit was paid and the property was transferred to the 1<sup>st</sup> Defendant with the intention that vacant possession of the suit property would be given to the 1<sup>st</sup> Defendant. Counsel relied on the Court of Appeal cases of *Willy Kimutai Kitilit vs Michael Kibet* [2018] eKLR and *Macharia Mwangi Maina & 87 Others vs Davidson Mwangi Kagiri* [2014] eKLR.
75. It was submitted that the sale agreement is valid and enforceable and was duly executed pursuant to Section 3(3) of the *Law of Contract Act*; that the elements of offer, acceptance, consideration, capacity, free consent and legalization have been satisfied and the contract was not contrary to the law or public policy. Counsel relied on the High court case of *Mombasa Bricks and Tiles Limited vs Arvind Shah & 7 Others* [2017] eKLR and *National Bank of Kenya Ltd vs Pipeplastic Sunkolit (K) Ltd & Another* (2003) 2 EA 503.
76. Counsel submitted that the incorrect dating of the sale agreement was a typographical error and does not materially affect the substance of the contract or the intentions of the parties; that a forensic expert duly confirmed that the sale agreement and transfer were signed by the Plaintiff and that the Plaintiff has not proved fraud, as required and held by the Court of Appeal in *Kinyanjui Kamau vs George Kamau Njoroge* [2015] eKLR, in *Central Kenya Ltd vs Trust Bank Limited & 4 others* [1996] eKLR and *Kagina vs Kagina & 2 others* [2021] KECA 242.
77. It was counsel's submission that there were breaches on the Plaintiff's part by failing to avail vacant possession of the suit property after receipt of the deposit, which he admitted, and that the Plaintiff



inequitably retained possession of the land as well as the deposit. Counsel relied on the case of James Muchangi Gachemi vs Solio Ranch Limited & Chief Land Registrar [2017] eKLR.

78. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' counsel argued that following the Plaintiff's act of breach, they are entitled to specific performance, removal of the caveat, vacant possession, accrued rent and discharge of the residue of the purchase price in view of retention of the suit property for more than 19 years.
79. Counsel submitted that the suit as against the 5<sup>th</sup> and 6<sup>th</sup> Defendants is void for want of statutory notice as required under Section 13A (1) of the *Government Proceedings Act*; that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were enjoined to the suit through the Amended Plaint dated 19<sup>th</sup> October 2017, which was ten years after this suit was filed and that the Plaintiff has not disclosed any cause of action against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
80. Counsel submitted that the sale agreement dated 5<sup>th</sup> June 2005 is valid and there was no coercion, fraud or undue influence. It was submitted that parties are bound by the terms and conditions of a contract. Counsel relied on the case of National Bank of Kenya Ltd vs Pipe Plastic Samkolut (K) Ltd [2011] eKLR.

### **Analysis and Determination**

81. The court has considered the pleadings, evidence and submissions by the parties. The following issues arise for determination by this court:
  - a. Whether the sale agreement and transfer to the 1<sup>st</sup> Defendant is lawful and valid.
  - b. Whether the sale agreement was voided by the actions of the parties.
  - c. Whether a constructive trust subsists in favour of the 1<sup>st</sup> Defendant.
82. The crux of the dispute before this court concerns the transaction between the Plaintiff and the 1<sup>st</sup> Defendant which commenced in 2005 with respect to the suit property. It is not disputed that the Plaintiff was the legal proprietor of the suit property, and had charged the said property to the National Bank of Kenya.
83. The Plaintiff denies negotiating and entering into a sale agreement with the Plaintiff. He asserts that he only engaged the services of the 1<sup>st</sup> Defendant, through the firm of Katwa and Kemboy Advocates to undertake a discharge of charge of the suit property from National Bank of Kenya, having duly paid the amount owed to the bank.
84. His case is that the 1<sup>st</sup> Defendant, in connivance with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, schemed to forge his signature and transferred the suit property to himself unlawfully.
85. In the alternative, the Plaintiff argues that if such a sale agreement existed, the same has been voided by the failure of the 1<sup>st</sup> Defendant to meet the terms of the agreement. The Plaintiff has sought for a declaration that the transfer of the suit property to the 1<sup>st</sup> Defendant was void and a nullity, rectification of the title of the suit property and damages for breach of contract.
86. The Defendants on their part assert that the sale agreement and transfer were properly and lawfully executed and attested. The 1<sup>st</sup> Defendant's counsel, Julius Kemboy, testified that he was present when the parties signed the sale agreement and the transfer, but concedes that the date of 5<sup>th</sup> June 2005 on both documents is an error.
87. In the counterclaim, the 1<sup>st</sup> Defendant has made a claim for specific performance, and for the rent of the suit property from the date the Plaintiff was to give vacant possession on 1<sup>st</sup> October 2005 up to



