



**Miumu v Kinuthia & 2 others (Environment & Land Case E011 of 2023)  
[2024] KEELC 13963 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13963 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E011 OF 2023  
LN GACHERU, J  
DECEMBER 19, 2024**

**BETWEEN**

**SAMUEL KARANJA MIUMU ..... PLAINTIFF**

**AND**

**ALICE NYAMBURA KINUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**MURANG'A COUNTY LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff, Samuel Karanja Miumu, brought this suit against the Defendants herein and sought for Judgement against them jointly and severally for orders that;
  - a. A declaration that the 1<sup>st</sup> Defendant acquired ownership of land parcel No. Makuyu/Kimorori/Block 1/910 through fraud.
  - b. The registration of Alice Nyambura Kinuthia as the registered proprietor of Makuyu/Kimorori/Block 1/910, be cancelled, and the title and ownership to revert unto the names of Eunice Muthoni Kinuthia and Samuel Karanja Miumu.
  - c. An Order to the Land Registrar Murang'a, for removal of restriction placed against Makuyu/Kimorori/Block 1/910.
  - d. Costs of the suit and interest.
2. In his claim, the Plaintiff averred that one Eunice Muthoni Kinuthia (deceased), and himself were registered as the owners of the suit land Makuyu/Kimorori/Block 1/910 measuring 0.500 Ha. In 1988, and a title deed was issued in their joint names on 24<sup>th</sup> April 1991.



3. That on 12<sup>th</sup> July 1991, the Plaintiff and the said Eunice Muthoni Kinuthia (now deceased), applied to Makuyu Land Control Board for consent to partition the suit land into two equal portions, and the said consent was duly granted on 30<sup>th</sup> July 1991, but the Eunice Muthoni Kinuthia, died before the partition was carried out.
4. That on the instigation of the 1<sup>st</sup> Defendant, the officers from Murang'a CID caused a Restriction to be registered against the suit land by the then Murang'a District Land Registrar, vide a letter Reference as 4/4/6/UDLC/81 dated 4<sup>th</sup> April 2006.
5. Further that during the pendency of the said Restriction, on or about 17<sup>th</sup> March 2011, the 1<sup>st</sup> Defendant acting in cahoots with officers from and or in Murang'a County Lands Registry, caused herself to be registered as the sole and absolute owner of the suit land, which act was activated by Malice, Malfiance, fraud, misrepresentation of material facts, which act was meant to deprive the Plaintiff of his rightful share in the suit land.
6. The Plaintiff particularized the malice and fraud of the 1<sup>st</sup> Defendant in paragraph 8 of his Plaint, and also particulars of fraud and misrepresentation on the part of the 2<sup>nd</sup> Defendant in the said paragraph.
7. That the 1<sup>st</sup> Defendant had sued the Plaintiff in Thika Law Courts vide Thika CM CC No. 390 of 2011, which suit was dismissed by the said Court on 26<sup>th</sup> August 2014, for non- attendance. That an appeal against the said dismissal was also dismissed vide Murang'a ELCA No. 21 of 2018 on 30<sup>th</sup> September, 2018.
8. Therefore, the Plaintiff urged the court to allow his claim, and averred that the said estate of Eunice Muthoni Kinuthia is represented by the 1<sup>st</sup> Defendant herein Alice Nyambura Kinuthia.
9. The 1<sup>st</sup> Defendant filed her Statement of Defence, and denied all the allegations made in the Plaint, especially the fact that the Plaintiff was a registered owner of the suit land, and she did put the Plaintiff to strict proof
10. She averred that through fraud, the Plaintiff managed to have his name included in the title deed of the deceased (Eunice Muthoni Kinuthia), and he also obtained the Land Control Board consent to subdivide the suit property without knowledge of the said Eunice Muthoni Kinuthia, now deceased.
11. She further alleged that the Plaintiff illegally included himself as joint owner of the suit land, and tried to partition it, but the 1<sup>st</sup> Defendant repulsed that effort by reporting the matter to the Police. That thereafter the 2<sup>nd</sup> Defendant registered a restriction over the title to the said property, and she denied being the registered owner of the suit land, but insisted that the Plaintiff fraudulently caused his name to be included as a joint owner of the said property, but he has no legitimate interest.
12. The 1<sup>st</sup> Defendant further denied the particulars of fraud as claimed by the Plaintiff, and it was her claim that she sought to have the matter rectified by the court by filing a suit against the Plaintiff at Thika Law Courts, but the said suit was dismissed for non- attendance.
13. The 1<sup>st</sup> Defendant urged the court to dismiss the Plaintiff's suit and further urged the court to enter judgment against the Plaintiff for;
  - a. A declaration that the Plaintiff had his name included in the register, and in the title deed of the suit property illegally.
  - b. An order for cancellation of the Plaintiff's name and registration on land parcel number Makuyu/Kimorori/Block I/910, and revert the same into the name of the proprietor of the suit property.



