



Kamau (Suing as an administrator ad litem in respect to the Estate of Moffat Kamau Mungai - Deceased) v Mungai & 2 others (Environment & Land Case E01720 of 2022) [2024] KEELC 13460 (KLR) (22 November 2024) (Judgment)

Neutral citation: [2024] KEELC 13460 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E01720 OF 2022**

**JG KEMEI, J
NOVEMBER 22, 2024**

BETWEEN

**PENINAH KEGA KAMAU (SUING AS AN ADMINISTRATOR AD LITEM
IN RESPECT TO THE ESTATE OF MOFFAT KAMAU MUNGAI -
DECEASED) PLAINTIFF**

AND

**GEOFFREY MUNYUA MUNGAI 1ST DEFENDANT
COUNTY LAND REGISTRAR KIAMBU COUNTY 2ND DEFENDANT
THE HON ATTORNEY GENERAL 3RD DEFENDANT**

JUDGMENT

1. Vide the Complaint dated the 16/2/2022 the Plaintiff filed suit against the Defendants seeking orders;
 - a. That Moffat Kamau Mungai, the husband to the Plaintiff herein had equal rights and interest as a heir and dependent in the Estate of Wanjiru Mungai – deceased in respect of Land Parcel No. Kiambaaa/Kihara/2249.
 - b. That Moffat Kamau Mungai – husband to the Plaintiff herein, now deceased held half share in land parcel No. Kiambaa/Kihara/2249 prior to its combination with land parcel No. Kiambaa/Kihara/2250 that gave rise to the land described as Kiambaa/Kihara/2251.
 - c. An order that title deed for parcel No. Kiambaa/Kihara/2251 which arose from the combination of Kiambaa/Kihara/2249 and Kiambaa/Kihara/2250 was procured fraudulently and illegally by the 1st Defendant and the same is hereby cancelled or revoked forthwith.



- d. That subsequent to prayer c above, an order directed against the 2nd Defendant to amend the Register and re-register a portion of land measuring 0.62Ha back to Kiambaa/Kihara/2249 in the names of Wanjiru Mungai Muchia.
 - e. That in the alternative to prayer c and d above, the 1st Defendant be and is hereby ordered to transfer 0.31Ha from land described as Kiambaa/Kihara/2251 to the Plaintiff within Sixty (6) days after delivery of Judgment failure of which the Deputy Registrar is at liberty to execute relevant transfer documents and effect transfer of the said portion to the Plaintiff.
 - f. Costs of this suit.
2. It is the Plaintiff's case that in March 1995, the 1st Defendant without the knowledge and consent of her late husband illegally and fraudulently combined parcel Nos 2249 and 2250 into parcel No 2251 and registered it in his name. That the combination and transfer was done when their mother Wanjiru Mungai Muchia (who held the land in trust) was old, sickly and illiterate and devoid of legal ability to do so. That the actions of the 1st Defendant were geared to disinherit the Plaintiff's husband. That as a result, the Plaintiff's husband got less land than the 1st Defendant contrary to the trust their mother held on their behalf in equal shares.
 3. The 1st Defendant on the other hand denied the claim of the Plaintiff in his defense and counterclaim dated the 21/3/2022. The 1st Defendant contended that it is Wanjiru Mungai Muchia (Wanjiru), their deceased mother that caused the combination of parcel 2249 and 2250 and transferred it to him and termed the particulars of fraud as wild and unsubstantiated.
 4. In his Counterclaim he sought the following orders;
 - a. That there be a declaration affirming that Land Parcel number Kiambaa/Kihara/2251 properly belongs to the Plaintiff herein.
 - b. That there be a permanent injunction against the Defendants jointly and severally from interfering with the enjoyment of quiet and open possession and occupation of land parcel No Kiambaa/Kihara/2251 by the Plaintiff in the Counter-claim.
 - c. That the decision by the Land Disputes Tribunal at Karuri being reference number LND/16/20/20/2005 and adopted by the Senior Principal Magistrate Court Kiambu in Land Case No. 11 of 2005 on 10th January, 2006 be set aside and/or quashed for being illegal.
 - d. That an order do issue requiring the District Land Registrar Kiambu to explain how L.R. Kiambaa/Kihara/2248 changed proprietorship from Wanjiru Muchia Mungai to Moffat Kamau, Samuel Mwaura and Felix Kariuki while the original title is still in the hands of the Plaintiff.
 - e. That titles held by Moffat Kamau, Samuel Mwaura and Felix Kariuki arising from subdivision be cancelled and the land L.R. Kiambaa/Kihara/2248 be restored to the legitimate status in the name of Wanjiru Muchia Mungai.
 - f. That costs of the main suit and the Counter-claim herein be awarded to the Plaintiff in the Counter-claim.
 - g. Interest at Court rate on (f) above from the date of Judgment until payment in full.
 5. He averred that he is the registered owner of parcel 2251 having acquired the land through the effort and action of his mother in exchange of care and compassion till her demise. Without giving details,