the time of vacant possession at the rate of Kshs. 25,000 per month. The 1<sup>st</sup> Defendant has asserted that the terms of the contract were such as to establish a constructive trust in his favour.

88. It is trite that contracts for disposition of an interest in land must be in writing, signed by the parties and each signature of the parties must be attested by a witness. This mandatory provision is set out in Section 3(3) of the [Law of Contract Act](#), Cap 23 Laws of Kenya as follows:

“No suit shall be brought upon a contract for the disposition of an interest in land unless:-

- (a) The contract upon which the suit is found-
  - (i) Is in writing
  - (ii) Is signed by all the parties thereto; and
- (b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

89. In this case, the Plaintiff has challenged the validity of the contract dated 5<sup>th</sup> June 2005. In the Amended Plaintiff and Witness statement, he averred that he did not sign the agreement on the date of 5<sup>th</sup> June 2005 as he was out of the country on the said date. He asserts that his signature was forged, that there was no consensus ad idem between the parties and in the alternative, that the contract was rendered void by the 1<sup>st</sup> Defendant’s failure to meet the terms of the contract.

90. It is not in doubt that the legal burden of proof lay upon the Plaintiff to establish the facts he has asserted. Section 107 (1) of the [Evidence Act](#), Cap 80 Laws of Kenya prescribes the legal burden of proof as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

91. The 1<sup>st</sup> Defendant has produced a letter dated 19<sup>th</sup> July 2005 in which he indicated that he had accepted the Plaintiff’s offer to sell the suit property at the price of Kshs. 2.7 million, of which Kshs one million would be paid as a deposit and the balance within ninety days.

92. On 1<sup>st</sup> August 2005, the 1<sup>st</sup> Defendant forwarded the proposed agreement to the Plaintiff to peruse the same. On 31<sup>st</sup> August 2005, the 1<sup>st</sup> Defendant forwarded a re-drawn agreement which sought the Plaintiff’s execution. The said letter indicated that the cheque of Kshs. 1,500,000 was enclosed and stated that they expect vacant possession effective 1<sup>st</sup> October 2005.

93. It is evident that as at 31<sup>st</sup> August 2005, the parties were still negotiating on the terms of the contract and the sale agreement was not signed. Further, the testimony by the Defendants irrefutably establishes that the deposit of Kshs. 1.5 million was paid on 31<sup>st</sup> August 2005 through the 3<sup>rd</sup> Defendant and not directly upon the Plaintiff.

94. It is therefore clear that the sale agreement and the transfer were not signed on 5<sup>th</sup> June 2005, as asserted and claimed by the 1<sup>st</sup> Defendant. The Plaintiff has presented copies of his passport which establishes that he was not in the country at that time. In their testimony, the 1<sup>st</sup> Defendant and his advocate concede that the date of 5<sup>th</sup> June 2005 was wrong and in error.

95. Did the Plaintiff in fact sign the sale agreement and transfer? This court believes so. While the Plaintiff has asserted that his signature in the sale agreement was forged, he has not presented any evidence to disprove the validity of the signatures.



