



**Anasi ( Suing as the Legal Administratrix of the Estate of Abigail Kemunto Opande) v Opande & 5 others (Environment & Land Case 165 of 2016) [2023] KEELC 846 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 846 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 165 OF 2016**

**JM ONYANGO, J  
FEBRUARY 16, 2023**

**BETWEEN**

**IRINE MWANGO ANASI ( SUING AS THE LEGAL ADMINISTRATRIX OF THE ESTATE OF ABIGAEL KEMUNTO OPANDE) ..... PLAINTIFF**

**AND**

**JARED TOM NGITI OPANDE ..... 1<sup>ST</sup> DEFENDANT  
STEVE NYAGAKA ORORA ..... 2<sup>ND</sup> DEFENDANT  
EEDI KENYA LIMITED ..... 3<sup>RD</sup> DEFENDANT  
THE LAND REGISTRAR KISII COUNTY ..... 4<sup>TH</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT  
INKA HOLDINGS ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit in her capacity as the administrator of the estate of her late mother Abigail Kemunto Opande –deceased. It is the Plaintiff’s claim that the deceased was the registered proprietor of land parcel number NYARIBARI CHACHE KEUMBU/3017. The Plaintiff further alleged that after the death of Abigail Kemunto Opande, the 1<sup>st</sup> Defendant who is her brother secretly obtained a grant of letters of administration vide Keroka SRM Succession Cause No 4 of 2012 and transferred land parcel number NYARIBARI CHACHE KEUMBU/3017 to himself. The 1<sup>st</sup> defendant subsequently sold and transferred the said parcel of land to the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant in turn sold the land to the 6<sup>th</sup> defendant.
2. The plaintiff avers that when she learnt that the 1<sup>st</sup> defendant had obtained a grant in Keroka SRM Succession Cause No 4 of 2012, she challenged the said grant vide Kisii HC Miscellaneous Application



No 187 of 2012 and the grant issued by Keroka court was revoked. Before revoking the said grant the court also issued a prohibitory injunction on May 23, 2012 prohibiting the sale, alienation or appropriation of land parcel number 3017. The said order was served upon the 4<sup>th</sup> Defendant and entered in the Land register on May 30, 2012.

3. The Plaintiff claims that in spite of the said prohibitory order, the 2<sup>nd</sup> defendant colluded with the 4<sup>th</sup> defendant and sub-divided parcel number 3017 into land parcels number NYARIBARI CHACHE KEUMBU/3303, 3304, 3305, 3306, 3307 and 3308 and sold them to the 3<sup>rd</sup> defendant.
4. It is the plaintiff's case that the sale, transfer and subsequent registration of the resultant titles in the name of the 3<sup>rd</sup> defendant was irregular, illegal, fraudulent and thus null and void. The plaintiff therefore seeks the following reliefs :
  - a. A declaration that the sub-division of the original parcel number NYARIBARI CHACHE KEUMBU/3017 was unlawful, irregular, fraudulent and void for all intents and purposes.
  - b. An order of cancellation of the titles in respect of land parcels number NYARIBARI CHACHE KEUMBU/3303, 3304, 3305, 3306, 3307 and 3308 respectively and rectification of the register in respect of R NO NYARIBARI CHACHE KEUMBU/3017 with a view to reinstating and restoring the title in respect of the original parcel of land.
  - c. An order directed to and/or for cancellation of the titles in respect of the name of the 2<sup>nd</sup> defendant over and in respect of NYARIBARI CHACHE KEUMBU/3017 and restoration of the name of the deceased as the lawful and legitimate proprietor thereof.
  - d. A declaration that the sale, transfer and registration of the suit properties that is LR NO NYARIBARI CHACHE KEUMBU/3303, 3304, 3305, 3306, 3307 and 3308 respectively, to and in favour of the 3<sup>rd</sup> defendant were unlawful, illegal, invalid and void in so far as the properties arising from NYARIBARI CHACHE KEUMBU/3017 were and are still the subject of succession proceedings in KISII HC MISC APPLICATION NO 187 OF 2012 in respect of the estate of the deceased.
  - e. A permanent injunction restraining the 3<sup>rd</sup> defendant either by herself, agents and/or servants from entering upon, taking possession, building on, occupying, encumbering and dealing with the properties known as NYARIBARI CHACHE KEUMBU/3303, 3304, 3305, 3306, 3307 and 3308 respectively arising from LR NO NYARIBARI CHACHE KEUMBU/3017 in such manner and/or otherwise detrimental to the interest of the estate of the deceased.
  - f. General damages for fraudulent sub-division, transfer, registration and trespass onto the suit properties arising from NYARIBARI CHACHE KEUMBU/3017.
  - g. Costs of this suit
  - h. Such further and/or other relief as the Honourable court may deem fit and expedient to grant.
5. The 1<sup>st</sup> Defendant filed a statement of Defence on July 18, 2016 in which he denied most of the Plaintiff's claim of fraud against him. He admitted that LR No NYARIBARI CHACHE KEUMBU/3017 was as at August 24, 2011 registered in the name of Abigael Kemunto Opande-deceased to hold the same in trust for him.
6. He gave the history of the said parcel which was that it was a sub-division of LR No NYARIBARI CHACHE KEUMBU/909 which was initially registered in the name of his late father Stanley Opande Nyakundi and upon his demise it was transferred to Abigael through transmission to hold the same in trust for the 1<sup>st</sup> Defendant and his younger brother.



