



**Nduati & another (Both suing in their capacity as the legal representatives
and administrators of the Estate of the Late Reuben Nduati Mwangi)
v Muchungu & 2 others (Environment and Land Appeal 17 of 2024)
[2025] KEELC 582 (KLR) (Environment and Land) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 582 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL 17 OF 2024
MC OUNDO, J
FEBRUARY 13, 2025**

BETWEEN

**ROSELYNE NYAMBURA NDUATI 1ST APPELLANT
JONATHAN MWANGI NDUATI 2ND APPELLANT
BOTH SUING IN THEIR CAPACITY AS THE LEGAL REPRESENTATIVES
AND ADMINISTRATORS OF THE ESTATE OF THE LATE REUBEN NDUATI
MWANGI**

AND

**DAVID KAMAU MUCHUNGU 1ST RESPONDENT
THE NAIVASHA LAND REGISTRAR 2ND RESPONDENT
THE NATIONAL LAND COMMISSION 3RD RESPONDENT**

*(Being an Appeal from the Judgement and Decree delivered on 25th August,
2022, by Hon. Mr. Yusuf Barasa in Naivasha CMELC No. 55 of 2019,
Roselyne Nyambura Nduati & Jonathan Mwangi Nduati-vs-David Kamau
Muchungu, The Naivasha Land Registrar and The National Land Commission.)*

JUDGMENT

1. What is before me for determination on Appeal is a matter which was heard and determined by Hon. Y.M Barasa, Senior Resident Magistrate wherein upon considering the evidence of both parties, vide his Judgment dated 25th August, 2022, the learned Magistrate had held that the Plaintiffs had failed to prove their case on a balance of probability wherein their case had been dismissed with costs. He



found in favour of the 1st Defendant to the effect that he held a valid title which had not been acquired fraudulently.

2. The Appellants, being dissatisfied with the Judgement and Decree of the trial Magistrate have now filed the present Appeal based on the following grounds in their Memorandum of Appeal:

- i. The Learned Magistrate erred in law and in fact and failed to consider the fact that the entire process of transfer of land title number Kijabe/Kijabe Block 1/3811 from the deceased Reuben Mwangi Nduati to allegedly Jonathan Mwangi Nduati and finally to David Kamau Muchungu was tarnished by fraud, irregularities and illegalities.
- ii. The Learned Magistrate erred in law and fact in emphasizing on extraneous matters which made him to arrive at a wrong conclusion in his judgement.
- iii. The Learned Magistrate erred in law and fact and went out of his way to address issues which were never raised by the Respondents in their cross-examination to the appellant by the respondents and this made him to go out of his way to assist the Respondents.
- iv. The Judgement delivered by the learned Magistrate is completely biased.
- v. The Learned Magistrate erred in law and in fact by failing to comprehend the Appellant's case, failing to consider the Appellants' witness evidence, bundle of documents and written submissions.
- vi. The Learned Magistrate erred in law and in fact in finding that the Appellants did not prove their case as per the required standard of prove that is on a balance of probability.

3. The Appellants thus sought for the following orders:

- i. That the instant Appeal be allowed.
- ii. That the Honourable Court be pleased to set aside the judgement and decree and any other consequential orders and actions with respect to the judgement and decree of the Honourable Mr. Yusuf Barasa Mukhula delivered on 25th August, 2022.
- iii. That the Honourable Court be and is hereby pleased to issue a declaration that the late Reuben Mwangi Nduati is the legal and true proprietor of Land Title No. Kijabe/Kijabe Block 1/3811.
- iv. That the Honourable Court be and is hereby pleased to issue a declaration that the purported transfer of Title No. Kijabe/Kijabe Block 1/3811 to David Kamau Muchungu is a nullity.
- v. That the Honourable Court be pleased to order a permanent injunction restraining the Respondents and/or any persons claiming proprietary interest adverse to the Plaintiffs' over Land Title No. Kijabe/Kijabe Block 1/3811 either by themselves, their agents, servants and/or employees from evicting, ejecting, or in any way interfering with the Plaintiffs' quiet possession.
- vi. That the Honourable Court be pleased to compel the 2nd and 3rd Respondent to restore the Plaintiffs' title by cancelling any other title issued thereafter and further to rectify the green card on the title to its original position before the purported transfer to David Kamau Muchungu and the provisional title issued to a purported sole administrator of the estate of the deceased herein.
- vii. That the Honourable Court be pleased to grant general and exemplary damages to the Appellants.



- viii. That the costs of the present appeal and those of the lower court be borne by the Respondents.
- ix. Any other relief that the Honourable Court may deem fit to grant.
4. On 20th June, 2024, directions had been issued for the Appeal to be disposed of by way of written submissions wherein only the Appellants and the 1st Respondent complied and filed their submissions which I shall summarize as herein under.

Appellants' submission

5. The Appellants hinged their written submissions dated 26th September, 2024, on the decided case of Peter Kanithi Kimunya v Aden Guyo Haro [2014] eKLR to submit that this being a first Appeal, the court was under an obligation to examine and re-evaluate the evidence on record afresh, assess it and make its conclusion pursuant to the provisions of Section 78 of the *Civil Procedure Act*. That further, the court would not normally interfere with the finding of fact by the trial court unless it was based on no evidence, or on misapprehension of evidence, or application of a wrong principles. They thus submitted that the findings of the trial court had been based on misapprehension of law wherein it had acted on the wrong principles of law in arriving at the decision it did.
6. The Appellant set out to define a bona fide purchaser by referring to the Black's Law Dictionary, 9th Edition as well as the decisions in the case of Katende v Haridar & Company Limited (2008) 2E.A. 173 and Francis Mbure Kamau v Methi & Swani Farmers' Co-operative Society Limited & 5 Others [2017] eKLR.
7. That there had been irregularities in transfer of the suit property specifically with regard to the amount paid for stamp duty, in that whereas he 1st Respondent alluded to have paid a sum of Kshs. 4,000/= as stamp duty for the transfer of the suit land, wherein the suit land had been purchased for Kshs. 1,500,000/= given that the stamp duty on immovable property was either 2% or 4% of the value of the property located in rural or urban areas respectively, the 1st Respondent could have only have paid an amount of Kshs. 30,000/= or Kshs. 60,000/= depending on the location of the suit property. That further, the official receipt from the bank did not bear the details of the suit property as was practice and procedure.
8. That whilst the procedure for a conveyance was that the purchaser would first pay the purchase price before the vendor could procure the completion documents followed up with a valuation by a government valuer before the purchaser could proceed to pay the stamp duty and lodge the documents for registration, it had been quiet perplexing that the 1st Respondent purported to have completed the purchase and transfer of the suit property in a record two (2) days. That further, a look at the official receipt on payment of stamp duty to the suit property had clearly indicated that the same had been paid on 29th November, 2013 which was also the day that the title deed had been issued to the 1st Respondent.
9. That from the foregoing, it had been clear and evident that the 1st Respondent must have engaged himself in fraudulent acts to try and unlawfully disinherit the beneficiaries of the estate of the deceased original registered and legal owners of Land Title Number Kijabe/Kijabe Block 1/3811 (suit property).
10. Reliance was placed in the decided case of Joseph Muriithi Njeru v Mary Wanjiru Njuguna & Another [2018] eKLR to submit that once the intention of the parties had been reduced into a contract, a party could not purport to change the terms of the contract through oral evidence. That clause 3 of the agreement for sale had clearly stipulated that the purchase price of the suit property was Kshs. 1,500,000/= and that the 1st Respondent had paid the full purchase price to the vendor on 26th



