



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirumba & 6 others v Katitia & 3 others (Environment & Land Case  
115 of 2018) [2024] KEELC 5540 (KLR) (29 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5540 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ENVIRONMENT & LAND CASE 115 OF 2018**

**LC KOMINGOI, J**

**JULY 29, 2024**

**BETWEEN**

**IAN MUKIRI KIRUMBA ..... 1<sup>ST</sup> PLAINTIFF**  
**JOAN WANGARI KIRUMBA ..... 2<sup>ND</sup> PLAINTIFF**  
**ANNE NJAMBI KIRUMBA ..... 3<sup>RD</sup> PLAINTIFF**  
**OWEN KARANJA KIRUMBA ..... 4<sup>TH</sup> PLAINTIFF**  
**SAMUEL KIMEMIA WAINAINA ..... 5<sup>TH</sup> PLAINTIFF**  
**JANET WAITHIRA NJUE ..... 6<sup>TH</sup> PLAINTIFF**  
**BEATRICE NYAWIRA NGURU ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**DANIEL KELEMBU KATITIA ..... 1<sup>ST</sup> DEFENDANT**  
**DAVID KAMAU GAKURU ..... 2<sup>ND</sup> DEFENDANT**  
**THE LAND REGISTRAR, KAJIADO NORTH ..... 3<sup>RD</sup> DEFENDANT**  
**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By the Plaint dated 13<sup>th</sup> July 2018, and Amended on 8<sup>th</sup> July 2019, the Plaintiffs claim that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs are Administrators of the Estate of their mother the Late Martha Wanjiku Kirumba who passed away on 5<sup>th</sup> July 2006. The Grant of Letters of Administration was issued on 23<sup>rd</sup> February 2009, confirmed on 21<sup>st</sup> October 2015, amended on 14<sup>th</sup> November 2016 and further amended on 6<sup>th</sup> November 2017.



2. It is their case that in the year 1989, their late mother, Martha purchased property Kajiado/Kaputiei-North/1223 from one Nicholas Muchene Njau and sold it off sometime in the year 2004 to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Plaintiffs, who took possession of the property pending its transfer. They allege that when filing for grant of letters of administration they did not include the said property in the list of properties because they knew it had been sold to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants. It was upon the grant confirmation that the 5<sup>th</sup> to the 7<sup>th</sup> Defendants informed them that the transfer had not been completed and they thus amended the grant to include it as part of the late Martha's property.
3. In 2017 when the beacons were re-established and the property fenced, they discovered that the land had been fraudulently and illegally transferred to the 1<sup>st</sup> Defendant who subdivided it to parcels Kajiado/Kaputiei- North/47222 and Kajiado/Kaputiei- North/47223 and transferred it to the 2<sup>nd</sup> Defendant. Parcel Kajiado/Kaputiei- North/47222 was further subdivided to parcels Kajiado/Kaputiei- North/101191-101193 and parcel Kajiado/Kaputiei- North/47223 further subdivided to Kajiado/Kaputiei- North/101198-101204.
4. The Plaintiffs particularised the claim of fraud against the 1<sup>st</sup> Defendant as:Representing himself as the proprietor of the suit land which was registered in the name Martha Wanjiru Kirumba;Obtaining title to the suit land while another one was in existence in the name Martha Wanjiru Kirumba;Entering into a sale agreement with the 2<sup>nd</sup> Defendant for sale of Kajiado/Kaputiei- North/1223 without having a valid title to it;Fraudulently subdividing and transferring titles emanating from Kajiado/Kaputiei-North/1223 which he did not have legal title to.
5. The Plaintiffs particularised the claim of fraud and negligence against the 2<sup>nd</sup> Defendant as:Entering into a sae agreement for sale of the suit land without undertaking due diligence;Acquiring title to land which was acquired fraudulently;Tendering a forged title to the Land's office and effecting a fraudulent transfer;Transferring land Kajiado/Kaputiei- North/1223 without proprietary interest in it.
6. The particulars of fraud against the 3<sup>rd</sup> Defendant were:Issuing title to the 1<sup>st</sup> Defendant in respect to the suit land which was registered in the name of Martha Wanjiru Kirumba;Issuing title to the 1<sup>st</sup> Defendant registered in the name of Martha Wanjiru Kirumba without a transfer of land lodged in favour of the 1<sup>st</sup> Defendant;Effecting a fraudulent transfer of the suit land and subdividing it into other portions disregarding the proprietary interests of its registered owner/Estate;Transferring and accepting forged documents regarding title Kajiado/Kaputiei- North/1223 and effect a fraudulent change of ownership.
7. The Plaintiffs thus sought the following orders;
  - a. A declaration that the issuance of title Kajiado/Kaputiei- North/1223 by the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant was fraudulent and consequently null and void;
  - b. A declaration that the subsequent subdivision of title Kajiado/Kaputiei- North/1223 to Kajiado/Kaputiei- North/47222 and Kajiado/Kaputiei- North/47223, the transfer to the 2<sup>nd</sup> Defendant of the said parcel numbers 47222 and 47223 and the subsequent subdivisions of the said title numbers 47222 and 47223 into Kajiado/Kaputiei- North/101191-101193 and 101198-101204 was fraudulent and consequently null and void;
  - c. An order that the 3<sup>rd</sup> Defendant do cancel all entries in respect to the subdivision of title numbers Kajiado/Kaputiei- North/1223 to Kajiado/Kaputiei- North/47222 and Kajiado/Kaputiei- North/47223 and all the subsequent titles emanating from the said subdivisions to wit Kajiado/Kaputiei- North/101191-101193 and 101198-101204.