7. He admitted that he obtained a grant in respect of his late mother's estate vide Keroka SRM Succession Cause No 4 of 2012 after which he sold and transferred the suit property to the 2<sup>nd</sup> defendant but denies that the plaintiff was a beneficiary of the suit property.
8. He further stated that though the grant issued by Keroka court was revoked by the High Court vide HC Miscellaneous Application No 187 of 2012, the same was done ex-parte without his knowledge as he was not served with the said application.
9. He stated that by the time the grant was revoked and a prohibitory order issued, the suit property had already been transferred to the 2<sup>nd</sup> defendant hence the orders were overtaken by events.
10. The 1<sup>st</sup> defendant denied the particulars of fraud attributed to him. It was his contention that the plaintiff had failed to disclose material facts to the effect the suit property emanated from land parcel No NYARIBARI CHACHE/KEUMBU/909 which was distributed vide HC Succession Cause No 59 of 2007 where the plaintiff was one of the sureties.
11. In view of what he alleged to be material non-disclosure, the 1<sup>st</sup> Defendant contended that the suit was brought in bad faith and therefore denied that the plaintiff was entitled to the orders sought.
12. The 2<sup>nd</sup> and 6<sup>th</sup> Defendants filed their Statement of Defence dated April 30, 2021. The 2<sup>nd</sup> Defendant stated that he acquired parcel number 3017 on May 11, 2012 after purchasing the same from the 1<sup>st</sup> defendant and subsequently sub-divided it into parcels number NYARIBARI CHACHE/KEUMBU/3303-3308. He then sold and transferred the resultant parcels to the 6<sup>th</sup> Defendant.
13. The 2<sup>th</sup> and 6<sup>th</sup> Defendants contended that the order of injunction issued in Kisii HC Miscellaneous Civil Application No 187 of 2012 prohibiting the sub-division of parcel No 3017 was ineffective to prohibit the sub-division of the said parcel as the sub-division had already taken place and the transfer took effect on May 11, 2012. They further contended that the order dated May 23, 2012 revoking the grant issued to the 1<sup>st</sup> defendant on April 7, 2012 having been issued after the transfer was ineffectual and sterile as it had been overtaken by events since the transfer sought to be prohibited had been effected on May 11, 2012.
14. They denied the allegations of fraud levelled against them by the plaintiff and asserted that the sale of the resultant parcels to the 3<sup>rd</sup> defendant was proper and effective to confer good title to the 3<sup>rd</sup> defendant.
15. The 2<sup>nd</sup> and 6<sup>th</sup> defendants further maintained that parcel no 3017 was derived from the mother title parcel number 909 which was transmitted to Abigael Kemunto vide HC Succession Cause No 59 of 2007. In the Grant which was issued in the said succession cause, Abigael's interest in parcel 909 was limited to that of a trustee for her sons namely Jared Tom Ngiti Opande (1<sup>st</sup> defendant) and George Morara Opande who are the plaintiff's brothers.
16. The 2<sup>nd</sup> and 6<sup>th</sup> defendants contended that the plaintiff who was a surety in the said succession matter never complained about the approved mode of distribution of parcel number 909 during her mother's lifetime.
17. They further stated that Abigael sub-divided parcel number 909 into parcels 3017 and 3018 and transferred parcel number 3018 to George Morara Opande while parcel number 3017 remained in her name whereupon she continued to hold the same in favour of the 1<sup>st</sup> defendant.
18. It was the 2<sup>nd</sup> and 6<sup>th</sup> defendants' contention that the trust created upon parcel 909 was not extinguished upon sub-division of the said parcel into parcels 3017 and 3018. They therefore contended that by