96. The 1<sup>st</sup> Defendant's expert witness testified that the Plaintiff in fact signed the sale agreement and the transfer. This witness's testimony was not impeached by the Plaintiff.
97. Indeed, while the Plaintiff, in his Amended Plaint contended that he did not negotiate or execute the sale agreement, in the course of trial and in his submissions, he conceded that he agreed to sell to the 1<sup>st</sup> Defendant the suit property.
98. This position has been collaborated by the various correspondences between the parties. In his bundle of documents, the 1<sup>st</sup> Defendant has exhibited a handwritten note from the Plaintiff dated 5<sup>th</sup> July 2005, inquiring if the 1<sup>st</sup> Defendant had received documents from National Bank.
99. In another handwritten note dated 18<sup>th</sup> July 2005, the Plaintiff has indicated his personal details and that of the suit property. There is another handwritten note dated 27<sup>th</sup> July 2005 in which the Plaintiff authorized the 1<sup>st</sup> Defendant to issue a notice of eviction of the tenant who was occupying the house. During cross examination, the Plaintiff admitted that he wrote these notes.
100. Further, in an affidavit sworn on 21<sup>st</sup> September, 2007 in support of a Chamber Summons in CMCC NO. 8341 Of 2007, the Plaintiff deposed as follows:
- “ 5. That the first Defendant then proceeded to draw the Agreement for Sale wherein it was agreed that the suit property be sold to him at a price of 2,700,000 out of which he paid me a sum of Kshs 1,500,000
6. That the first Defendant then called me to his office wherein I signed the Agreement for Sale but he did not give me a copy of the same advising me that he will supply me with a copy once the agreement is registered.
7. That at this point I decided to appoint the firm of Messrs Kipatanui Mbaabu to represent me in the transaction.
9. That it was a term of the said agreement that the first Defendant was to pay the balance of the purchase price within ninety (90) days from the date of signing the agreement.
10. That the first Defendant never paid the balance of the purchase price within the aforesaid 90 days as agreed nor has he ever paid the same to date.
11. That accordingly the first Defendant is in breach of a fundamental term of the agreement.”
101. The above deposition clearly shows that the Plaintiff did sign an undated agreement of sale. The same averments were repeated in the Plaint that was filed in CMCC No. 8341 of 2007.
102. Further, it is on the basis of the said agreement that the Plaintiff appointed the firm of Kiptanui Mbaabu Advocates, who, in a letter dated 19<sup>th</sup> October, 2005 to the 1<sup>st</sup> Defendant's advocates stated that they “are to commence the process of getting all the necessary documents in line with special condition F of the sale agreement for onward transmission to yourselves.”
103. Having found that the Plaintiff indeed signed the sale agreement, the issue that arises is the impact of the discrepancy of the date on the sale agreement and transfer.



104. In addressing the common practice of backdating documents in conveyancing in Kenya, the court in *Susan K. Baur & Another vS Shashikant Shamji Shah & 2 Others* [2017] eKLR asserted that such practice rendered the attestation illegal:

“The person attesting needs to be present when the document is being signed and therefore needs to indicate the correct date when he attested the signatures. In our case, it cannot be said that the plaintiffs appeared before the attesting witness on 17 October 2006, and that attestation is therefore invalid. It was said by Mr. Wathigo, that it is common practice in conveyancing to sign documents and leave them, after which they will be dated later. I was surprised that such words could come from an advocate who has practiced for over forty years. If that is indeed the practice, then such practice cannot be condoned, and needs to stop. Documents must bear the correct dates of signature and the person attesting must indicate the correct date when he saw these signatures being appended. An advocate worth his salt ought to know that. Anything else is illegitimate, illegal, and null and void. It is cheating, to provide in a document, that the person appeared before you on a date that he in fact did not. This court, cannot condone the back-dating or front-dating of signatures, as that would be abetting an illegal activity. I am at a loss as to how an advocate can actually deliberately append the wrong date in a document. The insertion of the wrong date in our instance was not a mistake which could be excused but was deliberate.”