- c. That a mandatory order be issued to the 2<sup>nd</sup> Defendant to cancel and remove the fraudulent inclusion of the Plaintiff from the register and title of the suit property (Makuyu/Kimorori/Block 1/910).
  - d. The Plaintiff's case be dismissed with costs plus interest.
14. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their Statement of Defence dated 2<sup>nd</sup> June 2023, and denied all the allegations made by the Plaintiff in his claim.
  15. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denied the particulars of fraud set out in the Plaint, and averred that if at all there was a Restriction and transfer registered on the suit land, then the same was done based on documents presented at the Lands Registry, by the parties and that action was within the 2<sup>nd</sup> Defendants statutory mandate.
  16. Further the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that the suit herein offended the mandatory provisions of Section 13A of the Government Proceedings Act, and they sought to have the suit struck out on the said basis.
  17. The suit proceeded for hearing via voce evidence, where the Plaintiff gave evidence for himself and called no witness. The 1<sup>st</sup> Defendant also gave evidence for herself and called no witness, while the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants gave evidence through the Land Registrar Murang'a, and denied the Plaintiff's claim.

#### **Plaintiff's Case**

18. PW I Sameul Karanja Miumu, from Kenol area and a peasant farmer adopted his witness statement dated 13<sup>th</sup> March 2023, as his evidence in chief, and also produced the list of documents as exhibits which list was marked as P Exhibit I.
19. He urged the court to allow his claim and reiterated that he uses the land by leasing it out, and that he is the one in control of the said land. It was his further evidence that one Eunice Muthoni Kinuthia (deceased), the mother to 1<sup>st</sup> Defendant, and who was also related to him through his wife, as a sister to his mother – in- law, was the initial allottee of the suit land. However, since she did not have all the money needed, she invited him, through his wife, to come in and contribute towards final payment of the required costs, and in return, the suit was to be registered in their joint names.
20. In his witness statements, the Plaintiff alleged that the said Eunice Muthoni, was a shareholder of Ngimu Farm Ltd, and that in January 1988, the said Eunice Muthoni, invited him to buy the suit land jointly with her, as she did not have sufficient funds to pay for it.
21. That he paid Kshs.5000/- to Ngimu Farmer Ltd, and as a result of that payment, he was jointly registered with the said Eunice Muthoni as the owners and/ or proprietors of the suit land. Further that he entered into a written agreement with the said Eunice Muthoni in October 1989, in the presence of two witnesses, that after obtaining the title deed, they would partition the suit land into two equal partitions.
22. It was his testimony that Eunice and himself took possession of the suit land and on 24<sup>th</sup> April 1991, the two were issued with title deed in their join names. Further, that he had applied for the said parcel of land to be partitioned into two equal portions, and consent to partition was granted. However, after the demise of Eunice Muthoni, the 1<sup>st</sup> Defendant emerged and demanded to have control of the whole suit land.