filing the instant suit the plaintiff was seeking to re-open and re-litigate issues which were the subject of HC Succession Cause No 59 of 2007 and which do not fall within the jurisdiction of this honourable court.

19. The 2<sup>nd</sup> and 6<sup>th</sup> defendants also contended that the transfer of parcel 3017 to the 2<sup>nd</sup> Defendant on May 11, 2012 was protected under the provisions of section 93 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and the dispositions subsequent to the said transfer were lawful.
20. The 3<sup>rd</sup> Defendant filed an Amended Statement of Defence dated April 3, 2018 denying the plaintiff's claim. In particular, he denied that he was privy to the transfer of parcel number 3017 between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He denied that he was aware of the grant issued in Keroka SRM Succession Cause No 4 of 2012. He further avers that he conducted a search at the Lands Registry and confirmed that parcel number 3017 was transferred by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant on May 11, 2012.
21. The 3<sup>rd</sup> Defendant denied that he was a party to the sub-division of parcel number 3017 and denied any knowledge of the alleged fraud and illegalities attendant thereto. He further denied that parcels number 3303-3308 were unlawfully transferred to him by the 6<sup>th</sup> Defendant as the prohibitory order had been lifted on September 25, 2013.
22. He maintained that he purchased the said parcels for value in a market overt without notice of any illegalities.
23. The 3<sup>rd</sup> defendant alleged that parcels number 3303-3308 have since ceased to exist as the same were amalgamated with the 3<sup>rd</sup> defendant's property and now form one parcel of land known as NYARIBARI/CHACHE/KEUMBU/3728.
24. The 3<sup>rd</sup> defendant averred that it would at an appropriate time issue a notice of claim against the 6<sup>th</sup> defendant for an order compelling the 6<sup>th</sup> defendant to refund the total amount paid for the suit properties plus interest thereon and costs, in the event the plaintiff was successful in the claim herein. It is in pursuance of the said notice that the 6<sup>th</sup> Defendant filed its Defence.
25. The 4<sup>th</sup> and 5<sup>th</sup> Defendants filed their Statement of Defence dated June 21, 2016 denying the plaintiff's claim. In particular, they denied the allegations of fraud attributed the 4<sup>th</sup> defendant and alleged that the 4<sup>th</sup> defendant was merely carrying out his duties on the basis of the transfer documents presented to him the and that no act of fraud was committed as alleged by the plaintiff.
26. After several applications the case was fixed for hearing on diverse dates between May 4, 2021 and May 24, 2022.

