



REPUBLIC OF KENYA



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**Mursoi (Suing on Behalf of the Estate of Kpsaina arap Mursoi  
(Deceased)) v Kiplel & 8 others (Environment & Land Case  
E05 of 2021) [2025] KEELC 704 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 704 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E05 OF 2021  
EO OBAGA, J  
FEBRUARY 20, 2025**

**BETWEEN**

**JOSHUA KIPKORIR MURSOI ..... PLAINTIFF  
SUING ON BEHALF OF THE ESTATE OF KPSAINA ARAP MURSOI  
(DECEASED)**

**AND**

**HEZEKIEL KIPLAGAT KIPELE ..... 1<sup>ST</sup> DEFENDANT  
DAVID MBUTHIA MACHARIA ..... 2<sup>ND</sup> DEFENDANT  
LINUS NJAGI GATIMU ..... 3<sup>RD</sup> DEFENDANT  
ISAAC JULIUS SANG ..... 4<sup>TH</sup> DEFENDANT  
ROMANUS ANGOLET ..... 5<sup>TH</sup> DEFENDANT  
SAMWEL NJUGUNA KANGETHE ..... 6<sup>TH</sup> DEFENDANT  
GILBERT MASACHI EGESA ..... 7<sup>TH</sup> DEFENDANT  
JOSPHAT EVASA ENZUGA ..... 8<sup>TH</sup> DEFENDANT  
WILLY KYOLE MUTISO ..... 9<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background and Introduction**

1. This suit was filed by Kispaina Arap Mursoi (Mursoi) against the Defendants on 20<sup>th</sup> May, 1997 at the High Court at Eldoret. Mursoi was the registered owner of LR. No. Eldoret Municipality/Block 21 (King'ong'o)/10 measuring 30 acres. Mursoi sold part of his land to two persons namely Peter Oirere



- Oenga who purchased ½ an acre on 11<sup>th</sup> June, 1986 and Ijait Cassianus Aluku, Philip Ijait Aluku and Irene Aluku who purchased one acre on 23<sup>rd</sup> February, 1987.
2. Mursoi who was old and illiterate asked his son-in-law Ezekiel Kiplagat Kiplel (Kiplel) the 1<sup>st</sup> Defendant to undertake survey of the land on his behalf so that he could give titles to the two persons to whom he had sold land.
  3. Kiplel engaged the services of Omondi Opuodho & Co. a firm of surveyors who subdivided Mursoi's land into 103 plots of various sizes. Kiplel made Mursoi sign many documents by thumb-printing. In or around 1996, Mursoi found Isaac Julius Sang (Sang), the Defendant constructing a house on one of the subdivided portion on grounds that he had purchased it from Kiplel. This is when Mursoi moved to register cautions against titles of those who had purported to purchase land from Kiplel.
  4. Mursoi complained to police over what Kiplel had done. Kiplel and Sang were arrested and charged in Eldoret Senior Principal Magistrate's court in Criminal Case No. 3740 of 1996 with various offences relating to the sale of portions of the land. The two were however acquitted under Section 210 of the *Criminal Procedure Code* on 3<sup>rd</sup> May, 2001 for lack of sufficient evidence to put them on their defence.
  5. The case which Mursoi filed against the Defendants in 1997 proceeded before the High Court until after the establishment of the Environment and Land Court. The file was transferred to the Environment and Land Court to proceed with the hearing but the file was returned back to the High Court by Justice Munyao who cited the directions which had been given by the Chief Justice that matters to do with land which were partly heard before the High Court before establishment of the Environment and Land Court were to proceed to conclusion in the High Court.
  6. Once the file was sent back to the High Court, Justice Kimondo of the High Court heard the remaining evidence and delivered judgment on 27<sup>th</sup> April, 2017. Kiplel and Sang were aggrieved with the judgment. They preferred an appeal to the Court of Appeal. When the matter came up for hearing at the Court of Appeal, the judges picked on the ground of jurisdiction raised by Sang. They found that the High Court had no jurisdiction to deal with a matter which was reserved for the Environment and Land court.
  7. The Court of Appeal nullified all proceedings which were undertaken after the promulgation of the 2010 Constitution including the judgement of 27<sup>th</sup> April, 2017. The file was remitted back to the Environment and Land Court for hearing by a judge other than Judge Munyao.
  8. Mursoi died on 31<sup>st</sup> May, 2017. He was substituted by his son Joshua Kipkorir Mursoi. The plaint was accordingly amended on 14<sup>th</sup> July, 2021 and it added willy Kyole Mutiso as the 9<sup>th</sup> Defendant.
  9. In the amended plaint, the following reliefs were sought:
    - a. A declaration that the registration of ELDORET MUNICIPALITY BLOCK 21 (KING'ONG'O) Plot Numbers 915, 916, 919, 920, 921, 922, 923, 924, 942, 943, 944, 945, 946, 947, 948, 960 and 961 in the names of the Defendants jointly and severally, is null and void abinitio.
    - b. A declaration that the Letters of Consent granted were fraudulently obtained and were of no legal effect and that the transfer forms executed were obtained by trick and the same be revoked.
    - c. Damages arising from the fraud on the part of the Defendants jointly and severally.
    - d. Interest.
    - e. Costs of and incidental to this suit.