23. That on the 17<sup>th</sup> March 2011, the 1<sup>st</sup> Defendant colluded with the 2<sup>nd</sup> Defendant and/or officers from Murang'a Lands Office, and she obtained title transfer of the suit land into her name, and the suit land was registered in favour of 1<sup>st</sup> Defendant as the sole proprietor, as was evident from a copy of Green card, produced as part of evidence and exhibits by him . Pw1, denied any knowledge of the restriction registered over the suit land, and he urged the court to have the said restriction removed.
24. Upon being cross-examined by Mr. Nyoroku , Counsel for the 1<sup>st</sup> Defendant, PW1, testified that he is the one who paid more money for the purchase of the suitland, although he did not produce any receipts for payment of the referred purchase price, and or any money for the suit land. However, he insisted that he had given all his documents to his advocate.
25. He further testified that even if there were witnesses during the transactions, all of them are now deceased, and he did not have any witness to support his evidence. It was his further testimony that the title deed was issued in their joint names, with the consent and knowledge of Ngimu Farm Ltd, although he was not a member of Ngimu Farm Ltd.
26. He also testified that Eunice and himself had applied for subdivision of the suit land equally, and each was entitled to an equal shares, but the said partitioning did not go through as Eunice died before the said partition could be done. That in 2011, when he carried out an official search, he noted that the suit land was owned by himself and Eunice equally.
27. However, upon carrying out a the 2<sup>nd</sup> search, he discovered that the suit land was solely owned by the 1<sup>st</sup> Defendant , and he was not aware of the transfer and registration of the suit land in favour of the 1<sup>st</sup> Defendant, and he was not involved in the transaction that led to that transfer and registration.
28. On being cross examined by Miss Kirina for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, he alleged that the Land Registrar, Muranga, and 1<sup>st</sup> Defendant colluded to have the land registered in the name of the 1<sup>st</sup> Defendant, but the original title is still registered in their joint names. He confirmed that it was his wish to have the suitland subdivided into two equal parcels; one for himself, and the other for Eunice, and/ or her estate.
29. On re-examination, PW1 alleged that the title deed was taken away from him by the police, on instigation of the 1<sup>st</sup> Defendant, and the said Police Officers assaulted him, when he requested for return of the said title deed. Further that the suit land is divided into two portions on the ground, and one of portion is used by himself, and the other portion is used by the son of Eunice.

#### **2<sup>nd</sup> and 3<sup>rd</sup> Defendant's Case.**

30. DW I: Elyos Muthoni Mputhia, the Land Registrar, Muranga adopted her witness statement dated 13/2/2024, as her evidence in chief, and she also produced her list of documents as D.Exhibit I.
31. It was her evidence that the Muranga Lands Registry receives documents from the officials of land buying Companies, or Schemes, and that after that receipt, the Registry does not question the documents or the officials as the said officials are well known to their members, and they know who are the rightful members, and what they deserve as their shares.
32. She confirmed that the suit land was initially registered under the name of Government of Kenya, on 15<sup>th</sup> April 1988, and later in the names of Eunice Muthoni Kinuthia and Samuel Karanja Muimu, and the two proprietors were thereafter issued with the title deed in their joint names on 24<sup>th</sup> April 1991.



33. However, on 17<sup>th</sup> March 2011, the suit land was registered in the name of 1<sup>st</sup> Defendant Alice Nyambura Kinuthia, but the said entry was not signed, and or endorsed, and so without signing/endorsing, this entry had no effects, and the real owners, are still Eunice and Samuel.
34. It was her further evidence that the documents availed by the 1<sup>st</sup> Defendant Alice Nyambura Kinuthia, were not accepted by the Land Registrar as the said documents were photocopies, and she did not avail the original documents. Further, that there is a Restriction placed over the said title deed, and this Restriction was registered by the Land Registrar, through a request made by the CID. That though the CID commenced investigations, they have not given the outcome of the said investigations.
35. Upon being cross-examined by Ms Waititu, Counsel for the Plaintiff, she confirmed that the title deed was issued in the names of Eunice Muthoni and Samuel Karanja, and also confirmed that on entry No. 5, the Land Registrar did not endorse the said transfer. It was her further testimony that even though there were documents lodged to support the said transfer, these documents are photocopies, and they were not accepted by their office, as proper documents for transfer.
36. Further that there is an Land Control Board Application for consent, and that the transfer form, and title deed are photocopies, and that was the reason why the Land Registrar declined to endorse the transfer, and the said application had been made on 14<sup>th</sup> December, 2010.
37. It was her further evidence that the transferee Alice Nyambura Kinuthia, signed the transfer documents on 11<sup>th</sup> March 2011, and the transferor, Eunice Muthoni Kinuthia, has also signed the documents. However, she testified that she was not aware when Eunice died, although she heard that Eunice died in the year 2006. Further, that there is a Restriction placed on the title deed vide an application made by the CID on investigations of fraud in respect of the suit land. However, she was not aware if investigations had been completed or not, and if completed, what was the outcome.
38. On cross examination by Mr Nyoroku, Counsel for the for the 1<sup>st</sup> Defendant, she confirmed that if one purchases shares, a share certificate is issued. That the Land registry only accepts original transfer documents, and the said transfer must be accompanied by Land Control Board's Consent.
39. Further that LCB consent is always a requirement before subdivision can be done and effected. She confirmed that a Restriction placed on a parcel of land is not indefinite, and cannot last indefinitely, and restrictions can either be removed through a court order, or by the imposer of the said restriction.
40. She also testified that if a transfer is done after succession proceedings, the said succession transfer are straight forward, and the Land Registry relies on the Confirmed Grant to effect such a transfer.