- November, 2013 via fund transfer upon the parties executing the Agreement for Sale. That further, the suit property had been sold with vacant possession, the 1st Respondent having already viewed the same and taken full possession on 26th November, 2013 when he had paid the full purchase price.
11. That during the hearing of the matter, however, the 1st Respondent had testified that he had paid the full purchase price to the purported vendor of the suit property in cash, that the suit property had tenants in it and further, that he had not physically visited the suit property prior to purchasing the same. That the alteration and variations of the agreement were blatant falsified statements that had been crafted by the 1st Respondent in an attempt to fraudulently mislead the court into disinheriting the beneficiaries of the estate of the deceased proprietor of the suit property. That in any case, the 1st Respondent had not produced any documentary evidence to confirm that indeed, he had paid the alleged purchase price for the suit property as had been alleged in the Agreement for Sale.
 12. That whereas the 1st Respondent had contended that he had attended the Land Control Board and obtained the consent to transfer, no evidence had been provided to confirm such attendance, while in the company of the Vendor. That even if the suit property had been located in an urban area, the 1st Respondent must have still been issued with the Commissioner of Lands Consent to transfer thus it was evident that no consent to transfer the suit property to the 1st Respondent had ever been issued. They placed reliance on the provisions of Section 26 (1) of the [Land Registration Act](#) as well as on the decided case of Samuel Odhiambo Oludhe & 2 Others v Jubilee Jumbo Hardware Limited and another [2018] eKLR where the court had cited the case of Alice Chumutai Too v Nickson Kipkirui Korir & 2 Others [2015] eKLR.
 13. That the suit property had been illegally transferred from the deceased's estate. That being administrators of the estate of the late Reuben Nduati Mwangi, the registered proprietor of the suit property confirmation had been in Nairobi High Court via Succession Cause No. 2226 of 2002, a look at the green card clearly indicated that the suit property had been transferred from Reuben Nduati Mwangi (Deceased) to Jonathan Mwangi Nduati through a confirmed grant issued in Nairobi High Court Succession Cause No. 2604 of 2005 and which Succession Cause had referred to the estate of Daniel Gichanga Thandi who had died testate.
 14. That whereas Reuben Nduati Mwangi (Deceased) had died intestate, his name did not appear in the said cause. That in any event, the 1st Defendant had confirmed to the court both through his pleadings and oral evidence, that he had never met the 2nd Plaintiff prior to purchasing of the suit property, that in fact, the 2nd Plaintiff had not been the person who sold him the suit property. Reliance was placed in the decided case of Zacharia Wambugu Gathimu & another v John Ndugu Maina [2019] eKLR.
 15. That it was thus evident and clear that the Appellants did not at any given time transfer the suit property to the 1st Respondent either in their individual capacity or in their capacity as the administrators of the estate of Reuben Nduati Mwangi. That subsequently it was evident and clear that the suit property herein had been transferred fraudulently and irregularly wherein the 1st Respondent had been the crafter of the scheme to fraudulently, irregularly and/or illegally disinherit the beneficiaries of the estate of the deceased registered proprietor of the suit property. That whereas the said 1st Respondent had confirmed to the trial court that he had not bought the suit property from the Appellants herein but from a certain gentleman, he did not take-out third-party proceedings against the said Vendor, report the matter to the police and/or seek summons for the alleged vendor to appear in court and testify. That indeed, the transfer instrument that had been used for the purported transfer of the suit property to the 1st Respondent had been a forgery as the image and the copy of the national identity card of the alleged vendor had not been the 2nd Appellant's.



16. That interestingly, the 1st Respondent did not take any action to protect and or safeguard his property neither had he reported the matter to the authorities, be it the chief, the police and/or file a suit in court. That further, the 1st Respondent did not call the advocate who had purportedly drawn the Agreement for Sale and subsequent transfer of the suit property as a witness to buttress his assertions of being an innocent purchaser for value. It was thus their submission that the glaring inconsistencies of the evidence by the 1st Respondent had clearly pointed out to the fact that he had been the author of the fraudulent and illegal acts that had been used in transferring the suit property to himself.
17. That the 2nd Defendant/Respondent had confirmed that the title deed document held by the 1st Respondent was a suspected forgery as had been confirmed by the Appellants. That the 2nd and 3rd Defendants did not controvert that the 1st Respondent's title document had emanated from the Naivasha Land Registry thus the said title had been obtained illegally since the 2nd and 3rd Defendants did not take any precaution to ensure that the due process had been followed. That whereas it was trite law that two title deeds of the same property could not exist at one point, no evidence had been adduced to show that the title deed that had been issued in the name of Reuben Nduati Mwangi had been surrendered to the 2nd Respondent as the same was still held by the Appellants to date. That the Appellants had indeed confirmed that they held a valid title deed that had been issued to their late father on 18th November, 1997 while the 1st Respondent's title had been issued on 29th November, 2013. Reliance was placed in the decided case of Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others [2017] eKLR.
18. That pursuant to the provisions of Section 80(1) of the *Land Registration Act*, the 2nd and 3rd Respondents should be ordered to cancel the 1st Respondent's title and restore it to the title deed being held by the Appellants in relation to the estate of the deceased.
19. While placing reliance in the decided case of Samuel Odhiambo Oludhe & 2 Others v Jubilee Jumbo Hardware Limited & another [2018] eKLR the Appellants submitted that the 1st Respondent having trespassed into their parcel of land, they were entitled to damages. They relied on the decided case of Propwa Company Limited v Justus Nyamo Gatondo & another [2020] eKLR to propose a sum of Kshs. 1,500,000/= as adequate damages in the instant case. That since they had proved their case to the required threshold, that their Appeal should be allowed as prayed.

