



Langat (Suing in her Capacity as the Administrator of the Estate of Joel Kimeter Arap Langat - Deceased) v State Law & 2 others (Environment & Land Case E024 of 2023) [2024] KEELC 14128 (KLR) (20 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E024 OF 2023
A OMBWAYO, J
DECEMBER 20, 2024**

BETWEEN

**NAOMI CHEPKORIR LANGAT APPELLANT
SUING IN HER CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF
JOEL KIMETER ARAP LANGAT - DECEASED**

AND

**STATE LAW 1ST DEFENDANT
AGNES CHEBET NGETICH & ANOTHER & ANOTHER &
ANOTHER 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff commenced this suit vide a Plaint dated 28th September, 2023 against the Defendants seeking the following orders:
 - a. A declaration that JOEL KIMETET ARAP LANGAT (deceased) is the lawful owner of L.R NOOLENGURUONE/KERINGET BLOCK 1/60(KIROBON).
 - b. A declaration that the 2nd Defendant acted illegally and fraudulently in transferring the deceased's interest in L.R NO OLENGURUONE/KERINGET BLOCK 1/60(KIROBON) to the 1 Defendant.
 - c. An order directing the 274 and 3 Defendants to cancel the register in respect to LR NO OLENGURUONE/KERINGET BLOCK 1/60(KIROBON) 333-341 being resultant from mutation and subdivision of L.R NO OLENGURUONE/KERINGET BLOCK 1/60(KIROBON) so as to revert the 11.30 hectares comprised therein and to register the same in the name of JOEL KIMETET ARAP LANGAT (deceased).



- d. A permanent injunction do issue restraining the 1st Defendant whether by herself, her agents, servants and/ or dependants or any persons claiming through her from entering, remaining and/or developing or in any way interfering with the 11.30 hectares of land comprised in L.R NO OLENGURUONE/KERINGET BLOCK 1/60(KIROBON) now subdivided into Parcels No. 333-341. e) Costs of this suit.
 - f) Such further relief as this Honourable Court shall deem fit or just to grant.
2. The 1st Defendant entered appearance and filed her statement of defence dated 22nd February, 2024 where she denied the allegations in the plaint.

Plaintiffs' Case

3. Naomi Chepkorir Langat testified as PW1 where her witness statement was adopted as evidence in chief. She testified that she had homes in Nakuru and Kericho where she resides. She testified that she filed the present suit on behalf of her late husband. She produced a marriage certificate (PEX1). It was her testimony that the deceased died on 17th July, 2020 (PEX 2). She also testified that she took out letters of administration (PEX 3). She testified that the suit is in the 1st Defendant's name. She produced a copy of the green card (PEX 4) and testified that the 1st Registered owner was the 1st Defendant on 25th May, 2022. It was her testimony that the 1st Defendant was not entitled to the suit land since she was not a member of Kirobon. She testified that the land belonged to Joel Kimetet Langat (deceased) who had bought plot no. 60 from Kirobon Co Ltd as a shareholder. She further testified that the land emanated from LR 548. PW1 testified that her late husband was listed as No.60. in the register which she produced as (PEX 5). She went on to testify that the land was still in the 1st Defendant's name. She added that in 2023, the land is 30 acres and was subdivided from 333 to 341. She produced the certificates of official search (PEX 6 (1)).
4. She testified that registration was effected after his death on 17th July, 2020 and the 1st
5. Defendant's name was registered on 23th May, 2022. She testified that she had put a restriction on 23rd November, 2022 and that subdivision was done on 30th May, 2023. It was her testimony that she had reached out to Kirobon who informed her that the register read Joel Langat after which she was issued with a clearance letter that gave her the title (PEX7). She testified that the property was not registered in her late husband's name due to a caveat. It was her testimony that in 2018 her late husband was allowed to process the title. She added that 548 was under one LR number hence the titles had to await subdivision. She further testified that there was a dispute over the property in Nakuru High Court case No. 4 of 2018 which was later transferred to Kericho. She produced a copy of the court order (PEX8)
6. She testified that the plot was within No.2/548 (Molo South) and that he passed on before judgment where the 1st Defendant a friend to her late husband came in as a proprietor and constructed on the land in 2023. She further testified that she had leased the land and that prior to 2020, she was not in the land as someone had leased the land from us. She testified that she was not aware that the deceased had settled her on the land. It was her testimony that the 1st Defendant was never recognized and that there was a letter from the chief at Kabianga, Kericho. She added that the deceased was buried in Kabianga. She produced a copy of the newspaper obituary (PEX 9). She testified that the land was acquired in 1976.
7. Upon cross examination by Kipkoech for the 1st Defendant, PW1 confirmed that they had a misunderstanding in her relationship with her late husband where she had taken him to court for matrimonial property before he died. She further confirmed that the title had a caveat and that there were no transfer documents. She added that there was no LCB consent and that the succession cause