105. This case evinces the contractual challenge that is brought about by the practice of backdating contracts. It is apparent that the agreement was not signed, executed or witnessed on 5<sup>th</sup> June 2005. It is apparent that it was only in October 2005 that the 1<sup>st</sup> Defendant’s Advocate forwarded the agreement to the Plaintiff’s Advocate, PW2, which was already signed by the parties, but not attested or dated.
106. Contrary to the evidence by the 1<sup>st</sup> Defendant that the date on the agreement and transfer were typographical errors, the 1<sup>st</sup> Defendant’s then Advocate, Julius Kemboi, testified in court that he deliberately left the agreements blank so that he can input the date at a later time.
107. Section 3(3) of the *Law of Contract Act* has a mandatory requirement that agreements for the sale of land must be in writing, signed by the parties and attested by a person present at the time of signing. The failure to date or attest a contract therefore results in non-compliance with Section 3(3) of the *Law of Contract Act*.
108. Further, backdating a contract when signed has several implications on the fulfillment of the terms of a contract. In this case, the ambiguity as to when the contract began running makes it impossible to determine when the 90-day completion period expired, and when the balance of the purchase price was to be paid.
109. The court therefore does not agree with the 1<sup>st</sup> Defendant’s position that the date of the agreement is immaterial. Indeed, that date is material considering that it does not only appear on the sale agreement, but it is also indicated as the date that the Plaintiff signed the Transfer before Kemboi Advocate.
110. Considering that the parties are agreeable that the Plaintiff was out of the country on 5<sup>th</sup> June, 2006, and that the said Transfer could not have been signed by the Plaintiff on 5<sup>th</sup> June, 2006, it follows that the said Transfer is voidable.
111. I use the term voidable, as opposed to void because I have already found that indeed the Plaintiff signed the agreement for sale and transfer, but not on the dates indicated therein. The erroneous date indicated on the sale agreement and the transfer renders the otherwise valid agreement and transfer unenforceable.



112. That notwithstanding, the court will discuss shortly if indeed the terms of the sale agreement were complied with.
113. It is trite that a court cannot rewrite a contract between parties. The Court of Appeal in the case of *National Bank of Kenya Ltd vs Pipeplastic Sunkolit (K) Ltd & Another* [2003] 2 E.A 503 held as follows:
- “a court of law cannot rewrite a contract between the parties and that parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”
114. Further, as held by the court in *William Kazungu Karisa vs Cosmas Angore Chanzera* [2006] eKLR, the basic rule of law of contract is that parties must perform their respective obligations in accordance with terms and conditions of the contract executed by them and an agreement can only be amended or varied by the consent of the parties.
115. The sale agreement in this case prescribed the payment of a deposit of Kshs. 1.5 million at the signing of the sale agreement. It is not disputed that this sum was deposited by the 3<sup>rd</sup> Defendant into the Plaintiff’s bank account on 31<sup>st</sup> August 2005.
116. As per the agreement, the balance of Kshs. 1.2 million was to be paid to the Plaintiff within 90 days or otherwise as may be agreed by the parties, and the Purchaser’s advocate was to give a professional undertaking to pay the balance of the purchase price upon successful registration of the transfer in the Purchaser’s favor, but not later than 90 days from the signing of the agreement. The Plaintiff was also to give the 1<sup>st</sup> Defendant vacant possession from 1<sup>st</sup> October 2005.
117. The 1<sup>st</sup> Defendant has never been given vacant possession of the suit property to date. The 1<sup>st</sup> Defendant’s advocate, through a letter dated 24<sup>th</sup> October 2005 to the Plaintiff, sought to know if the suit property was vacant. In their response dated 14<sup>th</sup> November 2005, the Plaintiff’s advocate indicated that they were taking instructions and would revert.
118. The evidence before me shows that the 1<sup>st</sup> Defendant’s advocate sent a draft professional undertaking to the Plaintiff’s advocate. The said advocate, Kiptui Mbabu, PW2, responded through a letter dated 14<sup>th</sup> November 2005 and indicated that the undertaking was unacceptable as the outstanding balance was not stated, and that the 90-day period was too long.
119. In the said letter, the Plaintiff’s advocate informed the 1<sup>st</sup> Defendant’s advocate to reduce the period of 90 days to 14 days of successful transfer of the title in the name of the purchaser, and that the 90 days is usually the entire transaction period and not for payment of the purchase price.
120. The 1<sup>st</sup> Defendant did not revert with any amendments to the professional undertaking. Instead, in the letter dated 29<sup>th</sup> November, 2005, he informed the Plaintiff’s advocate to prepare the “format and wording of the undertaking.”
121. It is trite that a professional undertaking must be clear and unequivocal by its nature. This was the position taken by the Court of Appeal in *Waruhiu K’owade & Ng’ang’a Advocates vs Mutune Investment Limited* [2016] eKLR where it stated as follows:
- “Our answer is that a professional undertaking is an unequivocal promise made by a party to another either to do or to refrain from doing something or acting in a manner which may prejudice the right of the opposite party, to which liability may attach.”