1st Respondent's Submissions.

20. In response to the Appellants' Appeal and in opposition thereto, the 1st Respondent vide his written submissions dated 25th October, 2024, summarized the factual background of the matter and then proceeded to submit on the Grounds of Appeal herein.
21. On the first ground of Appeal as to whether the learned magistrate had erred in failing to find that the transfer of the suit property had been tarnished by fraud, irregularities and illegalities, he submitted that it was not the duty of the trial court to speculate on how the transfer of the suit land had been undertaken but instead, it had been the Appellant's duty to adduce evidence to convince the court that the transfer had been fraudulently undertaken as alleged. That the Appellants had failed miserably to prove any fraud on the part of the Defendants.
22. That the evidence that had been submitted had clearly showed that the Appellants had not been innocent but had involved themselves in fraudulent deals to defraud innocent purchasers of their monies using fraudulent schemes. That from the evidence adduced by the 1st and 2nd Appellants' in court, and in reliance with the decided case of Palace Investment Limited v Geoffrey Kariuki Mwenda & Another Civil Appeal No. 127 of 2005, the Appellants had not only been untruthful and unreliable



- witnesses but had miserably failed to prove any fraudulent acts on the part of the 1st Respondent. It was thus his submission that the trial court could not be faulted in arriving at the decision it had made since he who alleges must prove, which duty the Appellants had failed to discharge. That the court should thus reject this ground of appeal.
23. On the second ground of Appeal as to whether the learned magistrate had erred in emphasizing on extraneous matters which had made him to arrive at a wrong conclusion in his judgement, it was his submission that the Appellants had not specified the extraneous matters alleged to have been relied on by the trial court hence the said ground remained hollow and unsubstantiated thus the court should reject the same.
 24. On the third and fourth ground of appeal as to whether the learned magistrate had erred by addressing issues that were never raised by the Respondents hence went out of his way to assist the Respondents, he submitted that the said grounds had not been specifically argued and instead the Appellants had generally argued the appeal abandoning their grounds of appeal thus rendering their submissions omnibus. He thus urged the court to so find and reject the said grounds. Reliance was placed in the decided case of *Judicial Service Commission v Gladys Boss Sholei & Another*, Civil Appeal No. 50 of 2014.
 25. With regards to the fifth ground of Appeal as to whether the learned magistrate had failed to comprehend the Appellants' case and consider their evidence, the Respondent submitted that the main issue during the trial had been whether the 1st Respondent had obtained his title fraudulently. That the trial court which had the advantage of hearing first-hand evidence and assessing the demeanor of the witnesses had taken into consideration all the factors before arriving at its decision as had been evidenced in the judgement. That the trial court had exercised its discretion based on the evidence and circumstances of the case. That indeed, from the analysis of the evidence, it had been clear that no mala fides had been proved against the 1st Respondent thus it was not correct to allege that the Appellants' evidence and submissions had not been considered. They thus urged the court to reject the fifth ground of Appeal as well.
 26. On the sixth ground of Appeal as to whether the Appellants had proved their case on a balance of probabilities, he submitted that whereas they had set out the particulars of fraud, they had failed to prove any during the hearing. That in fact, from the evidence on record, it was the Appellants who had come out as being complicit in the transactions. He reiterated the lackadaisical conduct on the Appellant's part had depicted complicity in the whole transaction hence they could not feign innocence. That they did not come to a court of equity with clean hands. He thus maintained that none of the particulars of fraud in the Plaintiff had been proved against him to warrant the court to upset the decision of the trial court.
 27. That further the Appellant's submissions consisted of a treatise on several legal doctrines but had failed to address the specific grounds raised in the appeal. That the Appellants' submissions had resorted to delving into periphery issues such as the amount of stamp duty that had been paid, whether the purchase price should have been paid in cash or money transfer and why the transfer had been done in 3 days which arguments had not been issues for trial. That further, the Appellants had invented new evidence in their submissions which was untenable since the court's duty was to relook at the evidence already on record and construe whether the trial court had properly analyzed the evidence in reaching its decision.
 28. That he had undertaken a due diligence of the suit property before he had purchased the same after which a Sale agreement had been prepared, payment made and completion documents released to him by the seller. That on the other hand, the 2nd Appellant did not refute that there had been an Agreement



for Sale between he and the 1st Respondent which Agreement had not been impeached during the hearing. That indeed, the 2nd Appellant could not explain why his documents had been in possession of the persons linked to him and who had been his agents given his conduct and demeanor during the trial. He thus submitted that the present appeal was not merited and urged that the same be dismissed with costs.

Analysis.

29. I have considered the record of Appeal, the holding by the trial Magistrate, the written submissions by learned Counsel and the applicable law. Conscious of my duty as the first Appellate Court in this matter, I have to reconsider the decision Appealed against, assess it and make my own conclusions as was stated by the Court of Appeal in *Paramount Bank Limited vs. First National Bank Limited & 2 Others* (Civil Appeal 468 of 2018) [2023] KECA 1424 (KLR) where the court held as follows;

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the *Civil Procedure Act*, a first Appellate Court can appreciate the entire evidence and come to a different conclusion.”

30. According to the proceedings herein, the Appellants herein instituted the suit against the Respondents herein in CMCELC No. 55 of 2019 formerly Nakuru High Court ELC No. 55 of 2019, formerly Naivasha CMCELC No. 9 of 2014 vide a Plaint dated 21st August 2024 wherein they had sought for the following orders;

- i. The Court be and is hereby pleased to issue a declaration that the late Reuben Nduati Mwangi is the real and true registered proprietor of land parcel Title Number Kijabe/Kijabe Block 1/3811 and the purported transfer of the suit property to the 1st Defendant is a nullity.
- ii. The Court be pleased to issue an order of permanent injunction restraining the 1st and 2nd Defendants and/or any other person claiming proprietary interest adverse to the Plaintiffs over land Title Number Kijabe/Kijabe Block 1/3811 either by themselves, their agents, servants and or employees from evicting, ejecting or in any way interfering with the Plaintiffs’ quiet possession.
- iii. An order compelling the 2nd and 3rd Defendants to restore the Plaintiffs’ title by cancelling any other title issued thereafter and further to rectify the green card of the title to its original position before the purported transfer to the 1st Defendant and the provisional title issued to a purported sole administrator of the estate of the deceased herein.
- iv. General and Exemplary damages.
- v. Costs of the suit.
- vi. Interest in (iv) and (v) above at court rates.