- f. Any other or further relief this Honourable Court may deem to fit to grant.

### **Plaintiff's Case**

10. The Plaintiff's case is that he purchased LR. No. Eldoret Municipality/Block 21 (King'ong'o)/10 in 1965. The land was measuring 30 acres and had a house which was being occupied by a colonial white settler. The Settlers land was about 3,000 acres. The farm was called King'ong'o Farm. When the Plaintiff was allocated the area which had the farm house, the members gave him an option to either pay for the house or in the alternative it be demolished so that the members could share the materials from the demolished house.
11. The Plaintiff who was residing in Mosoriot in Nandi County asked his mother in law and sister in law to reside on the land at Eldoret so that they could take care of the land and his cows which were there. The Plaintiff's son was also on the land and was occupying the farm house. The 1<sup>st</sup> Defendant married the Plaintiff's daughter in 1972. The 1<sup>st</sup> Defendant was employed at Raiply which was near the Plaintiff's land. The 1<sup>st</sup> Defendant requested his father in law, the Plaintiff to accommodate him on his land. The Plaintiff agreed and his son who was occupying the farm house moved back to Mosoriot. The 1<sup>st</sup> Defendant moved into the farm house.
12. On 11<sup>th</sup> June, 1986, the Plaintiff sold ½ an acre to Peter Oirere Oenga. Again on 23<sup>rd</sup> February, 1987, he sold one acre to Cassianus Ijait Aluku and 2 others. He then asked the 1<sup>st</sup> Defendant to look for a surveyor to come and subdivide his land so that he could give titles to the two purchasers. The 1<sup>st</sup> Defendant went and engaged the services of a surveyor called Omondi Opuodho & Co. who carried out survey. After the death of Omondi, the firm of Arch Surveys Completed the process. The Plaintiff appeared before the Land Control once for purposes of giving consent for the subdivision of his land. It is the Plaintiff's evidence that the 1<sup>st</sup> Defendant took advantage of his illiteracy to subdivide the land into 103 plots of various sizes and sold some of them to the Defendants.
13. The 1<sup>st</sup> Defendant then made him to sign several documents by thumb-printing on the pretext that they were meant for the two purchasers to whom he had sold part of his land. The Plaintiff discovered the fraud when he found the 4<sup>th</sup> Defendant who was building a house on part of his land. He with the assistance of his son who substituted him went to the Lands Registry where they discovered that the 1<sup>st</sup> Defendant had transferred nine plots to himself, two plots to the 2<sup>nd</sup> Defendant and one each to the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants. The 1<sup>st</sup> Defendant had also transferred one plot to the 5<sup>th</sup> and 6<sup>th</sup> Defendants jointly.
14. The Plaintiff then moved to the Lands Registry where he registered cautions against the fraudulent titles. He went to police and reported the fraud. The 1<sup>st</sup> and 4<sup>th</sup> Defendants were arrested and charged in Eldoret Senior Principal Magistrate's court in Criminal Case No. 3740 of 1996 where they faced charges of forgery, being in possession of government stores, giving false information to a person employed in Public Service and forcible detainer. All charges except the one of forcible detainer were levelled against the 1<sup>st</sup> Defendant. The 4<sup>th</sup> Defendant was only charged with the offence of forcible detainer.
15. The Plaintiff testified that the 1<sup>st</sup> Defendant made him to thumb-print several documents until he became tired. He stated that the 1<sup>st</sup> Defendant took advantage of his illiteracy to commit the fraud. At the time the 1<sup>st</sup> Defendant was arrested, he was found in possession of several documents which were thumb-printed by Plaintiff but were yet to be filled in. These documents were transfer forms and application of consent of the Land Control Board.