122. The Court of Appeal further held that a professional undertaking is a binding contract which is triggered by its offer and acceptance:

“The professional undertaking is a smooth and binding contract between the donor and the donee who are the advocates. It should be adhered to with a standard of ethics higher than that of the market place. Professional undertakings to lawyers by colleagues are like a religion and are the underpinning of the relationship that governs the activities, transactions and actions between them. A professional undertaking embodies and manifests the practice of the legal profession in a characteristically methodical, courteous and ethical manner. That is why the immediate offer and acceptance of a professional undertaking triggers a monumental transaction and huge financial relationship which must be observed by both sides. In our view, that is the basis of professional undertakings in the legal profession. In fact, the conditions, terms and implications must be strictly adhered to for the legal profession to thrive, and for advocates to deal with each other freely and openly.”

123. In this case, the professional undertaking was never accepted by the Plaintiff or his advocates. The 1<sup>st</sup> Defendant did not revert with an acceptable professional undertaking despite the fact that the Plaintiff’s advocate was clear on how the same should be worded. There was therefore no meeting of the minds on the terms of the professional undertaking.

124. Indeed, the professional undertaking was critical considering the conflicting clauses of the agreement.

125. While clause 4 provided that the balance of the purchase price shall be paid to the vendor within 90 days “or otherwise as may be agreed between the vendor and the purchaser upon when good title shall have been transferred to the purchaser”, clause 5 states that a professional undertaking shall be given for the payment of the balance of the purchase price upon successful registration of the transfer “but not later than 90 days from the date of signing this agreement.”

126. The failure to give an acceptable professional undertaking was the second default of the contract at the instance of the 1<sup>st</sup> Defendant. It resulted in the third default of the contract, which was the failure to pay the balance of the purchase price within 90 days from the signing of the agreement or as agreed between the parties.

127. What then is the impact of these breaches? Special Condition C of the contract provides that in the instance where the purchase price has not been paid by the purchaser on or before the completion date, the vendor may exercise his right to demand for immediate restoration of possession. Special Condition D provides that in the event that the sale cannot be completed, the vendor shall refund the deposit received from the purchaser less rent calculated from the time the purchaser took possession.

128. The contract does not provide for the issuance of notices in the instance of default. The Law Society of Kenya Conditions, 1989, whose terms are incorporated into the agreement, therefore come into play. Clause 4 of the LSK Conditions provides for the issuance of a 21- day completion notice when on the completion date, the sale has not been completed. It provides that for this period, time shall be of the essence.

129. If the purchaser fails to comply with the notice, the purchaser is required to return all documents to the vendor and procure cancellation of the register at his own expense. The vendor may forfeit and retain any deposit paid. On the other hand, if the vendor does not comply with a completion notice, the purchaser may give notice to refund the deposit within four days and the purchaser shall not be entitled to specific performance of the contract.



