



**Kaburu (Suing as the legal administratrix of Fredrick Kaburu – Deceased) & another v Muiruki & 2 others (Environment & Land Case 2 of 2022) [2024] KEELC 5774 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5774 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 2 OF 2022**

**CK NZILI, J**

**JULY 24, 2024**

**BETWEEN**

**MIRIAM KAGWIRIA KABURU (SUING AS THE LEGAL ADMINISTRATRIX OF FREDRICK KABURU – DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**HARRIET KARIMI KINOTI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**EVANS MUTHURI MUIRUKI ..... 1<sup>ST</sup> DEFENDANT**

**REBECCA KENDI ..... 2<sup>ND</sup> DEFENDANT**

**RAEL KARIMI MURIUKI ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiffs approached this court with a plaint dated 3.6.2014. The 1<sup>st</sup> plaintiff is the wife of the late Fredrick Kaburu, suing as the legal representative of the estate and who was a son of the late Stanley Murithi M’Turaruchiu, hereafter the deceased, while the 2<sup>nd</sup> plaintiff is a daughter of the deceased and a sister-in-law. The two plaintiffs have sued the 3<sup>rd</sup> defendant, their stepmother and the mother of the 1<sup>st</sup> and 2<sup>nd</sup> defendants, averring that the deceased passed on 20.4.2014 and was the owner of L.R No. Nyaki/Giaki/393, (the suit land).
2. They claimed that before the deceased passed on, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants conspired and fraudulently subdivided the suit land into five portions, namely L.R No. Nyaki/Igoki/3453, 3454, 3455, 3456 and 3457 and transferred L.R No’s Nyaki/Giaki 3453, 3454 and 3455 into the names of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, leaving only L.R No. 3456 and 3457 under the deceased’s name.
3. The plaintiffs averred that the said subdivisions and transfers were done despite knowledge by the defendants that they were equally entitled to a share of the initial land. Further, the plaintiffs averred



- that the said subdivisions were fraudulent in that the registered owner at the time was sickly on his deathbed, took advantage of his mental illness, knew of their interests, were out to defeat those interests, removed an existing caution and forged the deceased's signatures.
4. The plaintiffs prayed for the nullification of the said subdivisions, transfers, registrations and rectification of the title registers to revert the land to the name of the deceased for distribution through a succession cause among the beneficiaries of the estate.
  5. The defendants opposed the suit through a statement of defence dated 18.7.2014. The defendants averred that they could not have subdivided the initial land into the alleged five portions since the registered owner was alive at the time. Whereas the defendants admitted that L.R No's Nyaki/Giaki/3453 – 3455 were registered under their names, they averred that the subdivisions and transfers were effected by the deceased during his lifetime.
  6. The defendants denied that they conspired to fraudulently share the original suit land as they were not the registered owner; otherwise, the plaintiffs could not seek the nullification of transfers that were made *inter vivos* by the deceased since they were not the legal representatives of the deceased's estate.
  7. In reply to the defence dated 12.8.2014, the plaintiffs averred that the deceased could not have subdivided his original land given his mental status at the time and that it was the defendants who fraudulently did it to make it look and or appear that it was the deceased who did it.
  8. The plaintiffs averred that due to the exceptional circumstances of this case and the nature of the reliefs sought, they had *locus standi* to institute the suit; otherwise, they did not require leave, permission or status to prefer the case before the court of law to challenge *ultra vires* or unconstitutional acts of the defendants since their identity and interests in the suit land and its resultant subdivisions was not disputed.
  9. In compliance with Order 11 of the Civil Procedure Rules, the plaintiffs filed a list of documents and witness statements dated 3.6.2014 issues for determination and case summary dated 11.11.2015, while the defendants filed a list of witness statements, documents and issues for determination dated 30.11.2015, further witness statement and list of documents dated 5.6.2024.
  10. At the trial, Miriam Kagwiria Kaburu testified as PW 1. Relying on her witness statement dated 4.6.2014 as her evidence in chief, she told the court that she was the legal representative of the estate of the late Fredrick Kaburu Muriuki, the 1<sup>st</sup> son of the late Stanley Muriuki M'Tuaruchiu. In contrast, she said that the 2<sup>nd</sup> plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were a sister, son and sisters-in-law, respectively, the 3<sup>rd</sup> defendant being the step-mother-in-law.
  11. PW 1 told the court that her late father-in-law became sickly with psychiatric health complications and that before he passed on, the 1<sup>st</sup> – 3<sup>rd</sup> defendants took advantage of his mental status, forged his signatures, subdivided, transferred and registered themselves as owners of three out of the five portions, despite knowing that the plaintiffs were also entitled to the deceased's estate or were potential beneficiaries.
  12. Moreso, PW 1 stated that before her husband Fredrick Kaburu passed on, he had placed a caution over the title, which the defendants secretly removed through Misc Application No 3 of 2009, at Nkubu Law Courts. PW 1 said that the subdivisions meant that the plaintiffs were left out of the sharing despite the dictates of reason and wishes of the late father-in-law, who had put it in writing that he had shared his land among his children. The plaintiffs relied on a copy of the record for L.R No. Nyaki/Giaki/393, grant of letters of administration intestate copy of death certificate, certificate of official search for L.R No's. 3453, 3454, 3455, deceased's wishes, chief's letter, treatment notes for the