- the 1st Defendant averred that in any event Moffat, his deceased brother was bequeathed two plots by their father *intervivos* and to balance the bequests Wanjiru also bequeath him parcel 2251 *intervivos*.
6. The 1st Defendant further pleaded that parcel 2248 was registered in the name of Moffat without due process given that the original title is still in his custody and opined that the same ought to be cancelled to allow for succession of the estate of his mother.
 7. With respect to the decision of the Land Dispute Tribunal (LDT) adopted by the Court on 17/2/2006, the Court was urged to set aside the decision for being illegal having been conceived devoid of jurisdiction.

The Evidence

8. PW1- Penina Kega Kamau testified and relied on her witness statement dated the 16/2/2022 and produced documents marked as PEX No 1-9 in support of her claim.
9. She led evidence that Moffat and the 1st Defendant were brothers being the sons of Wanjiru Mungai Muchia. That Mungai Muchia, the father of Moffat and the 1st Defendant (Munyua) had 3 wives. Upon his death his estate was succeeded and the land shared among the 3 houses representing his 3 wives. That Wanjiru, the second wife was given parcel 1722 to hold in trust for her sons. That prior to his death Mungai Muchia subdivided the land belonging to the house of Wanjiru into two portions using a live hedge.
10. In cross she was emphatic that her mother in law, Wanjiru could not have combined parcel 2249 and 2250 into parcel 2251 because she was old, blind and illiterate and blamed the 1st Defendant for doing so without the consent of Moffat. She insisted that the combination and the transfer should be cancelled and parcel 2249 be shared equally between the family of Moffat and Munyua. That Wanjiru had no power to transfer more land as a gift to Munyua because she held it in trust for the two in equal shares.
11. She stated that her husband sold a portion of the land (0.2 ha) out of parcel 2248 to Samuel Mwaura and Tela Kariuki and that she occupies the balance with her children.
12. With that she closed her case.
13. DW1- Geoffrey Munyua Mungai led evidence and relied on his witness statement dated the 22/7/2022 and produced documents marked DEX No 1-17 in support of his defence and the Counterclaim.
14. He stated that the Plaintiff is his sister in law being the wife of his deceased brother, Moffat. He stated that he acquired parcel 2251 from his mother. That his mother subdivided parcel 1722 into three parcels namely 2248, 2249 and 2250 and further combined parcels 2249 with 2250 to create parcel 2251 and registered it in his name in 1995 during her lifetime. That his mother was mentally well, not blind and denied manipulating her to transfer the land to him. He added that the transfer was lawful, Land Control Board consent having been obtained in the presence of the Plaintiff and Moffat which consent was supported by the area chief vide the letter dated the 13/3/95.
15. Whilst maintaining that he holds 3 acres while Moffat has 1.5 acres, he wondered how parcel 2248 was registered in the name of Moffat in 2011 many years after the death of their Mother and without surrendering the original title in the name of Wanjiru which is still in his custody.
16. That angered by the registration of the parcel 2251 in his name, Moffat filed a complaint against him at the Land Dispute Tribunal in 2005. That the decision by the elders adopted by the Court was irregular because the elders had no jurisdiction to determine an ownership dispute.