- d. An order that the 2<sup>nd</sup> Defendant do restore the name of the deceased Martha Wanjiru Kirumba as the registered proprietor of title no. Kajiado/Kaputiei- North/1223.
  - e. A perpetual injunction restraining the 2<sup>nd</sup> Defendant from entering into, dealing with, interfering or alienating the Plaintiffs' parcel of land known as Kajiado/Kaputiei- North/1223 which has purportedly been subdivided into parcels 101191-101193 and 101198-101204.
  - f. In the alternative, the Defendants be jointly ordered to pay the Plaintiffs the sum of Kshs. twenty eight million (28,000,000) jointly being the current market value of the suit land.
  - g. The defendants do bear the costs of the suit.
8. The 1<sup>st</sup> Defendant in his Statement of Defence denied all the allegations in the Plaint and sought for dismissal of the suit. He claimed that he was the registered owner of the suit land Kajiado/Kaputiei- North/1223 having purchased it from the late Martha Wanjiru Kirumba on 19<sup>th</sup> December 2004 and lawfully transferred to him.
  9. The 2<sup>nd</sup> Defendant in his Statement of Defence averred that he duly purchased the suit property from the 1<sup>st</sup> Defendant. He states that there was a signpost on the suit land advertising the land for sale hence he contacted the 1<sup>st</sup> Defendant who gave him a copy of the title deed. He instructed his lawyers who upon conducting due diligence confirmed that the suit property was indeed registered in the name of 1<sup>st</sup> Defendant. They entered into a sale agreement executed on the 2<sup>nd</sup> August 2012 for parcel Kajiado/Kaputiei- North/47222, he paid a consideration, got consent from the Land Control board and paid the required stamp duty. The executed transfer documents were then presented to the 3<sup>rd</sup> Defendant and the land was legally transferred to him. In 2014, the other portion Kajiado/Kaputiei- North/47223 was also duly transferred to him and he proceeded to subdivide the property into fourteen (14) parcels. He therefore denied the allegations of fraud and sought that the suit be dismissed with costs.
  10. It is his case that should there be any irregularity in the transaction, the recourse should be against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants because the procedure to acquire the land was proper.
  11. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants in their statement of defence contested the entire claim and sought the suit be dismissed with costs.