31. Subsequent to the filing of the suit, the 1st Defendant/Respondent filed his Statement of Defence dated 7th November, 2014 wherein he denied the allegations contained in the Plaint putting the Plaintiffs to strict proof while stating that he suspected the Plaintiffs were involved in a criminal cartel jointly



with others to fraudulently obtain monies from unsuspecting innocent purchasers thus they could not purport to plead innocence.

32. He particularized the Plaintiffs' fraudulent behavior as knowingly conspiring with others and allowing them to dispose of the suit property using their names and documents with intent to defraud, showing up immediately after the said purchase and claiming that they had not sold the suit property yet they knew all the persons that had been involved in the sale and with whom they had constant touch during the time of sale. They further particularized fraudulent behavior as allowing persons known to them to possess their personal documents and use them to defraud innocent purchasers while pretending to be innocent when all along they had been working in cohorts with the persons who had sold the suit property and who must be their relation.
33. He thus prayed that the Plaintiffs' case be dismissed with costs.
34. Vide a Reply to the 1st Defendant's Statement of Defence dated 27th March, 2018, the Plaintiffs joined issues with the 1st Defendant's Statement of Defence and reiterated the contents of their Plaint while praying that judgement be entered against the Defendants as prayed in the Plaint.
35. The 2nd and 3rd Defendants on the other hand vide their Statement of Defence dated 15th July, 2015 denied the contents in the Plaint putting the Plaintiffs to strict proof while contending that the 2nd Defendant had affected the transfer of the suit property to the 1st Defendant upon the presentation of the original confirmation of certificate of grant of the late Reuben Nduati Mwangi originating from Nairobi Succession Cause No. 2406 of 2005. That the suit did not disclose a cause of action against them and should be dismissed with costs.

Summary of evidence tendered before the trial court;

36. The case proceeded for hearing wherein the 1st Plaintiff/Appellant herein referred as PW1 adopted her witness statement as her evidence in chief and proceeded to rely on the documents filed as her exhibits to wit;
 - i. A copy of the original title deed to property Title Number Kijabe/Kijabe Block 1/3811 in favour of Reuben Nduati Mwangi.
 - ii. A copy of the fake title deed to property Title Number Kijabe/Kijabe Block 1/3811 in favour of Jonathan Mwangi Nduati.
 - iii. A copy of fake title deed to property Title Number Kijabe/Kijabe Block 1/3811 in favour of David Kamau Muchungu.
 - iv. A copy of death certificate for Reuben Nduati Mwangi.
 - v. A copy of death certificate for Lilian Wangui Nduati.
 - vi. A copy of Grant of Letters of Administration Intestate for the Estate of Reuben Nduati Mwangi in favour of Lilian Wangui Nduati and Jonathan Mwangi Nduati.
 - vii. A copy of Grant of Letters of Administration Intestate for the Estate of Reuben Nduati Mwangi in favour of Roselyne Nyambura Nduati and Jonathan Mwangi Nduati.
 - viii. A copy of Grant of Letters of Administration Intestate for the Estate of Lilian Wangui Nduati and the Certificate of Confirmed Grant therein.
 - ix. A copy of Official Search to property Title Number Kijabe/Kijabe Block 1/3811 conducted on 13th March, 2014.



- x. A copy of the purported transfer to David Kamau Muchungu.
 - xi. A copy of the 2nd Plaintiff's Original National Identity Card.
 - xii. A copy of the note issued by the CID Naivasha Division in relation to OB No. 44/6/1/2014.
 - xiii. A copy of a letter to the Registrar of Lands Naivasha, requesting for the Parcel file as well as the correspondence file in relation to property Title Number Kijabe/Kijabe Block 1/3811.
 - xiv. A copy of application filed in court in relation to Nairobi High Court Succession Cause No. 2406 of 2005 and the Grant of Probate therein.
 - xv. Letters to the Tenants of the estate of the Deceased from the 1st Defendant through Messrs. David K. Gichuki & Co. Advocates.
 - xvi. A copy of the Original National Identity Card in favour of Jonathan Mwangi Nduati.
 - xvii. A copy of the Original Pin Certificate in favour of Jonathan Mwangi Nduati.
37. In cross examination by the Counsel for the 1st Defendant, she had responded as follows; that she was the administrator of her late father's estate and that he had been the original owner of the suit property. That she had not been aware that the plot had been transferred from her father's name. That whereas they had the original title deed, the reverse side of the said title did not bear any serial number. That she neither had the green card nor the said original title with her in court.
38. She confirmed that the grant for the Administration of the estate of her late father had been issued to her and her brother. She also confirmed that Plot 4R of her documents was a grant to her brother in Succession Cause No. 484/08. She further confirmed that the Grant had been confirmed and the estate distributed to her and her brother to hold the same in trust for their siblings who were under 18 years old hence they had not transferred the said properties to themselves. That most of their properties were rental buildings to which they shared the income.
39. When she was referred to page 37 of the Plaintiffs' list of documents which was a title deed, her response was that she did not know of any title bearing her brother's name since her brother could not effect a transfer without her signature. That she did not think that the said title deed that had been issued on 28th May, 2013 had been registered to her brother.
40. Upon being referred to the Defendant's list of documents, she confirmed that she could see a Sale Agreement dated 26th November, 2013, a title deed and a search dated 27th February, 2014. That however, she could not confirm when the 1st Defendant had purchased the suit property from her brother.
41. She confirmed that they had a caretaker called Mr. Ayub Mugo, who had been admitted at Kijabe Hospital hence could not attend court as a witness but whose duty was to take care of the plot and ensure that there had been no interference.
42. That around November, 2013, the said caretaker had inquired from them whether they were selling their property to which they had responded in the negative. That the caretaker had visited their Nairobi offices and showed her a copy of title after which they had reported at the Naivasha Police Station wherein their case had been booked and they had been issued with OB of June 2014. She confirmed that this incidence took place 6 to 7 months after the alleged sale or interference with the suit property.
43. That they had consulted their advocate on 6th January, 2014 who had advised them to register a caution on the suit land which they had visited on the same day. That unfortunately, by that time, money



had already exchanged hands. She that her brother could not have sold the suit property without her consent. That her brother had then proceeded to register a caution in the year 2013 but when she was referred to Page 26 of their documents, she stated that the caution had been lodged on the 10th December, 2013, a week after the sale. When she was referred to page 29 of the Plaintiffs' list of documents, she admitted that she had not produced any provisional title. On being referred to page 45 of the Plaintiffs' list of documents, she confirmed that she had conducted a search on the 13th March 2014 wherein the title issued on 29th November 2013 was a suspected to be a forgery. She maintained that her brother did not sell the plot to the 1st Defendant.