- deceased, demand letter by the 1<sup>st</sup> plaintiff dated 8.5.2014, to the land registrar and medical report dated 29.2.2016, from the Meru Teaching and Referral Hospital as P. Exh No's. 1-7 and MFI P. (8) P. Exh No. (9) and MFI P. No. (10).
13. In cross-examination, PW 1 told the court that P. Exh No. (7) was written by the deceased and given to her late husband. PW 1 said that the deceased would experience occasional mental lapses and was not in a cordial relationship with her husband by the time Fredrick Kaburu passed on.
  14. Harriet Karimi testified as PW 2, associating herself with PW 1, PW 2 told the court that she was brought up by her aunt Jane after her mother, Salome Mukiri, divorced her late father, after which she was married to John Kimaita. She confirmed that her late father brought her a copy of P. Exh No. (7).
  15. PW 3 was Lucy Muthoni Muriuki, who relied on her witness statement dated 15.6.2016 as her evidence in chief. As a daughter of the 3<sup>rd</sup> defendant and sister to the 1<sup>st</sup> defendant, she told the court that she was born and brought up by her two parents until 27.11.2011 when the defendants chased her away for unknown reasons, at a time when her late father was sickly and could not talk coherently. PW 3 told the court that she went to work in Mombasa and only came back after he had passed on to attend the funeral. Again, PW 3 said that after the burial, she discovered the illegal subdivisions and transfers over the suit land, leaving her out and together with the 1<sup>st</sup> plaintiff.
  16. Similarly, PW 3 told the court that there was a time when the 3<sup>rd</sup> defendant had sought Kshs.20,000/= from her, to allegedly facilitate the issuance of a title deed under her name, all of which were lies. PW 3 added that after the discoveries, she made a report to the area chief DCC and eventually to the Njuri Ncheke, who ordered that she be given five acres of the land as L.R No. 3457. PW 3 stated that she had also sued her mother in Meru CMCC No. 215 of 2015, which she withdrew by a notice dated 11.1.2016. Further, PW 3 told the court that the DCC wrote a letter dated 28.7.2015 summoning her mother to attend his offices.
  17. Esther Gacheri Mugeria testified as PW 4. Relying on her witness statement dated 8.3.2018 as her evidence in chief, PW 4 told the court that her late brother, Stanley Muriuki contracted his first marriage in a church in 1978 to the mother of the 1<sup>st</sup> defendant, Rebecca and Lucy, while the husband of the 1<sup>st</sup> plaintiff was staying at her parents' residence. PW 4 told the court that after his brother married the 3<sup>rd</sup> defendant, they settled on L.R No. Nyaki/Giaki/393, while Fredrick Kaburu was left on his grandfather's land in Buuri, though eventually, after getting married to the 1<sup>st</sup> plaintiff, they stayed shortly with his late father and the 3<sup>rd</sup> defendant before acquiring land and establishing a home in Buuri area.
  18. PW 4 told the court that his late brother had, before passing on, shared his land in favour of all his children as per P. Exh No. (7) and gave each of his children copies of the said letter. PW 4 said that by the time he wrote the letter, he was in good mental health. She said that all the children of the deceased were equally entitled to a share of his land; otherwise, some were landless after the illegal subdivisions had been transferred by their mother, the 3<sup>rd</sup> defendant oblivious of their suffering.
  19. Beatrice Kanguru Mbijiwe testified as her evidence-in-chief. She told the court that as relatives of the deceased brother, they were not called to and were concerned that the issue of sharing his estate had not been resolved to the detriment of some of his children, who were left out in the alleged subdivisions before he passed on in favour of the defendants to the detriment of the plaintiffs. DW 5 disputed the mutation forms dated 3.4.2012, allegedly signed by the deceased two years before he passed on.
  20. PW 5 told the court that she was privy to the sickly nature of her late brother at the time. As a reasonable man, PW 5 told the court that it was improbable that the deceased would leave out some of his children