### **Evidence of the Plaintiffs**

12. PW1, Owen Karanja Kirumba adopted his witness statement as part of his evidence in chief and produced his bundle of documents as P. Exhibits 1-6.
13. On cross examination he stated that he had not tendered any evidence of fraud or negligence against the 2<sup>nd</sup> Defendant. He stated that his late mother sold property Kajiado/Kaputiei North/1223 to a group of six people who included the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Plaintiffs. The purchasers paid a consideration of Kshs. 300,000 although he did not have documents as evidence of the transaction. He also stated that he was not sure if the purchasers took possession of the property and was also not aware why the transfer was never completed. However, he was aware that the land had been transferred to other parties and subdivided. He stated that upon getting information that other persons were claiming the property he lodged an inhibition against the suit property although he could not recall whether he paid any fees for registration of the inhibition. He also could not confirm if the inhibition was registered. He also informed court that he did not file a formal complaint with the police regarding the claim by other persons.



14. On re-examination he stated that he did not know that the land had not been transferred to the 5<sup>th</sup> – 7<sup>th</sup> Plaintiffs. He had no information that it had been transferred to other parties.
15. PW2, Beatrice Nyawira Nguru the 7<sup>th</sup> Plaintiff adopted her witness statement as part of her evidence in chief. She produced copy of the transfer and the application for consent to Land Control Board as P. Exhibit 2(a) and 2(b) respectively. She also stated that she had the original copy of the Certificate of Title in the name of Martha Wanjiru Kirumba from the year 2004.
16. On cross examination she stated that they purchased the land as a group of fourteen (14) friends in 2004 for a total of Kshs. 300,000. Each of them paid Kshs. 50,000 towards the purchase. She stated that the discussions and transaction was led by one Mr. Mathagu who was Martha's friend. However, the said Mr. Mathagu was neither a party nor a witness in the suit because he was sickly. She added that Mr. Mathagu is the one who gave them the certificate of title, signed transfer form and the application to the land control board. She stated that upon payment of the consideration, the deceased acknowledged receipt in writing. They then fenced the property in 2004, but it was vandalised over time and they went back in 2017 to put up another fence. They also went with a land surveyor to reconfirm the beacons. They were however informed that the land belonged to someone else. They also visited the Land Registrar who informed them that the property's green card was missing from the parcel file. She confirmed that she was not present when the documents were signed and given to Mr. Mathagu. She had no evidence that the property belonged to them.
17. On re-examination she stated that they learnt the land had been transferred to someone else in the year 2017 and in the year 2018 they registered an inhibition against the title.
18. PW3 Emmanuel Karisa Kenga, a forensic document examiner with 30 years' experience produced the report dated 24<sup>th</sup> November 2021 as an exhibit in this case. He stated that he received instructions vide a letter dated 23<sup>rd</sup> November 2021 from the Plaintiffs' advocates to examine some documents and ascertain their authenticity. The documents were marked A1, which was a sale agreement dated 19<sup>th</sup> August 2004, documents marked B1 and B2 which were known signatures of the late Martha Wanjiru Kirumba. He stated that upon comparing the signatures, there was no comparison between them. He indicated that he compared the pattern and the speed of the strokes, pen movement and concluded that the signature on the document marked A1 was not made by the same person as the signatures on the documents marked B1 and B2.
19. On cross examination he stated that he had worked for the National Police Service. He stated that the documents he examined were not originals but copies. He confirmed that it was possible to manipulate copies although in this case the copies were not manipulated. He could also not confirm the type of the machine used to make the copies nor the skills of the person who photocopied them. He also confirmed that his report did not indicate the type of microscope used although it captured the differences in the known signatures as against the signature in the sale agreement examined. He stated that the differences outlined in the chart were not in words because that is the standard way of making such reports.
20. On re-examination he confirmed that receiving copies of the documents did not affect the examination and that the standard way of compiling the report was by providing a comparison chart.