## **PLAINTIFF'S CASE**

27. The Plaintiff testified as the sole witness for her case. She informed the court that she was representing the estate of Abigael Kemunto Opande- deceased, her mother, who died on August 27, 2011. She stated that after her mother's death, she discovered that the 1<sup>st</sup> defendant had obtained a grant in respect of their mother's estate vide Keroka SRM Succession Cause No 4 of 2012. She the applied for revocation of the said grant and the same was revoked vide the High Court's ruling dated April 7, 2016 in HC Miscellaneous Application No 187 of 2016. In the said ruling the court directed the Deputy Register to recall the grant issued to the 1<sup>st</sup> Defendant together with the Certificate for confirmation of Grant for necessary cancellation and destruction. The court also directed that a fresh grant do issue formally in the joint names of the plaintiff and George Morara Opande.
28. She testified that the before the grant was revoked, the 1<sup>st</sup> Defendant used it to transfer parcel number 3017 to himself after which he sub-divided it into parcels number 3303-3308. She stated that before



the grant was revoked, the court had issued an injunction restraining the 1<sup>st</sup> defendant from selling parcel number 3017. The said order was served on the Land Registrar on May 30, 2016. She stated before the said order was served on the Land Registrar, land parcel No.3017 was transferred to the 2<sup>nd</sup> Defendant. It was her testimony that the sub-division of parcel number 3017 was unlawful. She prayed that parcel numbers 3303-3308 be cancelled and that the same do revert to parcel no. 3017 in the name of Abigael Kemunto Opande.- deceased.

29. Upon cross-examination by learned counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants the Plaintiff stated that the order issued in HC Succession No. 187 of 2012 was directed at the 1<sup>st</sup> Defendant and the said order was registered at the Lands Registry on May 30, 2012. She admitted that the 2<sup>nd</sup> Defendant was not a party in HC Misc Application No 187 of 2012 and that he was never mentioned in the ruling dated April 16, 2016. She admitted that she did not have a grant in respect of the estate of her late mother Abigael Kemunto Opande. She stated that the sub-division of parcel number 909 gave rise to parcels number 3017 and 3018.
30. She informed the court that parcel number NYARIBARI/CHACHE KEUMBU/909 belonged to her late father Stanley Opande Nyakundi. After his death, her late mother Abigael Kemunto Opande applied for a grant of letters of administration in respect of her late father's estate vide Kisii HC Succession Cause No 59 of 2007. She confirmed that she was listed as one of the proposed sureties in the Petition for the said Letters of Administration. She also confirmed that the said Grant was confirmed and her late mother Abigael and her step-mother Teresa Mochere Opande were appointed as the administrators of the estate of the late Stanley Nyakundi Opande. She admitted that at paragraph 5 of the affidavit of Teresa Opande in support of the application for confirmation of Grant, she stated that parcel number NYARIBARI/CHACHE KEUMBU/909 shall be registered in the name of Abigael Kemunto Opande in trust for her sons. In addition to the said affidavit, PW1 confirmed that Abigael swore an Affidavit in which she deponed that the mode of distribution of the estate had been agreed as stated by her co-petitioner (Teresa Opande) in her Supporting Affidavit. She confirmed that the sons referred to in the Succession cause are her brothers Jared Ngiti Opande (1<sup>st</sup> Defendant) and George Opande.
31. When PW1 was further cross-examined on 25.11 2021 she stated that she was not aware that the court had directed that parcel number NYARIBARI/CHACHE KEUMBU/909 be registered in the name of Abigael Opande in trust for her sons in accordance with the consent between her mother and step-mother. She denied that her mother had consented to the distribution of the estate in that manner.
32. She admitted that she was aware that parcel number 909 had been sub-divided into parcels number 3017 and 3018 and that parcel number 3017 was registered in the name of her brother George Morara Opande. She informed the court that Jared Opande (1<sup>st</sup> Defendant) had not been given any land out their father's estate.
33. She confirmed that she filed HC Misc Application No 187 of 2012 against the 1<sup>st</sup> Defendant and the court issued an order of prohibition on May 23, 2012 prohibiting any dealings on title no 3017. Upon being shown a copy of the title in the name of the 1<sup>st</sup> Defendant, she denied that she was aware that the title had been transferred to Jared by the time she obtained the order of prohibition because she had the original title. She further denied that she was aware that by May 10, 2012 the 1<sup>st</sup> Defendant had sold parcel 3017 to Steve Nyagaka Orora.
34. She admitted that she had not produced any grant of letters of administration, which gave her the capacity to file the instant suit and according to her HC Misc Civil Application No 187 of 2017 was still pending.