- while sharing his land. Further, PW 5 told the court that by the time the 3<sup>rd</sup> defendant was married by his late brother, she found the plaintiffs living on the suit land after which the 2<sup>nd</sup> plaintiff got married.
21. Zablon Kinoti testified as PW 6. Relying on his witness statement dated 19.12.2017 as his evidence in chief, he told the court that the deceased was his late brother. He doubted whether his late brother signed the mutation form. Otherwise, he would not have given out some of his land to three of his children and left out others from acquiring any share, since he had initially put his wishes into writing as per P. Exh No. (7). PW 6 said that all his late brother's children were entitled to a share of his estate as per his wishes in P. Exh No. (7). He saw no justification as to why his late brother would deviate from his earlier wish and sign a mutation form whose content was contrary to the earlier written letter which the mutation form was also challenged by his son Fredrick Kaburu.
  22. PW 6 confirmed taking his brother to hospital on several occasions. PW 6 said that the changes occurred soon after his brother's son, Fredrick Kaburu, passed on. Again, PW 6 told the court that between 1972 and 1993, the deceased was leading an everyday life, but his health deteriorated later in life, for he had mental lapses. Subsequently, PW 6 pleaded with the court to find the plaintiffs deserve an equal share of the deceased's property.
  23. Rael Karimi Muriuki testified as DW 1 on behalf of the defendants. Relying on her witness statements dated 30.11.2015 and 5.6.2024, she told the court that prior to the death of her late husband, he had subdivided the original land into five portions and transferred three of them, namely; L.R No's. Nyaki/Giaki/3453 – 3455 to the defendants. DW 1 told the court that she married the deceased on 3.12.1978 at the age of 40 years through the African Christian Marriage and Divorce Act, and upon settling down, her mother-in-law brought her a child, Fredrick Kaburu, who was in class 5 to take care of him begotten by the deceased with a lady he did not marry. DW 1 said that she graciously took care of the 1<sup>st</sup> plaintiff's deceased husband, then a child and settled him on their farm in Miriga Area, L.R No. Nyaki/Giaki/393, where they established their matrimonial home until he finished school and joined the Kenya Armed Defence Forces, during which time he married the 1<sup>st</sup> plaintiff until he sadly died in 2009.
  24. In addition, DW 1 told the court that in 1994, the late stepson lodged a caution against the land, differed with the late husband and went to the extent of threatening to cut him with a panga at their residence, which report was made at Giaki chief's camp. DW 1 said that her late husband never had any mental illness, as alluded by the plaintiffs; otherwise, the subdivisions and transfers were made according to his desires and free will, which facts she and her children could attest to. DW 1 said that the defendants were in actual possession and utilization of the three parcels of land, and if the plaintiff's claim was merited, they should have approached the deceased to transfer to them a share before he passed on instead of waiting until he died to lodge the claim. She termed the claim as unmerited, since the plaintiff was in occupation of their parcels of land at Mpuri and Naari; hence the issue of disinheritance was false, baseless and improperly before the court.
  25. DW 1 further stated that her late husband did not pursue the complaint any further, but the caution persisted until the deceased filed Nkubu Misc Application No. 3 of 2009. An order was issued to lift it. DW 1 told the court that her late husband used to charge the suit land with financial institutions for loans as indicated in the copy of the record; otherwise, he was both mentally and physically stable, contrary to the allegations by the plaintiffs that she had married a mad man.
  26. Moreso, DW 1 emphasized that the 2<sup>nd</sup> plaintiff was a daughter of Elijah Kinoti and Jane Mukomunene, a sister-in-law who lives in Naari and therefore, was not a sister-in-law to the 1<sup>st</sup> plaintiff. As to Lucy Muthoni Muriuki, DW 1 told the court that she was a sister to the 1<sup>st</sup> & 2<sup>nd</sup> defendants