### **Evidence of the Defendants**

21. The 1<sup>st</sup> Defendant did not attend court to prosecute his defence.
22. DW1 David Kamau Gakuru a retired businessman adopted his witness statement as part of his evidence in chief and produced his bundle of documents as evidence herein marked as D. Exhibit 1-21. He sought dismissal of the suit or compensation should the suit be in favour of the Plaintiff.



23. On cross examination he stated that his involvement with the suit property began in 2012. While at Isinya on his way to Namanga, he saw a signboard advertising the land for sale. He called the number on the board and he met the seller, one Daniel Katitia, the 1<sup>st</sup> Defendant and agreed on the terms. He then engaged his advocate who conducted a search against the suit property and confirmed that it was indeed registered in the seller's name. He paid the purchase price, fulfilled all the terms, and took possession of the land. Later on some people entered the property claiming it was theirs and he reported the matter to the police. He also presented his documents for plots 47222 and 47223 . He confirmed that he did not have a history of the subdivision of the property from 1223 to the current 47222 and 47223. But when he received a demand letter from the Plaintiffs indicating he had occupied their land, the 1<sup>st</sup> Defendant confirmed that the property was his and had passed a good title. Once again, he did a search which confirmed that the 1<sup>st</sup> Defendant was indeed the registered owner of the suit property. He stated that he did not ask for records of the subdivision. He also confirmed that he was not aware that the original title for Kajiado/Kaputiei – North/1223 was with the Plaintiffs or how the 1<sup>st</sup> Defendant acquired the said property. During the hearing of this suit, he has learnt that the Plaintiffs deny that the land was sold to 1<sup>st</sup> Defendant. He stated that he was not duped into purchasing the property because he carried out due diligence in acquiring it.
24. On re-examination he stated that the Plaintiffs erected a fence on the suit property four years after he had purchased it. He also stated that the original title document produced by the Plaintiffs had no serial number. It does not show the person who signed.
25. At the close of the oral testimonies, parties tendered final written submissions.

### **The Plaintiff's Submissions**

26. Counsel for the Plaintiffs submitted that the 5<sup>th</sup> to 7<sup>th</sup> plaintiffs purchased the suit property from the late Martha in the year 2017 but they had never effected transfer and she passed away in 2006. In 2017 after the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs had been granted letters of administration, they accompanied the 5<sup>th</sup> to 7<sup>th</sup> plaintiffs to the property to fence it and re-confirm the boundaries, which they did. He submitted that the allegation that the 1<sup>st</sup> Defendant also purchased the property from Martha was never supported because he failed to attend court despite being summoned severally. Counsel also submitted that the 3<sup>rd</sup> Defendant also failed to attend court to confirm how title was allegedly passed to the 1<sup>st</sup> Defendant and also subdivided. Counsel indicated that the document examiner confirmed that the late Martha's known signature did not match the signature on the sale agreement that 1<sup>st</sup> Defendant purported to have entered with her. As such, issuance of title to the 1<sup>st</sup> Defendant was done illegally and could not pass good title to the 2<sup>nd</sup> Defendant as was held by the Supreme Court in *Dina Management Ltd v County of Mombasa & 5 others* [2023] KESC 30 (KLR).

### **The 2nd Defendant's submissions**

27. Counsel for the 2<sup>nd</sup> Defendant submitted on the following issues as summarised here below.
28. On whether the Plaintiffs had a valid title over property Kajiado/Kaputiei North/1223, counsel submitted that the Plaintiffs produced an original title over the suit parcel but bore no serial number at the last page; it neither had the name of the Land Registrar who signed it nor stamp; and it did not have a Government printers' number. Without this, the alleged original title was invalid. Additionally, this alleged original title was given to one Patrick Mathagu who was neither party to the suit nor called as a witness.