44. In re-examination, she confirmed that she had received the information about the suit property in December, 2013 after which a caution had been registered on the same on 10th December, 2013. She reiterated that they had first reported to Maai Mahiu Police Station after which they had been referred to Naivasha Police Station. She maintained that she still had the original title and that to her knowledge, her brother did not sell the suit property. That she was not privy to money exchanging hands since she had only come to know the alleged seller in court and to see the sale agreement much later. She confirmed that whereas the 1st Defendant's title had been issued on 29th November, 2013, they had conducted a search on the same on 13th March 2014 at lands office in Naivasha which search had indicated that the said title had been a suspected forgery. She maintained that she had never transferred the suit property to anyone else and that she still had the original title.
45. PW2 one Jonathan Mwangi Nduati, the 2nd Plaintiff herein also adopted his witness statement as his evidence in chief wherein he proceeded to testified that he did not sell the land to the 1st Defendant and neither had they entered into any sale agreement with the said 1st Defendant. That whereas the copy of the identity card used and the KRA Pin number had been his, yet the passport size photograph appearing therein was not his and neither had he given out his KRA Pin Certificate and identity card.
46. That whilst he used to be a co-administrator to his late father's estate jointly with his mother, upon her demise, him and his sister become the administrators. He denied ever transferring the land or receiving any money from the 1st Defendant. He explained that in the year 2013, upon their caretaker inquiring whether they had been selling land, he had visited the said caretaker before reporting to Maai Mahiu Police Station where he was referred to Naivasha Police Station where they had been advised to follow the legal process. That was when they had instructed their advocate.
47. In cross examination by the counsel for the 1st Defendant, he stated that the land had been bought by his father wherein he had subsequently inherited it having been over 18 years of age at the time. He confirmed that there had been no confirmation of grant from his father to himself and his mother as the Grant had shown that the priority had been given to him and his sister. When he was referred to the Plaintiffs' list of documents with regard to title deed in the name of Jonathan Nduati, he confirmed that he knew about the said title that was dated 25th May, 2013. Upon being referred to page 43, he confirmed that they had been registered as trustees.
48. When he was referred to the Defendants' list of documents with regard to the Sale Agreement, his response was that whereas the identity card number therein was his, yet he was not aware of the said Agreement. That his identity card had been accessed after they had sold and transferred another land in Maai Mahiu to a society. That he had been informed that the land had been sold by their caretaker Ayub who had been carrying on business on the land. That the procedure for the purchase of land was that one ought to visit the land before he could buy it.
49. He confirmed that after Ayub had called him in the year 2013, informing them that the land had been sold, they had reported the matter to the police, then visited the land office before proceeding to their advocate who had advised them to place a caution on the suit land. When he was referred to page 45 of



the Plaintiffs' list of documents, he confirmed that the same was a search dated 10th December, 2013 and that his name had appeared as the proprietor of the suit land. That the Agreement had indicated that the land had been sold on 26th November, 2013 and that he had put a caution on the land after the alleged sale.

50. In re-examination, he had reiterated that his father's land had never been transferred to anybody else and that the land was in the name of Lilian Wangui as had been confirmed in December, 2013. That caution on the land had been placed on 10th December, 2013 and that he was the one who had conducted a search. He maintained that he was not aware of the Sale Agreement between him and the 1st Defendant since only the identity number had been his and not the passport size photograph. When he was referred to pages 48 to 50 of their list of documents, his response was that he was neither aware of the deceased therein nor how the property had been transferred.

The Plaintiffs closed their case

51. The 1st Defendant/Respondent testified as DW1 to the effect that he was the registered owner of land Title Number Kijabe/Kijabe Block 1/3811 having bought the same from Mwangi Nduati on 26th November, 2013. That they had executed a sale Agreement, wherein they had gone to the registrar, conducted a search and thereafter registered a transfer for which he had been issued with a title deed in his name. He adopted his witness statement and list of documents filed as his evidence in chief and then proceeded to testify that he had used the right procedure in buying the plot and that the Plaintiffs' case should be dismissed. The 1st Defendant relied on his list of documents dated the 7th November, 2014 to wit;
- i. Agreement for sale dated 26th November, 2013.
 - ii. Title deed dated 20th May, 2013.
 - iii. Identity Card No. 22xxxxxx
 - iv. Pin card No. A003xxxxxx
 - v. Official Search dated 26th November, 2013.
 - vi. Transfer form dated 26th November, 2013.
 - vii. Application for registration No. 1722018.
 - viii. Payment receipts for stamp duty dated 29th November, 2014.
 - ix. Certificate of Official Search dated 25th February, 2014.
 - x. Consent to transfer dated 29th November, 2013.
 - xi. Title deed dated 29th November, 2013.
52. In cross-examination, he initially stated that he had purchased the plot from Jonathan Mwangi Nduati, the 2nd Plaintiff /Appellant at a purchase price of Kshs. 1,500,000/=, but changed his mind and stated that he had not seen the person who had sold him the land. That they had entered into a sale agreement on 26th November, 2013 wherein he had paid the purchase price through the bank, but he had not deposited the money into the 2nd Plaintiff/Defendant's account since he had the Kshs. 1,500,000/= with him.
53. That he had carried out the due procedures before buying the land which had included conducting a search at the land registry in Naivasha on 26th November, 2013. That the sale agreement had been