130. Neither of the parties in this matter issued completion notices. The 1<sup>st</sup> Defendant however drew the Plaintiff's attention on his obligation to grant him vacant possession so that he can pay the balance of the purchase price. This was through letters dated 24<sup>th</sup> October 2005, 18<sup>th</sup> November 2005, 29<sup>th</sup> November 2005, 22<sup>nd</sup> August 2007 and 31<sup>st</sup> August 2007.
131. The 1<sup>st</sup> Defendant in August 2007 then engaged the service of the 2<sup>nd</sup> Defendant to evict the Plaintiff's tenant from the suit property. On 19<sup>th</sup> September 2007, the 2<sup>nd</sup> Defendant distrained from the suit property Motor Vehicle Reg. No. KAY 047Q to cater for rental arrears. The Plaintiff has however produced a registration certificate for the said vehicle which shows that the same is registered in his name.
132. While the Plaintiff wishes to be released from the contract, the 1<sup>st</sup> Defendant has sought for orders of specific performance. The impasse at which the parties have found themselves in meeting the contractual terms can only be attributed to lack of consensus ad idem from the beginning.
133. The 1<sup>st</sup> Defendant has pleaded that the doctrine of constructive Trust subsists in his favour. The Court of Appeal in the case of *Twalib Hatayan Twalib Hatayan & Another vs Said Saggar Ahmed Al-Heidy & amp; Others* [2015] eKLR, defined a constructive trust as follows:
- “A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrongdoing. (see Black's Law Dictionary) (Supra). It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see. Halsbury's Laws of England supra at para1453). As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment.”
134. The 1<sup>st</sup> Defendant has relied on the case of *Macharia Mwangi Maina & 87 Others vs Davidson Mwangi Kagiri* [2014] eKLR where the Court of Appeal held that the appellant's action of receiving the full purchase price and putting the respondent in possession created a constructive trust in favour of the respondent, dismissed the appellant's claim and granted an order of specific performance in favour of the respondent.
135. The 1<sup>st</sup> Defendant also sought to rely on the Court of Appeal's decision in *Willy Kimutai Kitilit vs Michael Kibet* [2018] eKLR, where the court found that a constructive trust had been established as the purchaser had paid the purchase price in full and had been granted possession of the suit property.
136. The facts in this case are distinct from the above decisions. In this matter, the Plaintiff has not paid the purchase price in full nor has he been granted possession of the suit property. In the circumstances herein, a constructive trust has not been created in favour of the 1<sup>st</sup> Defendant.
137. This court has found that the sale agreement and the transfer in this suit were not in compliance with Section 3(3) of the *Law of Contract Act* as they were not properly dated. The sale agreement and transfer are therefore voidable.
138. Further, the court has found that the 1<sup>st</sup> Defendant did not give an enforceable professional undertaking as requested, neither did he pay the balance of the purchase price despite having the suit property registered in his favour on 15<sup>th</sup> June, 2006.



139. That being the case, the 1<sup>st</sup> Defendant's prayer for specific performance in the counter claim fails because, firstly, the sale agreement and transfer are voidable and secondly, he has not fully paid the purchase price, which is inarguably an essential term of the contract. According to Halsburys Laws of England (4<sup>th</sup> Edition) at paragraph 487 vol. 44, a party seeking specific performance must show that he performed all terms of the contract, which are essential and considerable. It states:

“A plaintiff seeking specific performance must show that he has performed all the terms of the contract which he has undertaken to perform whether expressly or by implications and which ought to have been performed at the date of the writ in the action. However, this rule only applies to terms which are essential and considerable. The court does not bar a claim on the ground that the plaintiff has failed in literal performance or is in default in some non-essential or unimportant term although in such cases it may grant compensation”

140. The Plaintiff's case therefore succeeds. However, the Plaintiff will have to refund the money that was deposited on his account, with interest at court rates from the date the said deposit was made until payment in full.

141. Considering that the dispute herein relates to family members, I shall not award costs to any party.

142. For those reasons, the court issues the following orders:

- a. A permanent injunction be and is hereby issued restraining the Defendants by themselves, their agents, servants and employees from evicting, entering upon, selling, transferring, mortgaging, charging, subdividing, leasing out or otherwise interfering with parcel of land known as Nairobi Block 76/545.
- b. A declaration be and is hereby issued that the purported sale and transfer of the Plaintiff's property known as Title Number Nairobi/Block/76/545 to the 1<sup>st</sup> Defendant on 15<sup>th</sup> December 2006 is null and void, and be set aside and the register rectified to read the Plaintiff's name.
- c. Arising from the foregoing, the 5<sup>th</sup> and 6<sup>th</sup> Defendants are hereby ordered to rectify the register to remove the 1<sup>st</sup> Defendant's name and reinstate the Plaintiff's name into the register as the proprietor of Title Number Nairobi/Block 76/545.
- d. The Plaintiff to refund the deposit of Kshs. 1,500,000 to the 1<sup>st</sup> Defendant.
- e. The Plaintiff to pay the interest on the above amount at court rates from 31<sup>st</sup> August, 2005 until payment in full.
- f. Each party to bear his/her own costs.

**DATED SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13<sup>TH</sup> DAY OF JUNE, 2024.**

**O. A. Angote**

**Judge**

**In the presence of;**

Ms Kiget for Arusei for Plaintiff

No appearance for Defendants

Ms Waweru for Kalwa for 1<sup>st</sup> and 2<sup>nd</sup> Defendants



Court Assistant: Tracy