29. On whether the 5<sup>th</sup> – 7<sup>th</sup> plaintiffs purchased the suit property from one Martha, counsel submitted that PW1 and PW2 both confirmed that there was no sale agreement between the late Martha and the 5<sup>th</sup> – 7<sup>th</sup> plaintiffs. It was on record that the Plaintiffs did not have evidence of payment of the purchase price and they were not involved in the sale process because the person who led the process was one Patrick Mathagu who was neither party to the suit nor called as a witness and the title they had lacked ingredients to make it a valid document. The undated application for LCB consent neither had the name of the purchaser, nor Martha’s identification number and the Plaintiffs did not see her append her signature. On the undated transfer, counsel submitted that it had not been executed and the ID number indicated on it was different from the one indicated on the title deed.
30. On whether fraud had been proved against the Defendants, counsel submitted that the Plaintiffs never witnessed Martha signing the undated transfer and Land Control Board consent application form which were given to the document examiner to compare against the sale agreement in possession of the 1<sup>st</sup> Defendant. The only person who allegedly witnessed the signing was never called as a witness. Additionally, the document examiner did not produce documents of his qualifications, evidence of his service at the Kenya police, and he confirmed that the authenticity of the documents he examined was not proved. Therefore, the veracity of the document examiner’s report was questioned because the authenticity of the documents he examined was not proved. Reference was made to: *Samson Tela Akute v Republic* [2006] eKLR and *Apex Security Services Ltd vs Joel Atuti Nyaruri* [2018] eKLR. Therefore, fraud against the Defendants had not been proved as per the required standard.
31. Therefore, the 2<sup>nd</sup> Defendant was a bona fide purchaser for value without notice and his title was protected. To affirm this, counsel submitted that the 2<sup>nd</sup> Defendant followed due process and had documents to show that he acquired title to the said property lawfully without knowledge of fraud (if any). As such the register should not be rectified to affect him as provided by Section 80(2) of the *Land Registration Act* and supported by *Charles Karathe Kiarie & 2 others v Administrators of the Estate of John Wallace Mathare (Deceased) & 5 others* [2013] eKLR and *David Peterson Kiengo & 2 others v Kariuki Thuo* [2012] eKLR.
32. And should the court order for cancellation of title, then the 2<sup>nd</sup> Defendant should be indemnified by his co- defendants for an amount of Kshs, 28,990,240.

### **Analysis and Determination**

33. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. The issues for determination are:
  - i. Who is the bonafide owner of parcel no Kajiado/Kaputiei- North/1223;
  - ii. Whether the Plaintiffs claim of fraud against the Defendants has been proved;
  - iii. Whether the Plaintiffs are entitled to the prayers sought;
  - iv. Who should bear costs of the suit?
34. The matter before this Court involves the disputed ownership of the property known as Kajiado/ Kaputiei North/1223. It is not in dispute that the property was initially registered to Martha Wanjiru Kirumba. The primary issue for determination is whether the property was lawfully sold to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Plaintiffs or to the 1st Defendant.
35. PW1 Owen Karanja Kirumba one of the Administrators of the Estate of Martha Wanjiru Kirumba stated that they did not include the suit property in the application for letters of administration,



believing that their mother had sold it off. The Confirmation of Grant certificate dated 21<sup>st</sup> October 2015 therefore did not include the suit property. They would later be approached by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Plaintiffs who informed them that the suit property had not been transferred to them by the deceased prior to her demise. They then sought an amendment of the Grant to include the suit property for purposes of transferring it to the 5<sup>th</sup> to 7<sup>th</sup> Plaintiffs. The certificate of confirmation of grant shows that it was amended twice: on 14<sup>th</sup> November 2016 and 6<sup>th</sup> November 2017.