- drafted by P.W Ngunjiri Advocate after which they had proceeded to the bank. That the seller had the original title deed, identity card and KRA Pin Certificate while he had the transfer forms which documents had been used to effect the transfer. That whereas there had been a passport size photograph on the transfer forms, the image therein had not been of the 2nd Plaintiff. Further, that whilst the signature on the transfer form had been his, the one in his witness statement was not his.
54. That although he had communicated with the seller through phone, when the case was filed, he was neither his witness nor did he institute a third-party suit against him. He admitted that whilst they had attended the Land Control Board for consent, he had not produced the said consent in evidence. He confirmed to having complied with the terms of the sale agreement especially clause 3 that had stipulated that the purchase price had been via cash transfer to which he had withdrawn the cash, although he could not find the receipt to that effect.
 55. That whereas he had conducted the normal search, he neither inquired from the seller where he had got the land from nor did he know that the said land had belonged to the deceased, Reuben Nduati which information he got to learn after he had bought the land. That he had gone to the police in January, 2022 wherein he had found the Plaintiffs' advocate at the CID and told him that he had neither heard from the 2nd Plaintiff nor "baba Njoki".
 56. He confirmed that he had bought the land on 26th November, 2013 and that the title had come out after three (3) days, that is, on 29th November 2013 since they had attended a special board. When he was referred to the search certificate, he confirmed that the search that had been conducted on 13th March, 2014, wherein there had been a remark made that the title had been issued on 29th November, 2013 had been a suspected forgery.
 57. His evidence was that when he viewed the land on 15th November, 2013, it was occupied wherein there was a kiosk and tenants therein. That however, at clause 7 of his sale agreement, the same had indicated that the land had been vacant when it was sold. He maintained that he had bought the land on 26th November, 2013 and whereas he had not called the person who sold him the land as a witness, him being in possession of all the documents, he had asked the vendor to demolish the kiosk.
 58. When he was cross-examined by the counsel for the 2nd Defendant, he stated that he owned a hardware, and had bought the land from the 2nd Plaintiff after he had conducted a search. That whereas they had attended the Land Control Board, he could not see the agreement form. That further, whereas he had reported to the CID, he did not have an OB extract.
 59. Upon being referred to the P exh 9, he denied knowledge of the said search stating that he had only seen the phrase "suspected forgery" in court. He denied having given false information to the land registrar and stated that he had paid the stamp duty on 29th November, 2013.
 60. When he was re-examined, he denied the signature in the statement and proceeded to reiterate that they had done cash transfer at the bank. He confirmed ownership of the documents in his list of documents since they had been prepared by his counsel on record. That he had come to learn on 29th December, 2013 that the seller had not been the owner of the land since some people had gone on the land claiming ownership. That however, Jonathan, who had sold to him the land and the Plaintiffs herein were related but that he had not asked for the title deed from the said Jonathan.
 61. He confirmed that he had the OB at page 48 of his list of documents and that he had gone to the police after the people lay claim of ownership over the land. That the suit land was in Maai Mahiu town, was a municipality land thus the Land Control Board Consent was not required. That whereas the comments in the search had been 'suspected forgery', the said comments were not contained in the green card.



62. He maintained that he had followed the right procedure in buying the land wherein he had paid for the stamp duty and a receipt dated 29th November, 2013 issued. That he had been issued with the title deed by the Land Registrar.

Both the 1st and 2nd Defendants thus closed their case.

63. I have looked at the Plaintiffs witness statements both recorded on 21st August, 2024 wherein they stated that sometime in December, 2013, they had received a call from their caretaker at Maai Mahiu, one Ayub Mugo who had asked whether they had sold the property Title Number Kijabe/Kijabe Block 1/3811 to which they denied. That thereafter, the said Ayub had visited them in Nairobi and showed them a copy of title that had been issued by the Naivasha District Land Registry on 20th May, 2013 over title No. Kijabe/Kijabe Block 1/3811 purportedly in favour of the 2nd Plaintiff.

64. That upon visiting the Naivasha Land Registry to confirm the authenticity of the said title, they had noted that there had been discrepancy in relation to the registered owner of the suit property hence they had engaged their advocate on record to safeguard the interest of the beneficiaries of the deceased's estate. That subsequently, on 6th January, 2014, they had reported the purported attempt to defraud the beneficiaries of the registered owner of the suit property at the Maai Mahiu Police Station wherein they had been advised to report the matter at the Naivasha CID division where they had reported and were issued with OB No. 44/6/1/2014.

65. That the said advocate had then advised them to lodge a caution on the suit property to prevent any further dealings and after conducting a search, they had discovered that the suit property had further been transferred to a third party, one David Kamau Muchungu. That subsequently they had been summoned by the CID police officers from Naivasha on 28th March, 2014 wherein the 1st Defendant had confirmed that he had never met them and neither had they sold the suit property to him.

66. That there was forgery and fraud that had been occasioned in transferring the suit property to the 1st Defendant. Indeed the official search of 13th March, 2014 had clearly indicated that the title that had been issued to David Kamau Muchungu had been a suspected forgery. That the 2nd Defendant had also proceeded to cause the transfer of the suit property to the 1st Defendant without the original title deed, that further the Registrar had purported to have used a Certificate of Confirmation of Grant in relation to Nairobi High Court Succession Cause No. 2406 of 2005 to transfer the suit property yet the same had been in relation to the Estate of Daniel Gichanga Thandi and not the Estate of Reuben Nduati Mwangi.

67. That the title having already been issued to the 1st Defendant, it was only the court that had the jurisdiction to cancel it and to compel the 2nd and 3rd Defendants to delete the entries made in the green card so as to restore the title of Reuben Nduati Mwangi to its original position.

68. I have also looked at the 1st Defendant's witness statement recorded on the 7th November 2024, wherein he had stated that on 26th November, 2013, he had been approached by one Moses Njoroge who had informed him that the suit property was being sold for Kshs. 3,000,000/=. That he had then requested the said Njoroge to arrange for a meeting with the owner of the plot wherein he had given him the vendor's phone number and also called one Joseph Kirobi Kagethe who was the one with a copy of the title and documents concerning the suit plot. That the said Kirobi had called the owner of the plot who had agreed to meet with them.

69. That the vendor had appeared on the 29th November, 2013 and produced his Identity Card and the original title to the plot and that the names therein had matched hence he had requested that they



proceed to the lands office at Naivasha to conduct an official search which had also confirmed the ownership of the suit property.