- and a sister-in-law to the 1<sup>st</sup> plaintiff. DW 1 told the court that her sister-in-law has been fighting her through her children so as to wrestle the land that her late husband shared during his lifetime from her.
27. Further, DW 1 told the court that Lucy Muthoni Muriuki even sued her in Meru CMCC No. 215 of 2015 but unconditionally withdrew the suit on 11.1.2016, though initially, she had made a report to Njuri Ncheke Council of Elders where she was told there was no case against her mother.
  28. As to Esther Gacheri Mugeria, DW 1 said that she was a sister-in-law just like Harriet's mother, who had come up with a narrative that her late husband had other houses or wives, which was a conspiracy of lies to have the subdivision and transfers received and also claiming mental instability with a view of denying the defendants a share of the estate. DW 1 said that the scheme also involves Zablon Kinoti, Beatrice Kanyua Kanyuru and Silas Gituma and that was why her late husband had to transfer the land to her during his lifetime secretly.
  29. Additionally, DW 1 told the court that on 7.3.2012, her late husband obtained a land control board consent LCR No.17//3/2012 to subdivide L.R No. Nyaki/Giaki/393 into L.R No's 3453 – 3457 and proceeded to sign a mutation form to that effect, following the visit by a land surveyor on 3.4.2012, who erected the beacons. DW 1 told the court that her late husband willingly and freely transferred L.R No's Nyaki/Giaki/3453, 3454, 3455, 3456 & 3457 to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants but left the last two parcels under his names.
  30. DW 1 denied that her late husband had three houses which she termed as a creation of the plaintiffs and their proxies. She denied that her late husband was bedridden; otherwise, he was running his affairs generally like any other human being who would fall sick. DW 1 tendered as exhibits copies of the search for L.R No's. Nyaki/Giaki/3453 – 3457, marriage certificate dated 3.12.1978, letter dated 28.7.2015 to D.C Imenti North summons to appear before Njuri Ncheke elders dated 11.1.2016, death certificate for Stanley Muriki Mutwaruchiu, order lifting the caution, mutation forms over L.R No. Nyaki/Giaki/393 and a copy of its green card as D. Exh No's. 1-9, respectively.
  31. In cross-examination, D.W. 1 told the court that she had no consent to testify on behalf of the 1<sup>st</sup> & 2<sup>nd</sup> defendants. She said that she was not privy to P. Exh No. (7), whose signature appeared to belong to her late husband and had indicated the respective shares of each beneficiary. She told the court that though her late husband attended the land control board meeting twice, she had not brought before the court any land control board receipts or minutes. Similarly, DW 1 acknowledged that she had not availed the transfer forms accompanied with stamp duty revenue stamp for stamp duty and registration fee payments, which, unfortunately, she had surrendered to her advocates on record.
  32. DW 1 admitted that the deceased husband did not give the 1<sup>st</sup> plaintiff's late husband any share of land. Similarly, she acknowledged that the plaintiffs were not involved or present when the land was subdivided into beacons effected by the surveyor on 3.4.2012, during the transfers to the defendants. DW 1 told the court that her late husband never disclosed to her during his lifetime the contents of P. Exh No. (7).
  33. At the close of the defence case parties were directed to put in written submissions. The plaintiffs relied on written submissions dated 9.7.2020. It was submitted that the deceased had a psychiatric problem going by P. Exh No. (8) and (10) and therefore given P. Exh No. (7), it was not possible for him to subdivide and transfer the land contrary to the earlier wishes.
  34. Additionally, the plaintiffs submitted that there was a high possibility that the defendants were the ones who affected the subdivisions and transfers by taking advantage of the deceased status of health and mind to deny them a share of the land. The plaintiffs submitted that in the mutation form, the defendants failed to produce the minutes from the land control board meeting, the land control board