35. When the plaintiff was cross-examined by learned counsel for the 3<sup>rd</sup> Defendant, she stated that she was not aware that parcel no 3017 was transferred to the 1<sup>st</sup> Defendant but she was aware that it was transferred to the 2<sup>nd</sup> defendant. She informed the court that she was aware that the 1<sup>st</sup> Defendant obtained a Grant from Keroka Court on April 3, 2012 and the same was confirmed on May 4, 2012. She informed the court that she was not aware that by the time she obtained the prohibition order, parcel number 3017 had changed hands. According to her, the said order was directed at Steve Nyagaka (2<sup>nd</sup> Defendant). She denied that she was aware of the transactions relating to parcel number 3017 though she claimed to have conducted an official search with respect to the said title on April 18, 2016. She denied that she was aware that parcels number 3303-3308 had ceased to exist by the time she filed suit.
36. On being cross-examined by learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> Defendants the plaintiff confirmed that by the time she obtained the order of prohibition dated May 30, 2012 to prohibit any further transactions on parcel 3017, the property had already been registered in the name of Steve Nyagaka (2<sup>nd</sup> Defendant).
37. In re-examination, the plaintiff confirmed what she had stated in her evidence-in chief and cross-examination. She added that the 1<sup>st</sup> Defendant did not appeal against the order revoking the Grant issued by Keroka Court. She admitted that by the time the order of prohibition was served, the property was registered in the name of Steve Nyagaka Orora.
38. The plaintiff closed her case without calling any witness.

#### **DEFENDANTS' CASE**

39. The Defence called four witnesses. Jared Ngiti Opande (1<sup>st</sup> Defendant) testified as DW1. He relied on his witness statement recorded on July 11, 2016 as his evidence in chief. He also produced the documents in his List of Documents of even date as 1<sup>st</sup> Defendant's Exhibits 1-12 and the proceedings in Kisii HC Succession Cause No 59 of 2007 as 1<sup>st</sup> Defendant's exhibit 13. He referred to the affidavit by the plaintiff as a surety in support of the Petition for Letters of Administration in respect of the estate of their late father Stanely Opande Nyakundi. He also referred to the affidavit in support of the application for confirmation of Grant sworn by his mother Abigail Kemunto Opande in which she deponed that the mode of distribution of the estate had been agreed as stated by her co-petitioner (Teresa Mochere) in her Supporting Affidavit. At paragraph 4 of Teresa's affidavit, she deponed that parcel no NYARIBARI/CHACHE KEUMBU/909 be registered in the name of Abigael Opande in trust for her sons. He clarified that the sons mentioned in the said Affidavit were himself and his younger brother George Morara Opande. He added that the Plaintiff did not object to the mode of distribution of their late father's estate.
40. He told the court that parcel no 909 formed part of his late father's estate which was distributed in accordance with the Certificate of Confirmation of Grant. He explained that parcel number 909 was divided into two equal portions; parcels number 3017 and 3018. His brother George Morara Opande was given parcel number 3018 while parcel number 3017 was registered in his mother's name in trust for him since he was working in Nairobi. He testified that the said parcel was registered in his mother's name on August 9, 2010 and she died in 2011 before she transferred it to him.
41. It was the testimony of DW1 that as at May 9, 2012 parcel number 3017 did not form part of the estate of Abigael Kemunto Opande. He pointed out that the order of prohibition in HC Misc Application No 187 of 2012 was directed at himself and his brother George Opande. He stated that by the time the order was issued on May 23, 2012 parcel number 3017 had been transferred to Steve Nyagaka Orora. He stated that Steve was his bother-in-law and he was similarly related to the plaintiff. He told the court