### **1st Defendant's Case**

41. DW2, Alice Nyambura Kinuthia, the 1<sup>st</sup> defendant adopted her witness statement dated 30<sup>th</sup> October 2023; as her evidence in chief, and also produced her list of documents as exhibits which were marked D.Exhits Nos 2-9.
42. She testified that she had been following her mother's parcel of land, which land was in Ngimu Farm, and that her mother had paid for the said parcel of land through installments, which parcel of land had been bought by her mother, as shares from one Mwangi Kihumba, and that her mother paid by working for the owner. It was her evidence that her mother completed payment of the purchase price to the tune of ksh 4000/.
43. That after her mother finished paying for the said land, she was asked to pay ksh 850/= for Survey, but she did not have that money, and her mother requested her sister Wairimu, for help. However, the said sister requested her daughter, Margaret, who was the wife of the Plaintiff (Samuel Karanja), for



- help. Then Margaret asked her husband (the Plaintiff) to assist with the payment of the survey fees, and thereafter, the title deed was issued in the name of Eunice Muthoni Kinuthia and Samuel Karanja .
44. Dw2, further stated that she was shown this parcel of land after the death of her mother, and she also learnt that the title deed was in custody of the Plaintiff. That when she carried a search and noted that the suit land was in the name of her mother and Samuel Karanja, the Plaintiff herein, she reported the matter to the CID, who summoned the Plaintiff herein, but he refused to hand over the original title deed to her.
  45. That the CID compelled the Plaintiff to give the title deed to her, and she has been keeping it In safe custody, and thereafter, a Restriction was placed on the title. She also confirmed that Samuel Karanja has been using a small portion of the suit land, and she did not know how Samuel got into the suit land. Further that the Restriction was placed on the suit land after the CID carried out investigations, and that the Plaintiff did not have documents to support his claim of purchase of the said land.
  46. DW2, also testified that the wife of Samuel Karanja( plaintiff), had been allowed or permitted by her mother to use a portion of the suit land, and thus the reason as to why the plaintiff was using a part of the suit land.
  47. On cross examination by Ms Waititu for the Plaintiff, DW2, confirmed that her mother's land was No. 910 and that her mother was a casual labourer at Ngimu Farm, although she did not have documents to support this allegation.
  48. It was her further evidence that her mother bought the land in 1974/1975, and at this time, she was already born, as she was born in 1965. That her mother gave her cousin, Margaret Wairimu, this land to use ,and her mother was not using this land; and that the land was later utilized by the 2<sup>nd</sup> wife of the Plaintiff.
  49. 1<sup>st</sup> Defendant further testified that the Plaintiff's name was included on the title deed illegally, although the title was issued to Eunice and Samuel, the said land was registered in the name of Samuel illegally. She confirmed having custody of the title deed for the suit land, which she has kept well. That the said title deed was retrieved from the Plaintiff in 2011, and then given to her for safe custody by the DCIO, who later placed restriction on the said land.
  50. DW2, also confirmed that her mother died in 2006 ,and that she has never filed any succession cause over her estate. That Ngimu Farm did not know why the name of the Plaintiff was on the title deed, and that she has never evicted the Plaintiff from the suit land.
  51. On cross examination by Ms Kirina for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, she confirmed that she took documents to the Lands office for the entry to be entered in the Green Card for the Restriction. That she has never made an application for the title deed to be in her name.
  52. In re- examination, she stated that although the Plaintiff is indicated as a member of Ngimu Farm, he was not a member, and that the said letter is unsigned, for Ngimu Farm Ltd, and that Ngimu Farm Ltd has her mother's file in their office.
  53. She also confirmed that the Restriction on the suit land, was placed through a request made by the CID and that she did not seek to have the title deed issued in her name, and that she has never gone to see the Land Registrar.
  54. After the viva voce evidence, the parties were directed to file and exchange written submissions, which directions were complied with. The Plaintiff filed his written submissions dated 27<sup>th</sup> August 2024, through C.W Waititu & CO. Advocates, while the 1<sup>st</sup> Defendant filed her submissions dated 4<sup>th</sup>