70. That subsequently, they had proceeded to the lawyer's office where an agreement for sale had been prepared and they both executed it. That the vendor had, upon his insistence, agreed and applied for and obtain the Land Control Board Consent and thereafter, he had paid the full purchase price at the bank in cash. That the completion documents had then been released through the lawyer and handed over to him for registration of transfer which he did hence he had become the registered proprietor of the suit plot.
71. That thereafter, he had issued the tenants on the plot notices requesting them to vacate the premises as he had intended to develop the same. That it had been then that one Ayub Mugo, a caretaker, and who had been occupying one of the stalls on the suit property started asking questions as to how he had bought the plot and from whom. That upon him showing the said Ayub the phone number of the person who had sold him the suit property, Ayub had told him that the said person was not the owner of the suit property.
72. That subsequently, he had asked Ayub to call the other purported owner who had arrived with a bundle of titles and identity card which had tallied with the one that he had been given. That afterwards, the person who had sold him the suit land had called him on his mobile phone number and requested to speak to Ayub Mugo but the said Ayub did not reveal what they had talked about. That Ayub's non-disclosure had confirmed to him that the said Ayub and the Plaintiffs had been in league with the person who had sold him the suit property. That he had then reported the matter to the police who had asked Ayub Mugo to vacate from the 1st Defendant's suit property after which the Plaintiffs had filed the present suit.

Determination

73. Having summarized what transpired during the hearing at the trial Court, as herein above, I find the issues arising herein for determination as follows:-
 - i. Whether the Appellants had proved the allegations of illegality.
 - ii. Whether the 1st Respondent was an innocent purchaser for value.
 - iii. Whether the trial learned Magistrate had erred in his findings.
74. On the first issue for determination, it is not in contention that the Appellants herein filed suit against the Respondents herein in CMCELC No. 55 of 2019 formerly Nakuru High Court ELC No. 55 of 2019, formerly Naivasha CMCELC No. 9 of 2014 vide a Plaint dated 21st August 2024 wherein they had sought for orders that the purported transfer of the suit property No. Kijabe/Kijabe Block 1/3811 to the 1st Defendant was a nullity and that the late Reuben Nduati Mwangi was its true registered proprietor.
75. According to the documents relied on, it was not in contention that land parcel No. Kijabe/Kijabe Block 1/3811 was registered to one Reuben Mwangi Nduati on the 18th November 1997 wherein a title had been issued. It is further not in contention that the said Reuben Mwangi Nduati passed away on the 7th May 2002 wherein his wife Lilian Wangui Nduati and his son PW2 became administrators to his estate via Nairobi High Court Succession Cause No. 2226 of 2002 wherein the Grant of letters of Administration intestate was issued to them on the 8th September 2003. That upon the death of Lilian Wangui on the 3rd August 2006. The Grant of letters of Administration intestate to the Estate of Lilian Wangui Nduati was also granted to both PW1 and PW2 on the 29th October 2008 vide Nairobi



- High Court Succession Cause No. 484 of 2008 wherein the certificate of Confirmation of Grant dated the 13th April 2011 was to the effect that the suit land was to be held in trust by both PW1 and PW2 on behalf of other beneficiaries in equal shares. Subsequently the letters of Administration intestate to the Estate of Reuben Mwangi Nduati was rectified on the 23rd June 2014 wherein both PW1 and PW2 became administrators.
76. Lastly it is not in dispute that via a sale agreement of 26th November, 2013, the suit parcel of land was allegedly sold to the 1st Respondent by one Mwangi Nduati wherein after, the same was transferred and registered in his name despite the fact that the Appellants still had the original title and that they had not sold the land to third parties.
77. Section 26 (1) of the [Land Registration Act](#) of 2012 which provides as follows:-
- “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;-
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.
78. It was held in the case of Republic vs Senior Registrar of Titles Ex-parte Brookside Court Limited (2012) eKLR, that statutorily, the sanctity of title to land is assured and protected under Section 24, 25 and 26 of the [Land Registration Act](#). The court is also aware of the attribute of Section 26(1) (a) and (b) of the [Land Registration Act](#) which provides that a Title to land shall not be absolute and indefeasible because it can be impeached where it is shown to have been obtained through fraud, misrepresentation, illegally, un-procedurally or through a corrupt scheme.
79. In this case, the Appellants herein had challenged 1st Respondent’s title to the effect that it had been obtained illegally and therefore sought that it be cancelled and revert back to the original proprietor who was their deceased father.
80. The 1st Respondent put up a defence that he had legally purchased the suit property from one Mwangi Nduati vide a sale agreement of 26th November, 2013 at a purchase price of Ksh 1,500,000/= which he had paid in full.
81. Now since the Appellants had Challenged the Title held by the 1st Respondent, evidence according to Section 26 of the [Land Registration Act](#) had to be led to prove that the 1st Respondent’s title to parcel No. Kijabe/Kijabe Block 1/3811 was acquired illegally.
82. Indeed where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership, the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance. (See the Supreme Court decision in Dina Management Limited vs. County Government of Mombasa & 5 others [2023] KESC 30 (KLR)).
83. To prove their case evidence had been led to the effect that the Appellants still had the original title intact which title deed had been produced in evidence, that further the search conducted on the 13th