17. In addition, he stated that his mother held parcel 1722 in trust for all her children. That upon subdivision, he got parcel 2250, Wanjiru got 2249 while Moffat got 2248. That Wanjiru combined parcels 2249 and 2250 in 1995 at the age of 80 years or thereabouts. He stated that Wanjiru was illiterate and that explains why the chief wrote a letter to the Chairman of Land Control Board on her behalf. That the combination and transfer followed due process of the law although he admitted that he did not produce the minutes of the Land Control Board meeting and the consent. He also stated that he accompanied his mother throughout the process of subdivision and combination to the Land Control Board meetings in the absence of Moffat and the Plaintiff. He admitted that there was no mutation for the subdivision and combination of the parcel 2249 and 2250. Asked if the original titles for parcels 2249 and 2250 were surrendered he stated that he was not aware as his mother did everything.
18. The witness contradicted himself in cross when he stated that family or trust land did not exist and that Wanjiru held the land absolutely. In reexam he stated that Wanjiru held the land on her own behalf and that of himself and Moffat.
19. DW2 - Margaret Muthoni Munyua relied on her witness statement dated the 22/7/22 in chief and largely reiterated the evidence of her husband, DW1. Without divulging any details, she stated that Moffat got additional land from Mungai Munyua, her father in law. In addition, she stated that though Wanjiru inherited the land from her father in law, she never held it in trust for her children but absolutely and therefore had the right to gift it to anyone, her husband included. Without evidence in support, she asserted that the process of subdivision, combination and transfer of parcel 2251 to DW1 was above board. That DW1 claims a portion of 2248 whose title is still in the name of Wanjiru.
20. DW3 - George Kinyanjui Mungai stated that he is the step brother of Moffat and Munyua and relied on his witness statement dated the 22/7/22 in chief and stated that a family meeting was called by Wanjiru on 18/6/95 where Moffat was present among other family members. He informed the Court that Wanjiru gave parcel No 2251 to Munyua and directed that each son ought to be satisfied with the allocation and no land disputes should arise after her death. He admitted that the minutes of the meeting were not translated into English. He however informed the Court that he was unaware of the previous dispute between Moffat and Munyua. He was also unaware that by the time the meeting was held parcel 2251 had been registered in the name of Munyua on 22/3/95.
21. In further cross examination, he informed the Court that he came from the house of Wanjiku and since each house had its own secrets, he did not know what happened in the house of Wanjiru. That it was upon the three wives of Mungai Muchai to distribute the land to their children. Lastly, he confirmed that his mother distributed the land equally among her children and that there was no dispute by her heirs.
22. Ms Mungai, Counsel for the 1st Defendant obtained leave for summons to be issued to the Land Registrar Kiambu to attend Court and testify in the matter.
23. DW4 - Gladys Muchanga testified and relied on her witness statement dated the 30/1/2024 and produced documents marked as DEX No 18-21.
24. The witness led evidence and took the Court through the entries in the green cards for parcel 1722, 2249, 2250 and 2251. She informed the Court that the trust held by Wanjiru over the suit lands has not been determined. That in all the parcels there was no entry in support of the dissolution of trust. Shown the grant issued in 1987 she stated that according to the grant Wanjiru held the land in trust for her brothers and that the grant ought to have been amended to show that she held the land in trust for her sons. That in her opinion parcels 2249 and 2250 were combined without a Court order and therefore unlawful.



25. She further stated that the parcel files for the suit lands are missing in the Registry and was unable to tell how the entries were made in the green cards as the supporting documents could not be traced. She raised doubt about the transfer of land in the name of Moffat dated the 9/8/2011 without the supporting documents as well as original title having been surrendered to the Registry for cancellation. In addition, she stated that there was no evidence that Land Control Board consents were obtained for any of the transactions. That all she has in her custody were the green cards.
26. The 2nd and 3rd Defendants in the plaint and the 2nd – 5th Defendants in the Counterclaim failed to attend Court for the hearing.
27. The firm of Messrs Musungu Pekke & Co Advocates filed written submissions on behalf of the Plaintiff dated the 3/7/2024 while that of Messrs Muigai Kemei & Associates filed for the 1st Defendant in the Plaint and the Plaintiff in the Counterclaim.
28. Counsel for the Plaintiff submitted that parcels 2248, 2249 and 2250 are resultant subdivisions of parcel 1722. Reiterating the history of the suit lands, Counsel submitted that Wanjiru held parcel 1722 in trust for her sons. That it goes without saying that the resultant subdivisions being parcels 2248, 2249 2250 were encumbered with a trust in favour of Wanjiru’s sons. That the trust has not been determined.
29. What is the effect of a trust created on a parcel of land arising from succession proceedings? Counsel submitted that in the absence of a Court order severing the trust held by Wanjiru the said Wanjiru could not transfer the suit land to whosoever she deemed fit.
30. Counsel relied on the provisions of Section 35(1) of the *Law of Succession Act* which states as follows;
 - “ 35. Where intestate has left one surviving spouse and child or children (1) Subject to the provisions of section 40, where an intestate has left one upon her re-marriage to any person.”
 - Provided that, if the surviving spouse is a widow, that interest shall determine
 - (b) a life interest in the whole residue of the net intestate estate:
 - (a) the personal and household effects of the deceased absolutely; and surviving spouse and a child or children, the surviving spouse shall be entitled to-
31. He submitted that Wanjiru held a lifetime interest in the suit land and its subdivisions, including parcel 2249 and therefore the notion that she held it absolutely is untenable.
32. In buttressing the proposition, Counsel referred the Court to the case in Priscillah Warui Nyaga Vs. Joseph Njoka Kaara & Octavian Kiura Kaara [2015] KEHC 753 (KLR) where the Court held that the Plaintiff held title having originated from his father’s estate encumbered with a trust in favour of the Defendant. That having held the land in trust for her sons, it was illegal for her to combine the parcels and transfer some portion to the 1st Defendant
33. Counsel submitted that the actions of Wanjiru and the 1st Defendant in subdividing, combining and transferring of the parcels held under trust were illegal, unprocedural fraudulent for the reasons that it lacked; Land Control Board consent and combine the parcels; mutation scheme for subdivision and combination; a Court order to determine the trust; consent from the beneficiaries before carrying out subdivision combination and transfer of the parcels;
34. For the above reasons counsel submitted that the 1st Defendant’s Counterclaim ought to fail.