October 2024 through Shiramba Etemere & Co. Advocates and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their submissions dated 26<sup>th</sup> September 2024, through the Office of the Attorney General.

55. This court has carefully considered the rival written submissions, the available oral evidence as adduced by the parties herein, and the exhibits produced thereon, and finds the issues for determination are;
- i. Whether the Plaintiff is entitled to the orders sought in his Plaintiff dated
  - ii. Whether the 1<sup>st</sup> Defendant is entitled to the prayers sought in her Defence.
  - iii. Who should pay costs of the suit.

**(I) Whether the Plaintiff herein is entitled to the orders in his Plaintiff.**

56. The court has considered the prayers sought by the Plaintiff in his claim; being a declaration that the 1<sup>st</sup> Defendant acquired the ownership of land parcel Makuyu/Kimorori/Block 1/910, through fraud, that the said registration be cancelled and the pending restriction be removed. The 1<sup>st</sup> Defendant denied the allegations made in the Plaintiff and averred that the Plaintiff illegally included his name on the title deed.
57. Though the 1<sup>st</sup> Defendant did not file a Counter – claim, in her final analysis of the Defence, she urged the court to find that the inclusion of the Plaintiff’s name in the title deed was illegal, she sought for cancellation of the Plaintiff’s name from the title deed of the suit land, and dismissal of the Plaintiff’s suit.
58. From the available pleadings herein ,it is evident that Plaintiff herein is the one who has alleged, and therefore it is incumbent upon him to call sufficient evidence to prove his claim, as provided by sections 107 and 108 of the Evidence Act, which provide;
- 107.
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
59. The Plaintiff was the sole witness in support of his case, and to prove his allegations, he produced documentary as well as his oral evidence, which this court has carefully considered, alongside the Defence evidence tendered herein, and finds as follows;
60. The Plaintiff alleged that he was legally registered as a joint owner of the suit land together with one Eunice Muthoni Kinuthia, now deceased, and who was the mother to the 1st Defendant. However, the Defendants herein through fraudulent activities and actions, fraud being one of them, caused the registration of the suit land in the name of the 1<sup>st</sup> Defendant herein, without any notice to the Plaintiff.
61. Since the Plaintiff has alleged fraud, and given that fraud is a serious allegation which must be strictly pleaded and proved, therefore, the Plaintiff had the onus to call evidence and prove the said fraud. The court has considered the claim filed by the Plaintiff, and has noted that he pleaded the particulars of fraud in paragraph 8 of his Plaintiff.



62. It is trite that allegations of fraud must be strictly proved, and this position has been stated in many of the decisions from various courts. See the case of Railal Gordhanbhai Patel Vs Lalji Makanji (1957) E.A 314, where the Court held as;

“... allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, but something more than a mere balance of probabilities is required.”