16. The particulars of the fraud were brought out by the Plaintiff's son who testified as PW2 Joshua Kipkorir Saina. He stated that the father only went to the Land Control Board once. On the rest of the sessions he is said to have attended, he did not actually attend. It is the 1<sup>st</sup> Defendant who used to go. The Plaintiff had agreed with Omondi Opuodho to subdivide his land into 65 plots. The 1<sup>st</sup> Defendant later went to the Plaintiff's home at Mosoriot where he informed him that he had subdivided the land into 103 plots. The Plaintiff told the 1<sup>st</sup> Defendant that that was okay as long as all the subdivisions came out in his name.
17. The Plaintiff's son who finally took over this case after the death of his father testified that there were two sets of minutes of the Land Control Board. There were erasures in the minutes. His father did not sign any sale agreements with the 1<sup>st</sup> Defendant. It is the 1<sup>st</sup> Defendant who transferred the plots in issue to himself and to the other Defendants. He testified that upon arrest, the 1<sup>st</sup> Defendant was found in possession of blank transfer forms which had been thumb-printed by his father.

### **1<sup>st</sup> Defendant's case**

18. The 1<sup>st</sup> Defendant testified that he is son in-law to Mursoi. His father in-law had 30 acres of land. He had sold portions of it. He asked him to carry out subdivision of the land. He engaged the firm of Omondi Opuodho & Co. who carried out subdivision but he did not complete it. He later engaged Arch Surveyors who completed the survey. He paid a total of Kshs.353,100/=. He agreed with his father in-law that he was to be given 3 acres. This agreement was reduced into writing. The land was subdivided into 103 plots. There was change of user from agricultural to commercial and residential.
19. The 1<sup>st</sup> Defendant testified that his father in-law went to the Land Control Board where consent was given in respect of all the 103 plots. His father in-law agreed to give him 15 plots. His father in-law signed transfers for all the 15 plots. Consent to transfer was given pursuant to the Land Control Board meeting held on 9<sup>th</sup> November, 1995.
20. The 1<sup>st</sup> Defendant then sold plot 945 and 944 to the 3<sup>rd</sup> Defendant, plot 946 to the 4<sup>th</sup> Defendant, plot 947 to 5<sup>th</sup> Defendant and 6<sup>th</sup> Defendants, plot 943 to 7<sup>th</sup> Defendant, plot 948 to 9<sup>th</sup> Defendant and plot 916 to 2<sup>nd</sup> Defendant. He stated that it is his father in law who sold plot 924 to the 2<sup>nd</sup> Defendant.
21. The 1<sup>st</sup> Defendant further testified that he was arrested together with the 4<sup>th</sup> Defendant and were charged in Eldoret Senior Principal Magistrate's court in Criminal Case No. 3740 of 1996. They were acquitted under Section 210 of the Criminal Procedure Code. His father in-law called an elders meeting where it was resolved that he be given 2 acres including where the farm house is.
22. He went on to testify that he purchased the farm house which is on plot 923. He maintained that his father in-law appeared before the Land Control Board where he gave his consent for transfer of the plots to him. He denied any fraud attributed to him.

### **The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' case**

23. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not come to testify in this case.

### **The 4<sup>th</sup> , 5<sup>th</sup> , 6<sup>th</sup> , 7<sup>th</sup> and 9<sup>th</sup> Defendants' case**

24. The 4<sup>th</sup> , 6<sup>th</sup> , 7<sup>th</sup> and 9<sup>th</sup> Defendants testified that they purchased their respective plots from the 1<sup>st</sup> Defendant. They entered into sale agreements with the 1<sup>st</sup> Defendant and paid for their plots. They purchased their plots after they confirmed that the plots they were buying were in the 1<sup>st</sup> Defendant's name.