35. Counsel for the 1st Defendant submitted and castigated DW4 for not producing documents supporting the entries bedeviling the entries in the green cards of the suit lands despite exercising a statutory duty of maintaining land records pertaining to the suit lands. Counsel pointed out that the entry stating holding in trust for her “brothers” was an error and ought to read “sons”. Counsel exonerated Wanjiru in subdividing the lands into three portions where she gave each son equal shares and held parcel 2249 for herself in accordance with Section 41 of the *Law of Succession Act* that states as follows;
- “ 41. Property devolving upon child to be held in trust Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”
36. That having held parcel 2249 as her own, she was within her right to gift it to her younger son Munyua, being her share of her inheritance from her late husband Mungai Muchia.
37. Counsel stated that Wanjiru sought the consent of Land Control Board, and followed the law in the subdivision, combination and transfer of the land to the name of the 1st Defendant and the same cannot be faulted as it was above board. Counsel argued that the title in the name of the 1st Defendant ought to be taken as prima facie evidence of his holding without any taint.

Analysis and determination

38. Having considered the pleadings of the parties, the evidence led at the hearing, the rival submissions and all the material placed before the Court the commendable issues are as follows;
- a. Whether the subdivision of parcel 1722 into three portions, the combination of parcels 2249 and 2250 into parcel 2251 and the ultimate transfer of parcel 2251 in the name of the 1st Defendant were valid.
 - b. Whether the registration of parcel 2248 in the name of Moffat was valid.
 - c. Whether the trust held by Wanjiru should be determined.
 - d. What orders should the Court issue.
 - e. Costs of the suit and the Counterclaim.
39. But first is the historical outlook of the dispute. It is commonly agreed that the family Patriarch namely Charles Mungai Muchia (Mungai) owned parcel 408. He settled his large family therein comprising of three wives and children. He subdivided the land in accordance to his three wives, one of whom was Wanjiru Mungai Muchia (Wanjiru), the mother of Moffat and Munyua, the protagonists in this suit.
40. Upon his death, the estate of Mungai was succeeded vide Succ. Cause No 528 of 1976 in which Wanjiru was allocated 1.79 ha to hold in trust for all her ... (the last word is missing in the Certificate of Confirmation of Grant). See the Confirmation of Grant dated the 6/8/1987.