that he had sold the land to Steve on May 10, 2012 while the suit herein was filed in 2016. It was his testimony that his brother George Morara had also sold his land to Steve Orora and that the Plaintiff was aware of both sales as she was married about 5km away from her home. He told the court that after Steve Orora bought parcel number 3018, he constructed a petrol station. He denied that allegation that Steve Orora obtained parcel number 3017 by way of fraud. He stated that HC Misc Application No 187 of 2012 was not a succession cause.

42. Upon cross-examination, he stated that HC Succession Cause No 59 relates to the estate of his late father Stanley Opande Nyakundi. He stated that his father had two wives; namely, Abigail Kemunto and Teresa Mochere who were both appointed as administrators of the estate of Stanley Opande. It was his testimony that according to the affidavit of Teresa Mochere in support of the application for confirmation of Grant, parcel number 909 was to be registered in the name of Abigail Kemunto Opande in trust for her two sons; George Orora and himself. He confirmed that the Certificate of confirmation of Grant was issued on September 25, 2009 but stated that the same was erroneous as it indicates that parcel number NYARIBARI/CHACHE KEUMBU/909 was to be registered in the name of Abigail Kemunto Opande with her share indicated as 'Absolute'.
43. He stated that there had been no alteration to the said Certificate of Confirmation of Grant by the time his mother died in 2011. He stated that after the Grant was confirmed, his mother sub-divided parcel 909 into parcels 3017 and 3018. She then transferred parcel 3018 to George Orora while parcel 3017 remained in her name to hold the same in trust for him. It was his testimony that before her demise she had indicated that she wanted to transfer the said parcel to him but she died before transferring the same to him.
44. He confirmed that after his mother's death, he obtained a Grant from Keroka court pursuant to which he had parcel number 3017 transferred to him. He subsequently sold the same to Steve Nyagaka Orora. He reiterated that he was served with a prohibitory order after he had sold the said parcel of land.
45. Upon further cross-examination, he stated that the certificate of confirmation of Grant in HC Succession Cause No 59 of 2007 does not accord with the proceedings of September 25, 2009 where the court directed as follows:

' By consent the Grant herein is confirmed. The deceased's estate shall be distributed in terms of para 5 of the affidavit by Teresa Mochere Opande'.
46. He concluded his evidence by stating that the ruling revoking his Grant was delivered on April 7, 2016 after he had acquired and sold parcel number 3017.
47. Steve Nyagaka Orora, the 2<sup>nd</sup> Defendant (DW2) testified on his behalf and on behalf of Inka Holdings Ltd (Defendant). He told the court that he bought land parcel number 3018 from George Morara Opande vide a land sale agreement dated December 13, 2011. He subsequently approached Jared Opande (1<sup>st</sup> Defendant) to sell him land parcel number 3017 as the two parcels shared a fence. After he bought parcel 3017, he removed the fence separating the two parcels and merged the two plots. He stated that the plaintiff did not protest when he bought the two parcels. He told the court that he was not party to the proceedings in HC Misc Application No 187 of 2012 so he was not aware of the court order prohibiting any transactions on parcel number 3017.
48. Upon cross-examination he admitted that he had not produced any document to demonstrate that he had authority to testify on behalf of the 6<sup>th</sup> defendant. He confirmed that before he bought land parcel number 3017, he conducted an official search and there was no court order in respect of the said property. He stated that he entered into a sale agreement in respect of parcel number 3017 on May