25. The 4<sup>th</sup> Defendant testified that he purchased his plot on 25<sup>th</sup> January, 1996. The 5<sup>th</sup> and 6<sup>th</sup> Defendants purchased their plot on 29<sup>th</sup> March, 1996. The 9<sup>th</sup> Defendant purchased his plot on 5<sup>th</sup> February, 1996.

### **The 8<sup>th</sup> Defendant's case**

26. The 8<sup>th</sup> Defendant testified that he purchased his land from Mursoi the initial Plaintiff in this case. He stated that the agreement between him and Mursoi got lost. He obtained his title on 11<sup>th</sup> April, 1996.

### **Submissions of parties**

#### **Plaintiff's submissions**

27. The Plaintiff filed two sets of submissions. One is dated 19<sup>th</sup> April, 2024 and the other is dated 10<sup>th</sup> May, 2024. The submissions have highlighted various anomalies in the transactions leading to the filing of this suit.

#### **Submissions for the 1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup> to 8<sup>th</sup> Defendants**

28. The Defendants filed their submissions dated 24<sup>th</sup> May, 2024. They submitted that the Plaintiff lawfully subdivided his land into various plots some of which were transferred to the 1<sup>st</sup> Defendant who transferred some to the Defendants. They submitted that there was no fraud proved against the 1<sup>st</sup> or the other Defendants. They submitted that the consent of the Land Control Board which was obtained has never been set aside in any judicial review proceedings.

#### **4<sup>th</sup> Defendant's Submissions**

29. The 4<sup>th</sup> Defendant filed his submissions dated 20<sup>th</sup> March, 2024. The 4<sup>th</sup> Defendant submitted that he obtained his land lawfully from the 1<sup>st</sup> Defendant. He submitted that there was no fraud proved against him.

### **Analysis and Determination**

30. I have considered the evidence adduced by the parties, the submissions filed as well as the authorities cited. The following are issues which emerged for determination:
- a. Whether the subdivision of LR. No. Eldoret/Municipality Block 21 (King'ong'o)/10 was sanctioned by the Plaintiff.
  - b. Whether there was fraud involved in the transfer of the suit properties to the Defendants.
  - c. Are the 2<sup>nd</sup> to 9<sup>th</sup> Defendants innocent purchasers of their respective plots.
  - d. Which order should be made on costs.

#### **Whether the subdivision of LR. No. Eldoret Municipality Block 21 (King'ong'o)/10 was sanctioned by the Plaintiff.**

31. There is evidence that the Plaintiff had entered into an agreement with Omondi Opuodho & Co. to subdivide his land. This agreement was entered into on 25<sup>th</sup> March, 1987 as per Plaintiff exhibit 31. The firm of Omondi Opuodho & Co. was to be paid a total of Kshs.30,300/=. The Plaintiff and his son PW2 confirmed this in their evidence.



32. There was another agreement made between Omondi Opuodho & Co. on 1<sup>st</sup> February, 1990. This agreement was signed by the 1<sup>st</sup> Defendant on behalf of the Plaintiff. The fees for subdivision was Kshs.205,500/= . Kshs.170,000/= was to be paid on signing the agreement and the balance of Kshs.35,500/= was to be paid by 31<sup>st</sup> December, 1991.
33. The surveyor was to subdivide the Plaintiff's land into 65 plots. There is no evidence that the 1<sup>st</sup> Defendant paid Kshs.170,000/= on or before 1<sup>st</sup> February, 1990. There are only two receipts which were issued by the firm on 1<sup>st</sup> November, 1991 and 4<sup>th</sup> November, 1991 for Kshs.40,000/= and 30,000/= respectively.
34. There was also another agreement made on 25<sup>th</sup> August, 1992 in which the 1<sup>st</sup> Defendant agreed with the Plaintiff to subdivide the entire 30 acres and pay the suveyor.
35. The subsequent two agreements notwithstanding, the Plaintiff admitted that he had engaged the firm of Omondi Opuodho & Co. to carry out the subdivision. He went ahead to subdivide the land into 103 portions. The evidence of PW2 was that his father was not opposed to this as long as all the 103 portions were in his name. I therefore find that the subdivision had the sanction of the Plaintiff.