- consent and receipts for the payments of the subdivisions, transfer, registration and stamp duty fees payments.
35. On whether the plaintiffs are entitled to the reliefs sought, it was submitted that they have proved the claim on a balance of probabilities going by the case law of *Vijay Morjaria vs Nansigh Madhusingh Darbar & another* (2000) eKLR and *Nyamu vs Marango* (ELC Civil Suit No. 19 of 2018) (2023) KEELC 16699 (KLR) 21<sup>st</sup> March 2023).
  36. The defendants relied on submissions dated 17.7.2024. It was submitted that the plaintiffs created a narrative and produced an undated letter purportedly from the deceased that he had subdivided his land. The defendant submitted that the particulars of conspiracy and fraud remain were allegations more so with no evidence produced to show that the deceased was of unsound mind when he subdivided and transferred the initial land.
  37. The defendants submitted that their evidence was clear on how the deceased, during his lifetime, subdivided and transferred his land, leaving the balance to himself and the plaintiffs. Reliance was placed on *Donald Omuyaku Okinami vs Luanda Revival Worship Centre* (2021) eKLR.
  38. The court has carefully gone through the pleadings, evidence tendered, written submissions and the law. The issues calling for my determination are:
    - i. If the plaintiffs can bring the suit.
    - ii. If the plaintiffs pleaded and proved conspiracy and fraud against the defendants in the manner that the deceased L.R No. Nyaki/Giaki/393 was subdivided into L.R No's. Nyaki/Giaki/3453, 3454, 3455, 3456 and 3457.
    - iii. Whether the plaintiffs are entitled to the reliefs sought.
  39. The plaintiffs bought a suit dated 3.6.2014 as sister-in-law and daughter of the late Stanley Muriuki M'Tuaruchiu, claiming that their stepbrother, sister and stepmother conspired and fraudulently took advantage of their father, who was sickly and caused subdivisions and transfers to his L.R No. Nyaki/Giaki/393 into L.R No. Nyaki/Giaki/3453 – 3457 to their names, leaving out two parcels of land in the names of the deceased, with the intention of disentitling them of their shares, contrary to what had been previously put in writing by the deceased.
  40. The plaintiffs prayed for the nullification of the subdivisions and transfers for the land to revert to its original status, to enable the filing of succession proceedings.
  41. The defendants denied the claim, terming the plaintiffs as lacking the capacity to institute the suit since they were not legal administrators of the estate of the deceased and hence could seek nullification of the transactions that the deceased effected willingly and consciously during his lifetime.
  42. In response to the defence, the plaintiffs averred that they had a legitimate interest in the suit land which the defendants admit as children and beneficial owners of the suit land. The plaintiffs averred that the deceased could not have subdivided his original land given his mental status, and it was the defendants who fraudulently did it to look and appear like it was the deceased who did it.
  43. There is no dispute that the 1<sup>st</sup> plaintiff is a wife to the late Fredrick Kaburu, a son of the late Stanley Muriuki M'Tuaruchiu and stepdaughter of the 3<sup>rd</sup> defendant while the 2<sup>nd</sup> plaintiff and 1<sup>st</sup> – 2<sup>nd</sup> defendants are brother and sister.
  44. All the parties herein have a typical patriarch of the family, the late Samuel Muriuki M'Tuaruchiu, who passed on intestate on 20.4.2014. It is also not in dispute by the parties that letters of administration