41. Pursuant to the said grant, the original parcel No Kiambaa/Kihara /408 was subdivided and parcel 1722, one of the resultant subdivisions was registered in the name of Wanjiru Mungai to hold in trust for his “brothers” on 16/6/1989.
42. It is commonly agreed by both the Plaintiff and the 1st Defendant that Wanjiru held the land in trust for her sons and that the holding in trust for her brothers was an error. The Court concurs with the proposition given that no evidence was led to support any claim by the brothers of Wanjiru.
43. It is not in dispute that Moffat and Munyua are the sons of Wanjiru. It is also commonly accepted that Wanjiru passed away in 1998 while her son Moffat, the husband of the Plaintiff died in 2012. It is also acknowledged that all the parties live on the suit land with their families.
44. It is the case of the Plaintiff that the land was held in trust for the sons of Wanjiru and that they ought to have shared it equally. That parcel 1722 having been encumbered with trust, Wanjiru and the 1st Defendant had no right to transfer parcel 2249 to the 1st Defendant. That the parcel ought to have been shared equally between the two sons in addition to the two portions already allotted by their mother. Interalia, the Plaintiff has impugned the process of subdivisions combination and transfer of parcel 2251 to 1st Defendant as fraudulent illegal null and void and sought for its cancellation to revert the land to their mother and the trust be determined.
45. The case of the 1st Defendant is that he received a gift of portion 2251 from his mother lawfully as it was her right to bequeath him the land. That the process of subdivision, combination and transfers were carried out by his mother and were all above board thus received a valid title and urged the Court to dismiss the Plaintiff’s suit and decree that he received a valid and lawful title. In addition, he sought for the cancellation of title for parcel no 2248 in the name of Moffat arguing that it was registered in his name in unclear circumstances given that he is holding the original title in his mother’s name. He urged the Court to revert the title in the name of Wanjiru.

Whether the subdivision of parcel 1722 into three portions, the combination of parcels 2249 and 2250 into parcel 2251 and the ultimate transfer of parcel 2251 in the name of the 1st Defendant were valid.

46. It was the case of the Plaintiff that the process of subdivision, combination and transfer of the land to the 1st Defendant was fraudulent and the resultant title ought to be cancelled. Secondly that Wanjiru was aged (over 90 years) in 1995, partially blind, illiterate and therefore not in a position to carry out the said processes and therefore fingered the 1st Defendant for the illegal acts resulting in his being registered as owner of parcel 2251. The transfer was further impugned in the face of a trust in favour of the two sons held by their mother.
47. DW1 led evidence that the process was above board and that he accompanied their mother in carrying out the processes. Interalia he stated that Moffat and his wife were not involved in the combination of parcel 2249 and 2250 into parcel 2251. His reasoning was that Moffat had been given two plots by their father and therefore was not entitled to any more. The 1st Defendant however failed to give details of the two plots and the Court finds that in the absence of any evidence this explanation is baseless. Further he stated that he got more land because he was taking care of his mother till her demise. No evidence was produced to support this assertion either. It is rejected.
48. The Court has perused the evidence presented by the 1st Defendant and finds that parcel 1722 was closed for subdivision on 7/3/1995 into parcel Nos 2248, 2249 and 2250. The 1st Defendant failed to produce any documents in support of the subdivision being the mutation, application for Land Control Board consent and the Land Control Board Consent itself. The same fate applies to the



combination of parcels 2249 and 2250. DW4 led evidence that none of the documents are in her record. Infact she stated that the parcel files for the suit lands are missing. In the absence of these documents the Court is therefore unable to find that indeed Wanjiru subdivided and amalgamated the parcels of land.

49. Section 6 of the *Land Control Act* states as follows;

“Transactions affecting agricultural land

- (1) Each of the following transactions, that is to say—
 - (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
 - (b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply;
 - (c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.
- (2) For the avoidance of doubt it is declared that the declaration of a trust of agricultural land situated within a land control area is a dealing in that land for the purposes of subsection (1).
- (3) This section does not apply to—
 - (a) the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or
 - (b) a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.”

50. The suit lands having been agricultural lands, Land Control Board consents were required for the process of subdivision and combination absence of which invalidated the processes.

51. For the above reason the Court is not satisfied that there was a valid subdivision of parcel 1722 into 2248, 2249 and 2250 and combination of parcel 2249 and 3350 to yield 2251.

52. The 1st Defendant informed the Court the area chief approved the transfer of parcel 2251 in his name and recommended the same for issuance of the Land Control Board consent. He however failed to produce any consent in that regard. Needless to state that the Court was not addressed on the law that mandates a Chief to grant approval for land transfers. The Court agrees with DW4 that in the absence of the Land Control Board consent the transfer is null and void.