**Whether there was fraud involved in the transfer of the suit properties to the Defendants.**

36. The 1<sup>st</sup> Defendant is said to have fraudulently transferred Eldoret Municipality/Block 21 (King'ong'o) 915, 919, 920, 921, 922, 923, 923, 948, 960 and 961 into his name. All these plots were transferred into the 1<sup>st</sup> Defendant's name on 13<sup>th</sup> February, 1996. All the transfers were witnessed by Stephen M. K. Wainaina. There were no sale agreements which preceeded those transfers.
37. During the criminal Proceedings against the 1<sup>st</sup> Defendant and 4<sup>th</sup> Defendants, Stephen Wainaina was prosecution witness number 5. He stated that he witnessed the transfer forms in the absence of the owner. He had asked the 1<sup>st</sup> Defendant where the owner was and he told him that the owner was sick and could not come. This was wrong for one to purport to have seen the owner sign when that was not the case.
38. The Plaintiff had testified that he was made to sign blank forms which were taken to him by the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant told him that the forms were in relation to the transactions for Peter Oirere Oenga and Cassianus Ijait Aluku. There is evidence that the Plaintiff was illiterate. The 1<sup>st</sup> Defendant was taking advantage of him.
39. Fraud is defined thus:
 

“Deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other.”
40. During the criminal proceedings against the 1<sup>st</sup> and 4<sup>th</sup> Defendants Roseline Chepketer Kemboi testified as prosecution witness number 3. She was a Land Registrar when the 1<sup>st</sup> Defendant went to the lands office. She asked the 1<sup>st</sup> Defendant where the owner was and he told her that he was away because he was sick. This witness went ahead to sign for the titles as the 1<sup>st</sup> Defendant was her relative.
41. The 1<sup>st</sup> Defendant testified that he is the one who sold Eldoret Municipality (King'ong'o) 916 to the 2<sup>nd</sup> Defendant. There is no sale agreement between him and the 2<sup>nd</sup> Defendant. As for Eldoret



- Municipality/Block 21 (King'ong'o) 924. The transfer shows that it was signed on 28<sup>th</sup> March, 1996. The date the transfer was received for registration is shown as 11<sup>th</sup> April, 1996. There are two thumb prints on the transfer. Application for consent was made on 8<sup>th</sup> November, 1995. Consent was granted on 9<sup>th</sup> November, 1996. The application for consent which was used was for plot 944 but was changed by land to read plot 924. In the minutes of Land Control Board of 9<sup>th</sup> November, 1995 plot 924 was not among those whose consent was granted.
42. The transfer in favour the 2<sup>nd</sup> Defendant for plot 924 was taken to the Lands Registry by the 1<sup>st</sup> Defendant. It was rejected as the ink used was purple which is not accepted. The 1<sup>st</sup> Defendant went back with it and came back when it had been signed using the correct ink. This explains the two thumb-prints on the transfer. The evidence came out clearly at the criminal trial. It is clear that the 1<sup>st</sup> Defendant was involved in this fraud.
  43. The 2<sup>nd</sup> Defendant had signed a consent in Eldoret Senior Principal Magistrate court Civil Case No. 1870 of 1996 where he undertook to surrender the title in exchange for his release from custody. He had been arrested in connection with the fraud. There was no consent to transfer given. The 2<sup>nd</sup> Defendant was secretary to the Land Control Board which gave consent to sale of the Plaintiff's land. The consent was signed on 2<sup>nd</sup> April, 1997.
  44. The 1<sup>st</sup> Defendant entered into a sale agreement with the 5<sup>th</sup> and 6<sup>th</sup> Defendants in respect of sale of Eldoret Municipality/Block 21 (King'ong'o) 947 on 23<sup>rd</sup> January, 1996. According to the minutes of the Land Control Board of 9<sup>th</sup> November, 1995 consent was given to Plaintiff to transfer parcel 947 to the 1<sup>st</sup> Defendant. According to the green card, it is the Plaintiff who transferred the land to the 5<sup>th</sup> and 6<sup>th</sup> Defendants. During the hearing, the 6<sup>th</sup> Defendant said that he did not know the Plaintiff.
  45. On 10<sup>th</sup> December, 1995, the 1<sup>st</sup> Defendant entered into a sale agreement with the 4<sup>th</sup> Defendant for sale of Eldoret Municipality/Block 21 (King'ong'o) 946. Among the witnesses to this agreement was the 8<sup>th</sup> Defendant. As at the time of this agreement, the owner was the Plaintiff. The land was transferred to the 1<sup>st</sup> Defendant on 25<sup>th</sup> January, 1996 and he transferred it to the 4<sup>th</sup> Defendant the following day.
  46. When the 1<sup>st</sup> Defendant and the 4<sup>th</sup> Defendant realized the mistake they had made in their fraud game, they went before an advocate and entered into another agreement dated 25<sup>th</sup> January, 1996 to align it with the fraudulent transfer of 25<sup>th</sup> January, 1996 from the Plaintiff to the 1<sup>st</sup> Defendant. The Land Control Board also purportedly sat on the same day and approved transfer from the 1<sup>st</sup> Defendant to the 4<sup>th</sup> Defendant.
  47. The transfer in respect of Eldoret Municipality/Block 21 (King'ong'o) 942 in favour of the 8<sup>th</sup> Defendant was registered on 11<sup>th</sup> April, 1996. The Plaintiff was purportedly identified to the Land Registrar by 4<sup>th</sup> Defendant. The Plaintiff never went to the lands office. It is the 1<sup>st</sup> Defendant who took the transfers to the lands office. There was no sale agreement between the Plaintiff and the 8<sup>th</sup> Defendant. The 8<sup>th</sup> Defendant claimed that the sale agreement was lost. There was no report of the loss made anywhere.
  48. The Plaintiff testified that he attended the Land Control Board once and did not return as he was sick. Evidence which was adduced is that the 1<sup>st</sup> Defendant went to the Plaintiff's home at Mosoriot and told him that he had subdivided the land into 103 portions. The Plaintiff told him that that was okay as long as all the portions came out in his name. This evidence came from PW2. The one occasion he appeared before the Board was when there was an application for subdivision and change of user which was approved on 13<sup>th</sup> July, 1995.