- for the estate of the deceased are yet to be sought and issued regarding L.R No. Nyaki/Giaki/3456 and 3457 said to have formed part of his L.R No. Nyaki/Giaki/393 alongside L.R No. 3453 – 3455.
45. The question that the plaintiffs have posed before this court for determination is whether the subdivisions and transfers of the initial land were fraudulent and out of conspiracy to defeat the legitimate interest or expectations and rights of the plaintiffs that the deceased had expressed orally and in writing during his lifetime.
  46. There is no dispute that the late Fredrick Kaburu had lodged a caution as a licensee on the title register for L.R No. Nyaki Giaki/393 as per a copy of a record that was lifted vide an order of the court on 17.8.2009. The title register was eventually closed for subdivisions on 14.2.2013. Title registers for L.R No. Nyaki/Giaki/3453 – 3457 were opened on 9.7.2013, 8.8.2013, 8.10.2013, 14.7.2013 & 14.2.2013, respectively, in favour of the 1<sup>st</sup> – 3<sup>rd</sup> defendants and the deceased.
  47. The plaintiffs pleaded that they had a stake in the initial land which the defendants were trying to exclude them from. Further, it was averred that the defendants were dealing with the deceased property without letters of administration and were likely to dispose them of to third parties. The plaintiffs averred that the caution was fraudulently removed and signatures for the deceased forged.
  48. In *Kahindi Mumba Chome & others vs ARM Cement PLC Ltd (under administration) (2021) eKLR*, the court held that former employees of the applicant claiming terminal dues were preferential creditors and therefore had a legitimate interest which the court could not overlook once a company is placed under administration. In *Sitawi Ltd vs National Land Commission Nairobi & others (2020) eKLR*, the court cited with approval *J.P Bansal vs State of Rajasthan & another Appeal Civil 5982 of 2001 S.C.I* that expectations must not only exist but must also be legitimate to be worthy of protection. In *Republic vs Kenya Revenue Authority & exparte Aberdare Freight Services Ltd (2004) 2 KLR 530*, the court observed that legitimate expectations could not override the law.
  49. In this suit, the defendants have admitted that the plaintiffs are immediate stepchildren of the deceased. They, therefore, fall under the law of succession as potential beneficiaries to the estate of the deceased. As beneficiaries of the estate, they hold a stake in the estate that is protectable and enforceable in a court of law. See *Francis Muruatetu & another vs Republic (2017) eKLR*.
  50. Strictly speaking, what is before this court is whether or not the changes that occurred to the title registers between 7.2.2012 and 8.10.2013, during the lifetime of the deceased were fraudulent or not. The deceased passed on 20.4.2014. A cause of action is conduct on the part of the defendant that gives a plaintiff a reason to complain. The cause of action, as pleaded, occurred between 7.2.2012 and 8.10.2013. The plaintiffs have, therefore capacity to question and seek to enforce their legitimate interests against the defendants who acquired title deeds for L.R No's. 3453, 3454 and 3455, said to have been part of the initial L.R No. Nyaki/Giaki/393. The plaintiffs have not asked this court to enforce their rights as beneficiaries of the estate regarding L.R No's. Nyaki/Giaki/3456 and 3457, which belonged to the estate of the deceased as of 21.4.2014.
  51. My finding is that the preliminary objection on capacity lacks merits. Turning to fraud and conspiracy, the same must be specifically pleaded and proved with tangible and cogent evidence to a degree higher than in ordinary suits. See *Virjay Morjaria vs Nansigh Darbar (supra)*, *Arthi Highway Developers vs West End Butchery Limited & others (2015) eKLR*, *Donald Omuyaki Okinami vs Luanda (supra)*
    1. In this suit, the plaintiffs produced P. Exh No. (7) an original letter in which DW 1 confirmed the signature was that of her late husband. The same was copied to the area chief Kiburine location and the chairman land Gari Kiburine. It is trite law that when a title to land is under objection, it is not enough for a holder to waive the instrument of ownership without



producing documents on the root of ownership. See Dr. [\*Joseph N.K Ngok vs Moiijo Ole Keiwua & others Civil Application No. Nai 60 of 1997.\*](#)