- had not been finalized due to the objection proceedings. She stated that the suit land which is in the 1st Defendant's name formed part of the petition. She further stated that the RIM belonged to the company and that they had not taken the title. She added that registration was done in 2018 while the caveat was removed on 2018. She stated that the deceased, Major Langat died on 17th July, 2020. She confirmed that she was not sure whether the 1st Defendant had erected structures. She denied knowing Samuel Birir, Paul Cheruiyot Keter but confirmed that Joseph Kiplagat Bett was his late husband's driver and Wiliam Chepkwony from Kirobon who trespassed onto the land. She added that William Arap Terer was her chief. She admitted that the deceased sold most of the land.
8. She stated that the Kipkelion property was in court since part of it had not been sold.
 9. Upon cross examination by Shirika for the 3rd Defendant, PW1 confirmed that she had not served the AG and that she was not certain why the 3rd Defendant was sued. She stated that she had sued the Chief Registrar. She confirmed that the green card showed the 1st entry as the Government of Kenya while the second entry was the 1st Defendant. Sh further confirmed that Joel was never registered and that there was no indication of how the land was registered in his name. She stated that from the records at lands Registration, his name was present in the green card. She went on to state that she had been issued with an allotment letter and that the name was later changed. She stated that she was informed that the 1st Defendant went to lands office with the said wazees. She admitted that she had not sued Kirobon and that she had registered the restriction. She stated that the original card had her late husband's name.
 10. Upon reexamination, she stated that she was aware of the communication between the Land
 11. Registry and Kirobon. She further stated that she was aware of all the properties held by Joel Langat. She added that the present suit revolved on fraudulent transfer and subdivision of the suit land. She further stated that restriction was placed in 2022 by the land Registrar by virtue of her complaint and the register opened on 12th March, 1986. She stated that the 1st Defendant was registered on 23rd May, 2022 and that they were allocated the land in 1976 and started farming. She stated that the land was under caveat since it was agreed that it was a government forest. She urged the court to direct that the property revert to the estate.
 12. William Kipngetich Chepkwony testified as PW2 where his statement filed on 28th September, 2023 was adopted as his evidence in chief. He testified that he knew the Plaintiff as the wife to their member of Kirobon Farm Limited, one Joel Langat. He testified that he was the treasurer of Kirobon 548 and his duty included keeping records for 548. He further testified that Johnstone Rutto the chairman for 548 is alive but sickly. He testified that they gave the Plaintiff the certificate on behalf of Langat but that they did not know that the title had been issued. He further testified that they did not have the 1st Defendant's name in the register. He testified that the deceased had two wives and that he knew the Plaintiff as the first wife and the 1st Defendant as the 2nd wife. He testified that they gave 3 clearances for Major Langat, Plaintiff and the 1st Defendant. He further testified that the title was to come out in Joel Langat's name. He added that the acquisition of title was based on one's initiative.
 13. Upon cross examination by Kipkoech, he confirmed that Major Joel Langat had many wives but that he knew the 1st Defendant as the second wife. He confirmed that the 1st Defendant together with the chairman picked the clearance. He further confirmed that they had no complaint against the 1st Defendant. He stated that he got his title in 2000 and added that Major Langat died, after he had already obtained clearance. He also stated that the 1st Defendant took the 2nd clearance when major Langat was alive. He stated that someone had constructed on the land. He admitted that he did not know the official direction of Kirobon Farmers Ltd. He confirmed that when one dies, they don't remove him/her from register but succession is to be done first.



14. Upon re-examination, he stated that he saw a brick house constructed 2 years ago. He further stated that the 1st Defendant had been given the cleared before Major died. This marked the close of the Plaintiffs case.