49. In *Kinyanjui Kamau -vs- George Kamau* (2015) eKLR it was stated thus:

“.....It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo -vs- Ndolo* (2008) 1 KLR (G&F) 742 wherein the court stated that: “....we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases....”

50. The Plaintiff particularized the particulars of fraud and went ahead to prove the alleged fraud. The 1<sup>st</sup> Defendant engaged Stephen Wainaina who witnessed the transfers. The 1<sup>st</sup> Defendant claimed that the Plaintiff was sick hence the reason for being away. He also gave him the same answer he gave to Wainaina.

51. The 1<sup>st</sup> Defendant is the one who took the fraudulent transfer in respect of Eldoret Municipality Block 21 (King’ong’o) 924 to the Lands Registry. It was rejected and he went with it and came back with it. This is after he had secured the thumbprint of the Plaintiff who did not know that he was signing off his land. This transaction had no consent of the Land Control Board and the 1<sup>st</sup> Defendant was aware of this.

52. In his fraudulent schemes, he was working closely with particularly the 2<sup>nd</sup>, 4<sup>th</sup> and 8<sup>th</sup> Defendants. The 4<sup>th</sup> Defendant purported to attest that he was present when he identified the Plaintiff to the Land Registrar. The 8<sup>th</sup> Defendant also was a witness in a fraudulent sale agreement in favour of the 4<sup>th</sup> Defendant.

53. The 1<sup>st</sup> Defendant breached the trust which the Plaintiff had bestowed on him. The 4<sup>th</sup> Defendant is the one who introduced some of the Defendants to the 1<sup>st</sup> Defendant. What has been highlighted above shows that the Plaintiff has proved all the particulars of fraud attributed to the 1<sup>st</sup> Defendant and his co-defendants.

#### **Whether the 2<sup>nd</sup> to 9<sup>th</sup> Defendants are innocent purchasers without notice of any defect in title**

54. The 2<sup>nd</sup> Defendant was the secretary of the Land Control Board which made approvals of the dispute properties. For instance in the case of Eldoret Municipality Block 21 (King’ong’o) 924, he knew that there was no consent of the Land Control Board which had been obtained but he went ahead to obtain title for it with active assistance of the 1<sup>st</sup> Defendant who took the fraudulent transfer and ensured that it was registered. The sale was purportedly done by the Plaintiff. There was no sale agreement signed or any evidence of consideration. The 2<sup>nd</sup> Defendant did not even bother to come to court to testify because he knew what he had done.