- March 2014 had remarks to the effect that the title issued on 29th November 2013 was a suspected to be a forgery.
84. The 2nd Appellants evidence was that he did not sell the land to the 1st Respondent and neither had they entered into any sale agreement with him. That whereas the copy of the identity card used and the KRA Pin number had been his, yet the passport size photograph appearing therein was not his and neither had he given out his KRA Pin Certificate and identity card which could have been accessed in another land transaction where he had sold and transferred another land in Maai Mahiu to a society. That the title that was dated 25th May, 2013 was in his name wherein they had been registered as trustees. That the matter had then been reported to the CID Naivasha Division in relation to OB No. 44/6/1/2014.
 85. Looking at the 1st Respondent's inconsistent evidence, the same was that he had bought the suit parcel of land from Mwangi Nduati via a sale agreement of 26th November, 2013, however in cross examination he had stated that he had not seen the person who had sold him the land. In his statement which he had adopted as his evidence in chief, he had mentioned that one Moses Njoroge had informed him that the suit property was up for sale for Kshs. 3,000,000/= wherein one Joseph Kirobi Kagethe had subsequently presented him with a copy of the title and documents concerning the suit plot. These persons were called as witnesses.
 86. A look at the title deed in the name of the 2nd Appellant which he had been presented with by the said Joseph Kirobi Kagethe confirmed that the suit parcel of land was registered to the 2nd Appellant on the 20th May 2013, could this be true given that the certificate of Confirmation of Grant dated the 13th April 2011 was that the suit land was to be held in trust by both PW1 and PW2 on behalf of other beneficiaries in equal shares and secondly that the letters of Administration intestate to the Estate of Reuben Mwangi Nduati had been rectified on the 23rd June 2014 wherein both PW1 and PW2 became administrators. Could there have been a good title to pass to the 1st Respondent in view of the interests attached thereto? Indeed not as the 1st Respondent's title was later confirmed as not genuine by a search conducted on the 13th March 2014 wherein there had been a remark to the effect that it was a "suspected forgery"
 87. The 1st Respondent's further evidence was that he had paid the purchase price of Ksh 1,500,000/= through the bank, but had no deposit slips for which he had then stated that he not deposited the money into the 2nd Appellant's account since he had he had the Kshs. 1,500,000/= with him. He also confirmed that the image of the passport size photograph on the transfer forms, was not the 2nd Appellants image and admitted that it had been on 29th December, 2013 when some people went to the suit land claiming ownership that he came to learn that the seller had not been the owner of the land.
 88. In this case based on both oral and documentary evidence adduced, I find that indeed the title held by the 1st Respondent to parcel of land No. Kijabe/Kijabe Block 1/3811 had been procured illegally the same having not been obtained from either Reuben Nduati Mwangi or the administrators of his Estate, him having been the proprietor. Indeed in this regard, the said vendor, Mwangi Nduati did not have a good title to pass to the 1st Respondent as there had been no sale agreement produced between the said Mwangi Nduati and the deceased Reuben Nduati Mwangi or his administrators, there had been no evidence of payment of the stamp duty, and no Land Control Board consent to transfer. Despite the elaborate testimony on the process, none of the requisite documents were produced before the trial court by the 1st Respondent to show the legitimacy of his title.
 89. Without any documents to support the registration of the said Mwangi Nduati as the proprietor of the suit property, he had no good title to pass and therefore can it be said that the 1st Respondent was an innocent purchaser?



90. The court of Appeal in *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] eKLR adopted the decision of the Ugandan Court of Appeal in *Katende v Haridar & Company Limited* [2008] 2 E.A.173 that weighed in on the definition of an innocent purchaser as follows:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- (a) he holds a certificate of title;
- (b) he purchased the property in good faith;
- (c) he had no knowledge of the fraud;
- (d) he purchased for valuable consideration;
- (e) the vendors had apparent valid title;
- (f) he purchased without notice of any fraud;
- (g) he was not party to any fraud.”

91. Hon. Justice Onyancha in *Alberta Mae Gacii V Attorney General & 4 Others* (2006) eKLR had stated as follows:

“Cursed should be the day when any crook in the streets of Nairobi or any town in this jurisdiction, using forgery, deceit or any kind of fraud, would acquire a legal and valid title deceitfully snatched from a legal registered innocent proprietor. Indeed, cursed would be the way when such a crook would have the legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration. For my part, I would want to think that such a time when this court would be called upon to defend such crooks, has not come and shall never come.....”

92. Whereas in the case of *Iqbal Singh Rai vs. Mark Lecchini and the Registrar of titles*, civil Case No. 1054 of 2001, Hon. Justice Muchelule (as he then was) also opined as follows:

“At the time when the 1stDefendant sought to buy the land in dispute the registered proprietor was the Plaintiff. There is no dispute that he never dealt with the Plaintiff in the transaction that followed. The person with whom he dealt was not the registered proprietor of the land in dispute. The person was a fraud who had no claim whatsoever to the land. The consequence is that the 1stdefendant was a purchaser who did not deal with the registered proprietor of the land. Section 23(1) protects ‘title issued to a purchaser upon the transfer or transmission by the proprietor thereof’. The 1stDefendant did not obtain a transfer from the Plaintiff who was the registered proprietor. He obtained a transfer from a fraudulent person who had no claim to the land. He cannot I find invoke the provisions of section 23(1) to say he obtained an indefeasible title.”

93. From the evidence herein adduced, I find that the 1st Respondent did not carry out a proper due diligence to establish the lawful owner of the suit property, and although he claimed to have conducted a search at the Land registry, Naivasha to ascertain the ownership and title of the suit property, there was no sale agreement from the original first registered owner of the suit land, and the transfer documents



thereto produced in court, the vendor of the suit land did not testify, the 1st Respondent did not testify on his knowledge of the vendor's identities save that he and the Appellants herein were related. There were no steps taken to verify his identity. No steps were taken to physically ascertain the actual land owner from neighboring residents. There was not produced a copy of the executed transfer forms, receipts for payment of the stamp duty and transfer fees. The 1st Respondent's laxity in investigating the title to the suit land led to his misadventure and he cannot now turn around and claim that he acquired proprietary rights from imposters who were incapable of passing on such rights in the first instance. I therefore find that the 1st Respondent was not a purchaser for value without notice.

94. Having not obtained a transfer from the registered proprietor, but having dealt with fraudulent persons in the likes of Mwangi Nduati alias Jonathan, Moses Njoroge, and Joseph Kirobi Kageche, persons who had no claim to the suit property, the 1st Respondent could not therefore invoke indefeasibility of title as the transfer of the same to him was null and void.
95. Accordingly upon careful consideration of the record, the documents, the submissions and the authorities cited, and pursuant to the provisions of Section 26 (1) (b) of the *Land Registration Act* and Section 80 (1) and (2) of the same Act, the court finds merit in the Appellant's appeal and the same is allowed wherein further orders are that,;
- i. The Judgment and Decree delivered on 25th August, 2022, by Hon. Mr. Yusuf Barasa in Naivasha CMELC No. 55 of 2019, is set aside.
 - ii. The transfer and Registration of the suit parcel Kijabe/Kijabe Block 1/3811 to the 1st Respondent herein was irregular, un-procedural and illegal.
 - iii. The 2nd and 3rd Respondents shall within 30 days from the date of this judgment revert the title No. Kijabe/Kijabe Block 1/3811 to the name of Reuben Nduati Mwangi and rectify the green card to its original position before the purported transfer to the 1st Respondent.
 - iv. An order of permanent injunction is herein issued restraining the 1st Respondent and/or any other person claiming proprietary interest adverse to the Appellants over land Title Number Kijabe/Kijabe Block 1/3811 either by themselves, their agents, servants and or employees from evicting, ejecting or in any way interfering with the Appellants' quiet possession.
 - v. The order for general and exemplary damages is rejected there having been no evidence led to prove that the Appellants had suffered any damages or loss.
 - vi. Costs of the appeal shall be borne by the 1st Respondent.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 13TH DAY OF FEBRUARY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