Defendant's case

15. Agnes Chebet Ngetich testified DW1 where her witness statement filed on 28th February, 2024 was adopted as evidence in chief. She also produced her list of documents at page 4 of her bundle of documents. She produced the birth certificate of Brian Davis Metet (DEX1) and Brenda Cherotich Langat (DEX2) and testified that they are the deceased's children. She further produced a statement showing transactions with the deceased, Joel Langat (DEX 3) and school fees receipts as DEX 4 (a) - DEX 4(f). She produced title for LR Block 1/60 Kirobon (DEX5) and bundle of copies of tribute of Olenguruone Block 1/333-34/Kirobon DEX 16(a)-6(I). She also produced a copy of the title for Kericho Kabunga 1295 (1295) in the name of Joel Kimatta Langat as (DEX 7). It was her testimony that she was given the land by the deceased in 2015 where they have since lived. She testified that her late husband constructed a temporary house on the land which they fenced in 2018 and planted trees around it. She went on to testify that her late husband had started constructing a big house but died at the foundation. She testified that she did not acquire the land fraudulently but that it was transferred to her by Joel Langat (deceased). She testified that Joel Langat showed her the suit property and introduced her to the chairman who issued the title in her name. She added that subdivision was done since she owned the land. She further testified that the Plaintiff never utilized the land. It was her testimony that there was no person in the land. She testified that the deceased had other parcels of land being Kipkelion 100 acres, 78 acres, 18 acres which was given to them in 2012. She testified that the Plaintiff sold the said land after which the deceased decided to settle her at Olenguroine. Plots in Kabianga 5.2 acres, Sotik, Section 58, Kericho, Kabianga and Ngata. She testified that the suit land belonged to them and that the Plaintiff took from the deceased the 18.5-acre land in Ngata. She testified that she lived with the deceased since 1999 until when he passed on at War Memorial hospital in July 2020. She denied that the deceased paid the Plaintiff's bills and testified that the land in Kipkelion contributed towards the payment of bills. She testified that the Plaintiff never involved them in the deceased's burial arrangements.
16. Upon cross examination by Koech for the Plaintiff, DW1 admitted that she was the 2nd wife. She confirmed that she had no evidence that the Plaintiff sold the land in Kipkelion. She also confirmed that she was taken to the suit property in 2015 where they lived for 32 years. She confirmed that she met the deceased in 1988. She stated that the deceased had built a small house. She went on to state that she occupied the land where she has been managing it. She stated that DEX 1 was issued in 2023 after the deceased passed on. She confirmed that the mpesa transactions were between 1st January, 2015 and 31st December, 2020. She stated that the deceased had different numbers and further admitted that his number was not complete. She also admitted that the deposit slip did not have the depositor's name. She stated that the deceased had intended to transfer the suit land to her. She further stated that registration was on 23rd May, 2022 and that the deceased died on 10th July, 2020. She added that the documents were with the officials of the company. She stated that the deceased had instructed the chairman to issue a clearance certificate which he complied. DW1 confirmed that entry No 4 in the green card was a restriction. She further confirmed that she had not surrendered the title. She admitted that she subdivided the suit land despite the restriction. She stated that she was not aware of the said restriction.
17. Upon re-examination, she stated that she was in possession of the land. She further stated that there were no trees that were cut in the suit land. She added that the deposit slips did not have the deceased's