55. Black’s Law Dictionary (8<sup>th</sup> Edition) defines ‘a bona fide purchase’ as:

“One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”



56. The 8<sup>th</sup> Defendant purports to have purchased the land from the Plaintiff. He has no sale agreement. The Plaintiff denied selling his land to him. It was upon him to prove that his title was obtained genuinely. He did not.
57. As for the 5<sup>th</sup> and 6<sup>th</sup> Defendants, they purchased land from the 1<sup>st</sup> Defendant. However, the green card shows that the land was still in the name of the Plaintiff. Had they done due diligence, they would have noticed that the title holder was not the one who was selling them land.
58. As for the 9<sup>th</sup> Defendant, he cannot claim that his title is clean. A bona fide purchaser cannot stick on title. He has to show that the title was clean all through until it was transferred to him. The title of the 1<sup>st</sup> Defendant having not been obtained genuinely, he had nothing to pass on to the 9<sup>th</sup> Defendant.
59. In the case of *Said -vs- Shuma & 2 others* (Civil Appeal E050 of 2023 [2024] KECA 866 (KLR) (26 July, 2024) the court of Appeal quote from a Supreme Court of Kenya decision in *Dina Management Limited -vs- County Government of Mombasa & 5 others* (Petition 8 (E010 of 2021 (2023) KESC 30 (KLR) where the Supreme Court stated that for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment. The court upheld the dicta in *Samuel Kamere - vs- Lands Registrar Kajiado* where it was stated that:
- “..... in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property....”
60. In the instant case, it has come out clearly that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants were deeply involved in the fraudulent activities of the 1<sup>st</sup> Defendant. The 5<sup>th</sup> and 6<sup>th</sup> Defendants did not carry out due diligence otherwise they would have noticed that the person who sold them the land was not the owner. The green card showed that it is the Plaintiff who transferred the land to them, yet the agreement was between them and the 1<sup>st</sup> Defendant. The 3<sup>rd</sup> Defendant did not adduce any evidence on how he obtained his title. The 9<sup>th</sup> Defendant could not obtain a clean title from the 1<sup>st</sup> Defendant who has been proved to have obtained the title by deceit. He took advantage of his illiterate father-in-law to transfer land to himself. He had no good title to pass to any of the Defendants.

## Conclusion

61. The agreement of 25<sup>th</sup> August, 1992 is suspicious. The 1<sup>st</sup> Defendant claims to have purchased 3¾ acres from the Plaintiff. This agreement was a photocopy and the 1<sup>st</sup> Defendant stated that he did not have the original. The evidence of Mursoi is that he never sold any land to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant claims that the consideration was Kshs.300,000/= which was to be offset from the monies he used in the survey exercise.
62. Already, the Plaintiff had signed an agreement in 1987 in which he agreed with Omondi Opuodho & Co. that survey fees was Kshs.30,300/=. Again in 1990, the 1<sup>st</sup> Defendant purporting to act on behalf of the Plaintiff signed another agreement dated 1<sup>st</sup> February, 1990 in which survey fees was Kshs.205,500/=. As if this was not enough, the 1<sup>st</sup> Defendant again purported to have purchased 3¾ acres at Kshs.300,000 and that these monies were to be offset through payment of survey fees.

## Disposition

63. From the above analysis, I find that the Plaintiff has proved his case on a balance of probabilities. I grant the following reliefs.



- a. A declaration that the registration of Eldoret Municipality Block 21 (King'ong'o) 915, 916, 919, 920, 921, 922, 923, 924, 942, 943, 944, 945, 946, 947, 948, 960 and 961 in the names of the Defendants jointly and severally are null and void abinito and are hereby cancelled.
- b. A declaration that the letters of consent granted resulting in the impugned transfer were fraudulently obtained by trickery and are of no legal effect.
- c. The Plaintiff shall have costs of the suit.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HON. E. O. OBAGA**

**JUDGE**

In the presence of:

Mr. Bittok for Plaintiff

Mr. Nyachiro for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants.

Mr. Momanyi for 4<sup>th</sup> Defendant.

Court assistant Steve Musyoki