36. In 2017, when the administrators and the alleged purchasers visited the suit property to re-establish its beacons and fence it, they were informed that the property belonged to the 2<sup>nd</sup> Defendant, hence the filing of this suit.
37. The 7<sup>th</sup> Plaintiff, who testified as PW2, admitted that they were not involved in the purchase process of the property in 2004. That Mr. Mathagu, who gave them the title deed and undated copies of transfer and application for consent from the Land Control Board handled the transaction. No sale agreement or evidence of payment was produced, and the Mr. Mathagu was not called as a witness. He was said to be sickly.
38. It is trite that 'he who alleges must prove.' The burden of proof lies with the person who asserts existence of certain facts as stipulated in Section 107 and 108 of the *Evidence Act*:
- 107.
- (1) 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.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
39. The undisputed fact is that the suit property Kajiado/Kaputiei – North/1223 belongs to the late Martha Wanjiru Kirumba (the deceased). Before her demise, she had sold the land to some people.
40. It appears the said people did not follow up on the registration process. It is not clear what took them so long. PW2 Beatrice Nyawira Nguru told the court that the person who was involved in the transaction is a Mr. Mathagu who is now unable to testify due to health reasons.
41. At this point the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs who are the Administrators of the Estate of the late Martha Wanjiru Kirumba do not dispute that the suit property had been sold to the 5<sup>th</sup> to 7<sup>th</sup> Plaintiffs and others. They only realised later that the same had not been transferred. In my view the issue is not whether the deceased had sold to the 5<sup>th</sup> to 7<sup>th</sup> Plaintiffs.
42. The issue in my view is whether the Deceased sold the suit property to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant filed a statement of Defence dated 20<sup>th</sup> March 2019. He claimed to have bought the suit property from the deceased. He put forth a sale agreement dated 19<sup>th</sup> August 2004. The same was subjected to examination by PW3, the Document Examiner who found that the signature on the sale agreement does not belong to the late Martha Wanjiru Kirumba (deceased). He produced the report as exhibit in this case.
43. This means the 1<sup>st</sup> Defendant's claim that he brought the suit property cannot be true. He therefore had not good title to pass to the 2<sup>nd</sup> Defendant.



44. It is the 2<sup>nd</sup> Defendant's case that he bought parcels known as Kajiado/Kaputiei – North/47222 and 47223 respectively. That the same were sub-divisions of Kajiado/Kaputiei – North/1223. When he was cross-examined he told the court that he did not see the mutation form and or sub-divisions plans. The 1<sup>st</sup> Defendant did not provide him with any. It is also the 5<sup>th</sup> to 7<sup>th</sup> Plaintiffs case that the suit property was fenced.
45. The 2<sup>nd</sup> Defendant's case is that he further sub-divided the land into parcel numbers 101101-101198 and later 101198-101204. He claims that he is an innocent purchaser for value without notice cannot stand. One wonders why since the institution of this suit he has not made any efforts to avail the copies of mutation and/or subdivisions plans.
46. Having found that the deceased did not sell the suit property to the 1<sup>st</sup> Defendant, it means the issuance of title in his favour was illegal and unlawful. The subsequent transfers and subdivisions are null and void.
47. The legal principle is that fraud should not only be pleaded but strictly proved as held by the Court of Appeal in *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000]eKLR where it stated; "... It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts..."
48. The fact that the 1<sup>st</sup> Defendant had a title issued in his name without purchasing it from the registered owner can only mean that the same was done fraudulently. I find that the particulars of fraud as against the 1<sup>st</sup> Defendant have been proved.
49. This means that the 1<sup>st</sup> Defendant had no good title to pass to the 2<sup>nd</sup> Defendant.
- The Document Examiners testimony was not shaken by the 2<sup>nd</sup> Defendant. No other report was produced to challenge the one by PW3.
50. Having stated that the 1<sup>st</sup> Defendant had no good title to pass to the 2<sup>nd</sup> Defendant, the latter's claim that he is an innocent purchaser for value without notice cannot stand.

In the case of *Dina Management v County Government of Mombasa & 5 Others Supreme Court of Kenya Petition 8 of 2021*, the court quoted with approval the case of *Samuel Kamere v Land Registrar Kajiado Court of Appeal 28/2005* where the Court of Appeal stated thus;

“In order to be considered a bonafide purchaser for value, they must prove: that they acquired a valid and legal 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.”