- name since there was no provision for the sender's name. She also stated that the signature belonged to the deceased. She further stated that the deceased had discussed with the elders in 2017 before his demise that she takes the suit land.
18. Samuel Kimutai Birir testified as DW2 where his statement filed on 28th February, 2024 was adopted as his evidence in chief. He testified that he the deceased had informed him that he had the suit land, LR Block1/60 originally LR No 548. He testified that they met in 2019 at Lands. He testified that the deceased further informed him that he had land in Keringet which he had wanted to have the title in her wife's name. He further testified that the deceased had two wives. It was his testimony that due process was followed since they had identified the portions after which they issued the 1st Defendant with the clearance. He testified that he is the chairman of Kirobon Farmers Limited. He testified that he gave another clearance in 2020 in the 1st Defendant's name and the register was amended. He testified that the deceased's name was removed and replaced with that of the 1st Defendant. He testified that it had been signed by the Director and the Registrar of lands. He further testified that they had presented the minutes to the Registrar of lands. It was his testimony that he signed the transfer forms in 2021 and that the amendments were done in 2021.
 19. Upon re-examination, he stated that the deceased confirmed that the deceased had two wives but that he wanted the suit land to be given to the 1st Defendant's. He stated that the deceased had signed a clearance and that they amended the register after being authorized by the Land Registrar. Emma Sitieni the Land Registrar, Nakuru testified as DW3. She testified that she had the member registration for LR No.Nakuru Olenguruone LR No.548 now NKR/Olenguruone/Kirenget/block1(Kirobon). It was her testimony that register parcel number 60 was in the 1st Defendant's name. She testified that the registrar had been supplied to the office by the Director of Oleguruone Block 1/ Kirobon. She went on to testify that the green card showed that registration was opened on 12th March, 1986 and that on 23rd May, 2022 the 1st Defendant was issued with a title deed on the same date. She further testified that the last entry was on 30th March, 2023 where the title was closed for subdivision. She testified that there was a note that there was a cause No 24 of 2023. DW3 produced the register as (DEX 9) and the green card as (DEX10). She testified that entry No 4 was a restriction where the 1st Defendant was to surrender the title deed for verification. She testified that the title was verified after which the entry was cancelled. She testified that they had no interest in the land
 20. Upon cross examination by Koech for the Plaintiff, she admitted that she could not confirm when the restriction was cancelled but admitted that the cancellation was stamped. She stated that there ought to have been another entry that showed the reason for removal. She stated that the restriction was cancelled and added that it was illegal to subdivided a title with a verification. She went on to state that the subdivision was in order since the green card showed that the restriction was cancelled. She stated that she could not confirm that the renewal of the restriction was procedural. She further stated that the original title was to be surrendered and added that she was not certain whether the same was done. DW3 admitted that she could not tell when the register was submitted to the land office. She further confirmed that there was an amendment made in the register on No 60. She also admitted that the amendment was not supported by any documents. She stated that her office had custody of the register since 2001. She added that for an amendment to occur, there was supposed to be appearance of the officials of the company. She admitted that she was not aware of the persons who appeared. She went on to explain that the officials would make an amendment signed by the officials and counter signed by the Land Registrar. She admitted that the same was not signed, dated or counter signed by the Land Registrar. She stated that the signature was not stamped. She stated that the register was submitted on 23rd January, 2001. She added that they did not require the company's resolution. She stated that the amendment was procedural since there was a signature.



21. Upon re-examination, DW3 stated that at the time of subdivision, the restriction had been removed. She further stated that mutation was done 2 years after removal of the restriction. She confirmed that the subdivision was proper and that the register was counter signed against the amendment which was also proper.
22. Paul Cheruiyot Keter testified as DW4 where his statement filed on 28th February, 2024 was adopted as evidence in chief. He testified that he was the chief Silobinet location, Kuresoi section and that he knew the 1st Defendant. He testified that the suit land was located on his way home. He testified that the deceased started construction in 2014 and stopped a year after. He testified that the deceased frequently visited the suit land with the 1st Defendant. He testified that the deceased had built a stone house where the 1st Defendant lived. He testified that he never knew the Plaintiff and added that he had never seen her cultivate the land.
23. Upon cross examination by Abuya for the Plaintiff, DW4 confirmed that the deceased was a shareholder but admitted that he did not know when he bought shares. He stated that he was the chief for 27 years from 1995 to 2022. He further stated that from 1995 to 2015, there was no case. He confirmed that he did the statement last year. He stated that the first house was made of wood while the second house was occupied. He admitted that he did not know the size. He further admitted that he did not know whether the land was subdivided. He stated that the deceased had leased out the land to Koech, Leitich and Koskei. He admitted that he did not know when the transfer was done. He also admitted that he was not aware whether succession was done for Langat (deceased). He stated that the land belonged to Joel Langat (deceased).
24. Upon re-examination, he stated that he had not seen a certificate of title in the name of Joel Langat.
25. He added that he was not included in preparation of the register.
26. Joseph Kiplangat Bett testified as DW5 where his statement filed on 28th February, 2024 was admitted as evidence in chief. He testified that he was the deceased's neighbor. He testified that between 2014 and 2020, the deceased had employed him as his driver. He testified that from 2018 to 2020 together with the deceased and the 1st Defendant, they bought trees and planted on the suit land. He added that they also constructed a small house using bricks in 2015. He testified that the 1st Defendant had been settled on the suit land. He further testified that they went to the chairman where he changed from his name to that of the 1st Defendant. He testified that the deceased had the intention to have the land registered in the 1st Defendant's name.
27. Upon cross examination by Abuya, he confirmed that the deceased never registered the land in the 1st Defendants name. He stated that he could not recall the year the deceased married to the 1st Defendant or when he travelled abroad for treatment. He confirmed that the current house was made of stones.
28. Fredrick Maritim testified as DW6 where his statement filed on 28th February, 2024 was adopted as his evidence in chief.
29. Upon cross examination by Abuya, he stated that he is from the same clan with Joel (deceased). He added that the deceased was his brother and that they share a great grandfather. He stated that the deceased had told him to look after his family. He added that he knew the Plaintiff and 1st Defendant as the deceased's wives. He stated that the 1st Defendant and her family lived in Bondeni.
30. He admitted that he did not know whether the deceased had registered the suit land in the 1st Defendant's name. He stated that the deceased had travelled abroad in 2015 and that he passed on in 2020.