- 10, 2012 and obtained a title deed on May 11, 2012 after getting the necessary consent from the Land Control Board. He confirmed that he was aware of the court order in HC Misc Application No 202 of 2013 which lifted the prohibitory order but he could not tell if the same had been served upon the plaintiff since he was not a party to the suit.
49. He stated that at some point, parcel number 3017 was transferred to the 6<sup>th</sup> Defendant which subdivided the property into parcels number 3303-3308. The 6<sup>th</sup> Defendant then sold the said parcels to the 3<sup>rd</sup> Defendant at an agreed purchase price of Kshs 46,000,000/=. The properties were subsequently transferred to the 3<sup>rd</sup> Defendant after obtaining the necessary consents.
  50. DW2 explained that according to the green card, parcel number 3017 was registered in the name of Jared Opande before it was transferred to him. He confirmed that there was no prohibitory order at the time of transfer on May 11, 2012. He admitted that before he sub-divided parcel 3017, he obtained a court order removing the prohibitory order vide HC Misc Application No 202 of 2013. He maintained that the sub-division was done in accordance with the law.
  51. He denied the allegation that he presented any forged documents to the Land Registrar. He said he signed the necessary transfer documents in his capacity as a director of the 6<sup>th</sup> defendant. He stated that he had no knowledge of any proceedings between the plaintiff and the 1<sup>st</sup> defendant before May 11, 2012.
  52. Steve Mokaya, the Land Registrar, Kisii County (4<sup>th</sup> Defendant) testified as DW3. He explained the 10 entries on the green card in respect of parcel number 3017 from August 9, 2010 when it was registered in the name of Abigael Kemunto Opande upto October 7, 2013 when the title was closed on subdivision to parcels 3303-3308. He stated that the sub-division was done after the order of prohibition was lifted. He told the court that titles number 3303-3308 were amalgamated to produce land parcel number 3728 on April 28, 2016. He said that parcel number 3728 was currently registered in the name of EEDI (Kenya) Limited (3<sup>rd</sup> Defendant).
  53. Upon cross –examination Mr Mokaya stated that he was posted to Kisii Lands Registry in November 2016 but he started working in Kisii County in 2017 and he was therefore not present when the transactions on the suit property took place. It He stated that it was possible to obtain a title within a day if a special consent of the Land Control Board was issued. Special consents of the Land Control Board are issued within a period of one to seven days.
  54. He stated that there was nothing to stop Steve Nyagaka Orora from being registered as the owner of parcel number 3017. He told the court that he had not come across any fraudulent documents presented to the Land Registrar in respect of the said transfer. He denied that his office acted in contempt of a lawful court order. He added that his office was never cited for contempt of the court order issued in HC Misc Application No 187 of 2012. He opined that there was no wrong-doing on the part of his predecessor or the office of the Land Registrar as the transactions were proper. He said the letter dated 21.04.2016 from the firm of Oguttu Mboya which refers to the order of prohibition was not in his records.
  55. Dipen Nalinchandra Dodhia who introduced himself as director of EEDI Kenya Limited (3<sup>rd</sup> Defendant) testified as DW4. He adopted his witness statement dated November 11, 2016 as his evidence in chief. He also produced the documents listed in the 3<sup>rd</sup> Defendant’s List of Documents of even date as the 3<sup>rd</sup> Defendant’s exhibits 1 to 7.
  56. He informed the court that the 3<sup>rd</sup> Defendant was the registered proprietor of land parcel number NYARIBARI/CHACHE KEUMBU/3728. It was his testimony that before they bought land parcels number 3303-3308, they visited the said parcels after which their advocate carried out due diligence



by conducting an official search at the Land Registry. After satisfying themselves that the titles were in order, they entered into a sale agreement with Inka Limited (3<sup>rd</sup> Defendant) for the sale of the 6 parcels at an agreed purchase price of Kshs 46,000,000/= which they paid in full. They thereafter obtained the necessary consents before the transfer was effected to the name of EEDI Limited (6<sup>th</sup> Defendant). He testified that after purchasing the said parcels, they amalgamated them into one parcel number 3728. They thereafter obtained the necessary consent to enable them develop the property but they had not been able to carry out any construction owing to the injunction issued against them.