53. The 1st Defendant relied on a transfer form in support of the validity of his title. I have perused the said transfer and make the following findings; it is undated; the alleged signatures of Wanjiru and Munyua are not attested; the person who drew the transfer is not disclosed; the transfer is not registered at the Lands office; the document is not stamped for stamp duty; the transfer is not registered; no registration fee receipt was enclosed.
54. The long and shot of the Court's finding is that the transfer in its form could not have been used to register any interest let alone confer or transfer parcel 2251 to the 1st Defendant. DW4 agrees with the Court entirely when she stated that there are no supporting documents for the registration of parcel 2251 in the name of the 1st Defendant.
55. In the case of Vijay Morjaria Vs. Nansingh Madhusingh Darbar & Another [2000] eKLR, the Court held as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
56. The Court finds that the Plaintiff has proved fraud and therefore issue (a) above is answered in the negative

Whether the registration of parcel 2248 in the name of Moffat was valid

57. I shall now examine the process under which Moffat became registered as owner of the parcel 2248.
58. The Court has already impugned the subdivision of 1722 into parcels 2248 inter alia. According to the green card for parcel 2248, the title was issued to Wanjiru on 7/3/95 and title issued on even date. On the 9/8/2011 the title was registered in the name of Moffat. The Plaintiff failed to produce the transfer, Land Control Board consent, the dissolution of trust in support of the entry registering Moffat in his name. DW4 informed the Court that all the documents in respect to all the entries for this register are missing. The Court finds that Wanjiru did not convey the suit land to Moffat given that she had passed away 6 years earlier in 1995.
59. The Court answers the issue in the negative.

Whether the titles arising from subdivision and amalgamation should be cancelled.

60. It is not in dispute that the original parcel 1722 was held in trust by Wanjiru for her sons. Wanjiru held legal title in the suit land for the benefit of her two sons. She therefore was a trustee holding trust property (parcel 1722) for the beneficiaries namely (Moffat and Munyua), here two sons.
61. Trusts created in the manner in which this one was is determined by dissolving the trust and transferring the trust property to the beneficiaries or by the Court.
62. While holding the property Wanjiru was devoid of legal capacity to subdivide and combine the trust property except in the fulfillment of the purposes of the trust in which she held the trust property. The Court has already found that the subdivision combination and transfer were contrary to the law and for all purposes and intents are null and void.



63. In this case neither of the above have taken place. Now that the trustee is deceased, I am of the view that the parties ought to petition for succession of the estate of the trustee so that the administrator may determine the trust and distribute the land to the two parties.

64. This Court has been urged by the 1st Defendant to set aside the decision of the SPMCC No 11 of 2005 delivered on the 10/1/2006. The orders are reproduced as follows;

“That a portion measuring 0.31 (Zero point three one) hectares be carved out of Land Parcel No. Kiambaa/Kihara/2251 registered in the names of the Objector, Geoffrey Munyua Mungai and be transferred and registered to Moffat Kamau Mungai and a title deed issued to him.”

65. The decision emanated from the LDT Case No LND/16/20/13/2005 in which the panel of elders ruled in favour of the Plaintiff. This order was adopted as an order of the Court on the 30/1/2006. The Court has not been shown any evidence to show that the said decision of the Court has been set aside, vacated and or appealed against. Further the decision having been delivered on 2006, expired by effluxion of time by 29/1/2006. There is therefore no decision capable of any action by the Court. Moreover the Court notes that there is no appeal that has been placed before the Court.

What orders should the Court issue?

66. The Court finds that parcel 1722 was held in trust by Wanjiru for the benefit of Moffat and Munyua. The Court also finds that the subdivision of parcel 1722 into parcels 2248, 2249 and 2250 were null and void in the absence of Land Control Board consent and a registered mutation. The same fate applies to the combination of parcel 2249 and 2250 yielding parcel 2251. The transfer of parcel 2251 to the 1st Defendant as well as parcel 2248 in the name of Moffat are all products of fraudulent and illegal activities.

67. The Plaint succeeds partially in terms of prayers Nos (c) and (d).

68. The Counterclaim partially succeeds in terms of prayer No (e) only.

69. Resultantly parcels Nos. 2248, 2249, 2250 and 2251 be and are hereby nullified and cancelled. The land shall revert to parcel 1722 in the name of Wanjiru holding in trust.

70. Parties are related and I order that each shall meet their own costs.

71. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 22ND DAY OF NOVEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Musungu for the Plaintiff

Mary Mungai for 1st Defendant

2nd and 3rd Defendants - Absent

Court Assistant – Phyllis