52. case. P. Exh No. (7) was not objected to by the defendants nor subjected to forensic investigations if at all the defendants were denying that the deceased did not author it. The original was produced before the initial trial court on 27.1.2017.
53. The defendants listed land control board consent and transfer documents for L.R No's. 3453, 3454 and 3455 as part of their list of documents to be relied upon dated 30.11.2015. A further list of documents was filed on 5.6.2024. D. Exh No. (8), is a mutation form dated 3.4.2012 allegedly signed by the deceased. The date that it was received for registration was missing. Survey fees paid were blank. Details on the presentation book number, receipt number, and paid fee receipt number were missing. Other than quoting a land control board consent, the application for the land control form was missing that was duly signed by the deceased. The land control board consent was also missing. The persons' beneficiaries in the mutation form and their addresses were also missing, including the defendants and the plaintiffs.
54. The names of the land surveyors who prepared and undertook the survey works were missing or ineligible. The dates on pages two and three of the forms are different. The maker of the document was not called to testify and confirm before this court whether it was the deceased who instructed him to undertake the survey works or not. DW 1 told the court that she was not a party to the mutation form, nor did she attend the two land control board meetings for both the subdivisions and the transfers.
55. A title deed is a result of the process of subdivision, transfer forms, registration and payment of requisite statutory registration fees and stamp duty.
56. It is the defendants who pleaded legality and regularity of the process followed towards the acquisition of the title deeds to L.R No. Nyaki/Giaki/3453 - 3455. The defendants listed the documents they were going to rely upon at the hearing. A party who has in its custody of specific documents or evidence and withholds or fails to avail them leaves a court to make an inference that the production of such evidence or documents would have been prejudicial to the party. DW 1 told the court that she surrendered all documents listed in the list of documents in 2015 to her lawyers on record. The documents were part of the paper trial to show that the title deed acquired by the defendants during the lifetime of the deceased was regularly, procedurally and lawfully obtained free of any fraud, illegality, or procedural missteps and without corrupt scheme.
57. The plaintiffs had pleaded that it was the defendants who took advantage of the deceased, misled and or prepared the documents to make them appear as if the deceased was the one who signed and executed them with the intention of denying them a share of the land and contrary to an express wish in writing by the deceased that had been brought to the attention of the plaintiffs the area assistant chief, the chairman of the land control board and the defendants.
58. DW 1 made an admission that her daughter, Lucy Muthoni Muriuki PW 3, had also sued her in Meru CMC No. 215 of 2015 as per D. Exh No's. (5) & (7). PW 3 told the court that she reported her mother to both the DCC and the Njuri Ncheke as per D. Exh No. (3) & (4). She said that her mother eventually gave her land equivalent to what was indicated in P. Exh No. (7), that is 5 acres.
59. Given the evidence of PW 3 against her mother, I do not think the in-laws of the 3<sup>rd</sup> defendant have conspired to deny her the rightful share & the estate. The 1<sup>st</sup> & 2<sup>nd</sup> defendants did not testify to counter the evidence of the plaintiffs and refute the existence of P. Exh No. (7), which, in my view, would be relevant to the probate cause. Consequently, I find that the plaintiffs have proved their case on a balance of probability. The entries to the register regarding L.R No. 393 and the subsequent entries, transfers



and registration as L.R No's. Nyaki/Giaki/3453 – 3457 are as a result of this recalled and invalidated.  
The land shall revert to its original status to be dealt with in accordance with the *Law of Succession Act*.  
Costs to the plaintiffs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 24TH DAY OF JULY, 2024**

In presence of

C.A Kananu/Mukami

Gikunda for Ondari for plaintiff

Gitonga for defendant

Defendants

Plaintiffs

**HON. C K NZILI**

**JUDGE**