51. Similarly in, *Reuben Muna v Athanas Bonaventure Wanyama* [2007] eKLR the Court of Appeal stated thus;

“..... in our view, the very foundation upon which the Appellant's title was based was quicksand. He purported to derive a title from a person who had none and who had purported to acquire it by fraud. The Appellants title was as good as defective as that of Kimani. He could not in our view, successfully pitch tent under Section 143 of the Registered *Land Act* (provision equivalent of the current Section 80 of the *Land Registration Act*).”



52. I am guided by the above authorities, in finding that the 2<sup>nd</sup> Defendant could not derive good title from the 1<sup>st</sup> Defendant.
53. I find that the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs are the bona fide owners of this suit property.
54. As stated earlier the particulars of fraud have been proved as against the 1<sup>st</sup> Defendant.
55. I note that the 2<sup>nd</sup> Defendant filed a notice against the Co-defendants as per the Order 1 rule 24 of the Civil Procedure Rule. There is a Valuation Report produced by consent as Exhibit - P6. It shows the suit property is now valued at Kshs.28,000,000/=
56. The 2<sup>nd</sup> Defendant is entitled to be compensated to the tune of Kshs.28,000,000/= by the 1<sup>st</sup> Defendant together with Kshs.241,200/= being the legal fees. The 1<sup>st</sup> Defendant who was the architect of this whole scheme ought to shoulder the responsibility.
57. The upshot of the matter is that I find that the Plaintiffs have established their case as against the Defendants on a balance of probabilities.
58. Accordingly Judgement is entitled for the Plaintiffs as against the Defendants as follows;
  - a. That a declaration is hereby issued that the issuance of title Kajiado/Kaputiei- North/1223 by the 3rd Defendant to the 1st Defendant was fraudulent and consequently null and void;
  - b. That a declaration is hereby issued that the subsequent subdivision of title Kajiado/Kaputiei-North/1223 to Kajiado/Kaputiei- North/47222 and Kajiado/Kaputiei- North/47223, the transfer to the 2nd Defendant of the said parcel numbers 47222 and 47223 and the subsequent subdivisions of the said title numbers 47222 and 47223 into Kajiado/Kaputiei- North/101191-101193 and 101198-101204 was fraudulent and consequently null and void;
  - c. That the 3rd Defendant is hereby directed to cancel all entries in respect to the subdivision of title numbers Kajiado/Kaputiei- North/1223 to Kajiado/Kaputiei- North/47222 and Kajiado/Kaputiei-North/47223 and all the subsequent titles emanating from the said subdivisions to wit Kajiado/Kaputiei- North/101191-101193 and 101198-101204; within sixty (60) days from the date of this Judgement.
  - d. That an order is hereby issued directing the 3rd Defendant to restore the name of the deceased Martha Wanjiru Kirumba as the registered proprietor of title no. Kajiado/Kaputiei- North/1223. Within sixty (60) days from the date of this Judgement.
  - e. That a perpetual injunction is hereby issued restraining the 2nd Defendant from entering into, dealing with, interfering or alienating the Plaintiffs' parcel of land known as Kajiado/Kaputiei- North/1223 which has purportedly been subdivided into parcels 101191-101193 and 101198-101204.
  - f. That the 2nd Defendant be compensated by the 1st Defendant for the value of the suit property being Kshs.28,000,000 plus legal fees of Kshs.241,200/=
  - g. That the Plaintiffs shall have costs of the suit to be borne by the Defendants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 29TH DAY OF JULY 2024.**

**L.KOMINGOI**

**JUDGE.**

**In The Presence Of:**



**Mr. G. Maina for the Plaintiffs present.**

**Mr. Achoki for Mr. Githumbi for the 2<sup>nd</sup> Defendants.**

**Court Assistant – Mutisya.**