Further the case of case of Kinyanjui Kamau vs George Kamau (2015), eKLR, the Court held;

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (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; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

63. From the available oral and documentary evidence as adduced by the Plaintiff, DW1 and DW2, the suit land was registered in the name of Eunice Muthoni Kinuthia and Samuel Karanja Miumi on 15<sup>th</sup> April 1988, and later the two were issued with the title deed in their joint names on the 24<sup>th</sup> April 1991. This registration was under the Registered Land Act, Cap 300( Repealed), and as provided by section 27 of the said repealed Act, the two were considered to be the absolute and indefeasible owners, with rights and privileges appurtenant thereto, and therefore, said registration could only be cancelled or rectified as provided by the law.

64. The 1<sup>st</sup> Defendant alleged that the suit land was solely purchased by her mother Eunice Muthoni Kinuthia (deceased), but the Plaintiff illegally included himself as the owner of the suit land. She alleged that the Plaintiff was not a member of Ngimu Farm Ltd, and he could not have purchased the suit land. However, there was no evidence to confirm that the Plaintiff was wrongly or illegally included as a registered owner of the suit land.

65. From the title deed produced in court by the Plaintiff, it is evident that the Plaintiff and Eunice Muthoni were registered as the owners of the suit land on 24<sup>th</sup> April 1991, under Cap 300 Law of Kenya (now repealed).

66. Under the said Cap 300 “The Registered Land Act” (repealed) Section 27(a) provides as follows:

“ Subject to this Act;

(a) 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;

67. Further as a registered proprietor of the suit land, rights of such registered owner cannot be taken away or defeated, unless as provided by the law. See section 28 of the said Act.

“ 28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall



not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject.”

68. These provisions of law are now anchored in Sections 24 and 25, of the *Land Registration Act*, which provide;

24.

- (a) 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; and

25.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
  - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

69. It is evident that the said registration of the Plaintiff and Eunice Muthoni, was not cancelled, but according to the copy of the Green card produced as Exhibit by the Plaintiff, the 1<sup>st</sup> Defendant Alice Nyambura Kinuthia was registered as the owner of the suit land on 17<sup>th</sup> March 2011. It is not clear how the said registration was done, but, DW I told the Court that this entry No. 4, was not endorsed, and so it is not effective.

70. However, the Green card still bears the name of Alice Nyambura Kinuthia, as the owner of the suit land, and the evidence the Land Registrar Muranga( DW1), that such registration is not effective, cannot be trusted to give solace to the Plaintiff herein, whose name was removed from the Green card, without being informed or given notice of such drastic move.

71. The registration of 1<sup>st</sup> Defendant was done in the year 2011, and so the provisions of law applicable are the ones found in Cap 300 (repealed), and as noted by the court earlier that under section 28, of the said Cap 300( repealed), the right of registered owner cannot be defeated except as provided for by the Act. However, the Plaintiff’s right was defeated, without any backing of the law, or without a court order.

72. It is evident that Eunice Muthoni Kinuthia died in 2006, and the transfer to the name of Alice Nyambura Kinuthia was done in 2011. However, there was no evidence that any succession cause was ever filed over the estate of Eunice Muthoni Kinuthia, and that the said suit land was distributed, and/ or it devolved to 1<sup>st</sup> Defendant, through Confirmation of Grant. If there was no succession done over the estate of Eunice Muthoni Kinuthia, on what basis was Alice Nyambura Kinuthia registered as the owner of the suit property, and which property was in the name of deceased person, and another joint owner?



73. If no succession cause was ever filed, and the suit land did not devolve to the 1<sup>st</sup> Defendant, then her registration amounted to intermeddling with the property of a deceased person and that is against the provisions of Section 45 of the Succession Act, which states;

“No intermeddling with property of deceased person

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- (2) Any person who contravenes the provisions of this section shall-
  - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
  - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

74. In the case of *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR), the court stated as follows;

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

See also the case of *In re Estate of M’Ngarithi M’Miriti* [2017] eKLR where the court held that:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