31. Upon re-examination, he stated that he had never visited the suit land. He added that the deceased informed him that the land belonged to the 1st Defendant.
32. Wilson Terer the chief testified as DW7 where his statement filed on 28th February, 2024 was adopted as his evidence in chief. He testified that he knew major Joel Langat (deceased) as his neighbor together with the Plaintiff and 1st Defendant as his first and second wives respectively. He testified that there was also Rael Chesang Kenei. He testified that the dispute arose when the 1st Defendant placed a caution on the land at Kipkelion. He testified that the deceased had given the 1st Defendant the said land when the Plaintiff sold it. He testified that the 1st Defendant was given the suit land by the deceased. He further testified that the deceased told the 1st Defendant to settle in the suit land while the Plaintiff was settled at Kabianga land. He testified that the deceased had constructed a temporary two roomed house made of structure of bricks and later constructed the foundation of a permanent house but passed on after he placed the foundation. He testified that the 1st Defendant continued with the construction. He added that the deceased took him to the chairman of Kirobon Farmers.
33. Upon cross examination by Abuya, he confirmed that he had not seen the register. He confirmed that the Plaintiff and 1st Defendant celebrated their marriage with the deceased. He stated that the deceased went for treatment to the United States of America (USA) in 2015 after his marriage ceremony with the 1st Defendant. He stated that he did the payment together with Maritim. Upon re-examination, he stated that the deceased had the intention to give the suit land to the 1st Defendant.
34. This marked the close of the 1st Defendant's case.

Submissions

35. The Plaintiff's counsel filed her submissions dated 9th November, 2023 where she identified three issues for determination. The first issue was whether Joel Kimetet Langat (deceased) was the lawful owner of L.R No. OLENGURUONE/KERINGET BLOCK 1/60 (KIROBON) entitled to registration as its proprietor. She submits that it is not in dispute that the deceased was the beneficial owner of the suit property and that he passed on before registration was completed.
36. The second issue was whether the registration of the 1st Defendant as proprietor of L.R No. OLENGURUONE/KERINGET BLOCK 1/60 (KIROBON) was unprocedural, irregular and/or unlawful. While submitting in the affirmative, counsel relied on Section 26(1) of the [Land Registration Act](#) and argues that registration of the 1st Defendant as the proprietor of the suit land was effected on 23rd May, 2024 long after the deceased had died on 17th July, 2024. She further submits that in as much as the 1st Defendant indicated that the deceased had the intention to transfer the land to her, no evidence was availed in support of the same. She adds that there was no documentary evidence in support of the registration of the 1st Defendant as the proprietor of the suit land. It was counsel's submission that the Land Registrar (DW3) conceded that the amendment off the register was riddled with irregularities and illegalities. She submits that issuance of the title deed in the 1st Defendant's name was illegal since it was done after the deceased's demise and also without the succession proceedings having been finalized. She relied on the case of *Alice Chemutai Too V Nickson Kipkurui Korir & 2 Others* [2015] eKLR.
37. She further submits that the purported removal of the restriction was unlawful since there was no entry that cancelled the restriction on the register as evidenced in (PEX4). She added that there was no reason for removal of the restriction noted in the register. She submits that sub division of the suit land despite the subsistence of the restriction was unlawful. She cited the cases of *Zacharia Wambugu Gathimu & Another V John Ndungu Maina* [2019] eKLR and *Munyu Maina V Hiram Gathiha Maina* [2013] KECA 94 (KLR).