75. Section 55 of the Succession Act provides;



- (1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.
76. Further, section 79 of the said Act provides;
- “The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative”
77. In the instant case, there is no evidence that any Letters of Administration were ever issued to the 1<sup>st</sup> Defendant, and the transfer of the suit land to the 1<sup>st</sup> Defendant contravened the above provisions of the Succession Act, and therefore, the said registration was done fraudulently, illegally, without following the laid down procedure of distribution of deceased person’s estate.
78. Further, the Plaintiff was a registered joint proprietor of the suit land, but on 17<sup>th</sup> March 2011, the said land was registered in the name of the 1<sup>st</sup> Defendant without his input. That action deprived the Plaintiff of the ownership of the suit of land, without his knowledge or having been given notice, and thus it went against the rule of natural justice which is a cardinal rule. In the case of Sangram Singh vs Election Tribunal Kotch (AIR 1955 SC 664), the court held;
- “there must be ever present to the mind; the fact that our laws of Procedure are guided on a principle of natural justice which require that men should not be condemned unheard, that decisions should not be reached behind their back, that the proceedings that affect their lives and property should not continue in their absence and that not precluded from participating on them”.
79. It is evident that the suit property was initially registered in the name of the Plaintiff and Eunice Muthoni prior to 17<sup>th</sup> March 2011. Therefore, said registration was protected by the law, and could only be cancelled as provided by Section 143 of Cap 300, which was provision of law was not applied. It is trite that cancellation of the title is done through a court order, after the due process has been finalized.
80. In the instant case, there is no evidence of such court order, and thus the said cancellation of the Green card and removal of the earlier proprietors names on the Green Card, and replacing them with that of the 1<sup>st</sup> Defendant was illegal and /or irregular, as it is trite that only Courts can cancel a title deed.
81. In the case of Kisumu Misc No. 80 of 2008 Republic Vs Kisumu District Lands Officer & another [2010] eKLR, the Court declared as follows:
- “[I]t is clear that it is only the Court that can cancel or amend if where the Court is of the view that registration has been obtained, made or omitted through fraud or mistake and only where it is not a first registration”.



82. Further, in the case of Mombasa Appeal No. 98 of 2016 Super Nova Properties Limited & another v District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties) [2018] eKLR the Court held that:

“The only institution with mandate to cancel a title to land on the basis of fraud or illegality is a Court of law”.

83. Therefore, the said registration of the suit land in the name of 1<sup>st</sup> Defendant, Alice Nyambura was illegal, and/or irregular and was done fraudulently, and for that reason, the said cancellation cannot be allowed to stand.

84. Further, from the available evidence, it is clear that the Green card and the certificate of official search confirm that there is a Restriction registered over the suit land indicating no dealing with the title until Police investigations are over.

85. Section 76 of *Land Registration Act* provides that a restriction can be registered on a title, for purposes of prevention of fraud or improper dealings. It provides;

76.

(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(a) for a particular period;

(b) until the occurrence of a particular event; or

(c) until the making a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

86. However, such Restrictions cannot be imposed or endure indefinitely, and as provided by section 76(2) of LRA, the said restriction is for a particular time. It provides;

2) A restriction may be expressed to endure—

(a) for a particular period;

(b) until the occurrence of a particular event; or

(c) until the making a further order is made

87. The Green card and Certificate of official search show that the restrictions are to remain in place until the police investigations are over. However, DW1 told the court that she was not aware whether the police investigations are over, and she did not know of the outcome of the said investigations. No evidence was called from the DCIO, who applied to have the restriction imposed on the suit land to confirm whether the said investigation was done, what was their findings, and whether they found evidence of fraud or not.



88. The Restriction herein was placed in 2011, and that is more than 13 years ago, and therefore the said restrictions cannot remain in place indefinitely, and without no evidence on whether the said investigations has been completed and what was the outcome. Consequently, this court cannot allow such restrictions to remain indefinitely. See the case of David Macharia Kinyuru v District Land Registrar Naivasha & Anor [2017] eKLR, where the Court held that;

“Restrictions are to endure for a particular time, or until the occurrence of an event, or the making of a further order. It is not the purpose of this section of the law to have restrictions remain indefinitely. The reasoning is that a restriction should only hold a property in abeyance, as the underlying issue leading to the restriction is being resolved, since a restriction by itself does not solve a dispute ....”