38. On the final issue, counsel urges the court to allow the Plaintiff's claim as prayed in the Plaint dated 28th September, 2023.
39. Counsel for the 1st Defendant on the other hand filed his submissions dated 11th November, 2024 where he identified two issues for determination. The first issue was whether the 1st Defendant is the legal and beneficial owner of the parcel of land L.R No. Olenguruone/Keringet Block 1/60 (Kirobon) 331-334. He relied on Section 24(a) and 26(1) of the [Land Registration Act](#) and the case of *Ali WanjeZiro V Abdulbasit Abeid Said & Another* [2022] eKLR and submits that the certificate of title and subsequent subdivisions are indefeasible evidence of the Plaintiff's proprietorship of the suit land. It was his submission that the deceased made an undertaking to have the suit property in the 1st Defendant's name. He added that the Land Registrar appreciated the members' register from Kirobon Farmers Limited and the green card which confirmed the 1st Defendant as the owner of the suit land.
40. The second issue was whether the Plaintiff should be granted the prayers sought. Counsel relied on the case of *Abdulkadir Shariff Abdirahim & Another V AwoShariff Mohammed T/A A.S Mohammed Investments* [2014] eKLR and *Gichinga Kibutha V Caroline Nduku* [2018] KEELC 3981 (KLR). He submits that the Plaintiff pleaded fraud but gave evidence that fell far short of establishing that the 1st Defendant committed fraud. He added that the evidence adduced did not show how the Defendants engaged in fraud and therefore the said allegations were not proved to the required standard. He also submits that the suit property was never registered in the name of the deceased and that the 1st Defendant has been in occupation of the suit property since 2015. Counsel submits that the Plaintiff is therefore not entitled to the prayers sought.

Analysis and Determination

41. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
 - a. Whether the 1st Defendant is the lawful owner of the suit property?
 - b. Whether the Plaintiff is entitled to the orders sought.
 - c. Who should bear the costs of the suit.

Who is the lawful owner of the suit property?

42. It was the Plaintiff's case that the deceased Joel Kimetet Langat was the lawful owner of the suit property by virtue of his shareholding with Kirobon Farmers Company Limited, a land buying company. The Plaintiff claims that the 1st Defendant colluded with the 2nd Defendant and had the suit land fraudulently registered in her name before the same was registered in the deceased's name. The Plaintiff argues that the Land Registrar in her testimony conceded that the amendment of the register was riddled with irregularities and illegalities.
43. The 1st Defendant on the other hand claims that she is the legal and beneficial owner of the suit having acquired the same from the deceased's undertaking. She called six witnesses who corroborated her claim including the Land Registrar.
44. Section 24(a) of the [Land Registration Act](#) provides that:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”



45. Section 26(1) of the *Land Registration Act* further provides that:

“...the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a 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
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.” [Emphasis mine]

46. The Supreme Court in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) cited the case of *Munyua Maina V Hiram Gathiha Maina* [2013] KECA, where the court held as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

47. Furthermore, in the case of *Kinyanjui Kamau V George Kamau* [2015] eKLR expressed itself as follows; -

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

48. The Plaintiff alleged that the 1st Defendant acquired the suit property fraudulently, however, she did not adduce sufficient evidence to prove the same. It is this court’s view that in cases where fraud is alleged, it is not enough to simply infer fraud from the facts, the Plaintiff ought to have strictly proved the alleged particulars of fraud as stated in the plaint.

49. The Land Registrar (DW3) upon cross examination confirmed that the subdivision of the suit land was proper since it was done after the restriction had been removed. It is not in dispute that the 1st Defendant was issued with the title of the suit property on 23rd May, 2022. It is also noteworthy that the green card opened on 12th March, 1986 under entry. number two confirmed that the title was issued to the 1st Defendant. The Land Registrar also confirmed that the amendment under entry number 4 of the green card was procedural since it was signed.



50. It is this court's view that the burden of proof lied with the Plaintiff to prove that the 1st Defendant fraudulently acquired the suit property which she failed to do so. It is also this court's view that the 1st Defendant on the other hand by virtue of the title issued to her on 23rd May, 2022, was sufficient evidence that she is the registered proprietor of the suit land. This court therefore finds that the 1st Defendant is the lawful owner of the suit property Whether the Plaintiff is entitled to the orders sought.
51. This court having established that the 1st Defendant is the lawful owner of the suit property, the Plaintiff is therefore not entitled to the orders sought in her plaint dated 28th September, 2023.
53. The upshot of the above is that the Plaintiff failed to prove her case on a balance of probabilities. Consequently, the Plaintiff's suit is dismissed with costs to the 1st Defendant. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2024-12-20 11:56:42