89. Having carefully considered the available evidence, the court finds and holds that the registration of the suit land in the name of 1<sup>st</sup> Defendant was done illegally and fraudulently and cannot stand. See the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] eKLR, where the Court proclaimed as follows:

“[T]here is no doubt that in so far as the title of the 1st respondent is concerned, it was procured by way of fraud or misrepresentation, and there is no way that the 1st respondent could have procured title without his own involvement in the fraud or misrepresentation. The title of the 1st respondent is clearly impeachable by dint of the provisions of Section 26 (1) (a). It cannot be allowed to stand and must be cancelled. If it is cancelled then it follows that any subsequent transactions have to be cancelled as well, for they were entered into by a party who had no capacity to do so, he not having a title in the first place.”

90. Therefore, this court finds and holds that the Green Card bearing the name of the 1<sup>st</sup> Defendant as the owner of the suit land is a candidate for rectification or cancellation as provided by section 143 of the Registered [Land Act](#), Cap 300 (repealed) and now mirrored in Section 80(1) of the [Land Registration Act](#) which provides;

80.

- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake

91. For the above reasons, the court finds and holds that the Plaintiff is entitled to the prayers sought in his filed Plaintiff.

**ii. Whether the 1<sup>st</sup> Defendant is entitled to prayers sought in the reference:**

92. Although the 1<sup>st</sup> Defendant did not file a Counter - claim, in her Defence, she sought for various prayers among them; cancellation of the Plaintiff's name, and the said title to revert to the name of Eunice Muthoni Kinuthia as the sole proprietor.

93. However, there was evidence that the Green card to the parcel of land in question is registered in the name of the 1<sup>st</sup> Defendant, which registration has been found and held to be illegal and is thus cancelled.

94. It is evident from the provisions of section 26(1) (c) & (b) of [Land Registration Act](#), that the Certificate of title can be challenged if there is evidence that the same was acquired through fraud,



misrepresentation or through corrupt scheme or improper dealings. Section 26(1) (c) & (b) of the [Land Registration Act](#) stipulates as follows:

- (1) 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; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

95. The 1<sup>st</sup> Defendant has not availed any evidence to prove that the Plaintiff was registered as a joint proprietor of the suit land together with Eunice Muthoni Kinuthia (deceased) through misrepresentation, fraud or corrupt scheme. Therefore, this court finds no reasons or good grounds to cancel the title deed in the joint names of the Plaintiff and Eunice Muthoni Kinuthia (deceased) as proprietors, having been registered so since 1991. Eunice Muthoni (deceased), did not challenge the Plaintiff's inclusion on the title during her lifetime.

96. Having found no evidence to impeach the Plaintiff's ownership of half portion of the suit land, and thus inclusion of his name on the title, this court finds no reasons to allow the prayers sought by the 1<sup>st</sup> Defendant.

### **iii. Who should bear costs of this suit?**

97. Ordinarily costs are awarded at the discretion of the court as provided by Section 27 of the [Civil Procedure Act](#). However, costs follow the events, and are awarded to the successful litigant. The Plaintiff herein is the successful litigant, and is therefore entitled to costs, given that the 1<sup>st</sup> Defendant sought to be registered as the owner of the suit land, and the 2<sup>nd</sup> Defendant did enter the said entry without seeking the input of the registered proprietors, or serving the Plaintiff with a Notice for imposition of Restriction on the title.

98. Consequently, the court finds and holds that the Plaintiff has proved his case against the Defendants herein on the required standard of balance of probabilities. Therefore, judgment is entered for the Plaintiff against the Defendants herein jointly and severally as prayed in his Plaint dated 13<sup>th</sup> March 2023, in terms of prayers Nos. (a) (b) (c) and (d).

It is ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**L. GACHERU**

**JUDGE**

**19/12/2024**

**Delivered online;**

In the presence of;

Ms Waititu for Plaintiff



Mr Nyoroku for the 1<sup>st</sup> Defendant

N/A for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Joel Njonjo – Court Assistant.

**L. GACHERU**

**JUDGE**

**19/12/2024**