57. He told the court that after the 6<sup>th</sup> Defendant was sued, they took out a notice to sue the 3<sup>rd</sup> Defendant on April 3, 2018 so that the 3<sup>rd</sup> defendant could indemnify them in the event that the plaintiff's case succeeded. He ended his testimony by praying that if the court did not grant them the suit property, the 6<sup>th</sup> Defendant should be directed to indemnify the 3<sup>rd</sup> Defendant by refunding the purchase price together with costs and interest.
58. I have set out the evidence in detail in order to contextualize the dispute between the plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as well as the dispute between the 3<sup>rd</sup> and 6<sup>th</sup> Defendants. After the close of the defendants' case all the parties filed their submissions to articulate their clients'

### ISSUES FOR DETERMINATION

59. Having considered the pleadings, evidence on record and all the submissions, the following are the pertinent issues for determination:
- i. Whether the plaintiff has the locus standi to institute this case.
  - ii. What is the legal effect of the revocation of the grant issued by Keroka Court in Keroka SRM Succession Cause No 4 of 2012 vide Kisii HC Miscellaneous Civil Application No 187 of 2012 vis a vis section 93 of the *Law of Succession Act*?
  - iii. Whether the prohibitory injunction issued on 23.05.2012 in Kisii HC Miscellaneous Civil Application No 187 of 2012 was effective in restraining the 1<sup>st</sup> defendant from selling/transferring land parcel number NYARIBARI CHACHE/KEUMBU/3017 to the 2<sup>nd</sup> defendant.
  - iv. Whether Abigael Kemunto Opande was a trustee for the 1st Defendant vis a vis parcel number 3017 and if so, whether the said trust was extinguished upon her death.
  - v. Whether the transfer of parcel number NYARIBARI CHACHE/KEUMBU/3017 by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant and the subsequent transfer to the 3<sup>rd</sup> Defendant was lawful.
  - vi. Whether the sub-division and transfer of parcels number NYARIBARI CHACHE/KEUMBU/3303-3308 by the 3<sup>rd</sup> defendant to the 6<sup>th</sup> defendant was lawful?
  - vii. Is the plaintiff entitled to the reliefs sought?
  - viii. Is the 6<sup>th</sup> defendant entitled to indemnity against the 3<sup>rd</sup> defendant?

### ANALYSIS AND DETERMINATION

60. The first issue for determination is whether the plaintiff has locus standi to institute this suit against the defendants. The Plaintiff is the daughter of Abigael Kemunto Opande-deceased who died on the August 24, 2011. After her death, Jared Tom Ngiti Opande (the 1<sup>st</sup> defendant) obtained a Grant of Letters of Administration in respect of her estate on April 7, 2012 vide Keroka SRM Succession Cause No. 4 of 2012.



61. When the plaintiff learnt that her brother Jared had obtained a Grant without involving her, she filed Kisii HC Miscellaneous Civil Application No 187 of 2012 where the grant issued by the Keroka Court was revoked on April 7, 2016. In the order revoking the said Grant, the court directed as follows:

' A fresh grant do issue formally in the joint names of the Applicant Irine Mwango Anasi and the Interested Party George Morara Opande and be brought up for confirmation within a period of four (4 ) months from the date hereof.'

62. The issue of locus standi was raised as a preliminary objection and this court (Mutungi J) in his ruling dated April 7, 2016 held that the High Court had constituted the Plaintiff as an administrator of the estate of Abigael Kemunto Opande and what remained was the administrative process of issuing the Grant. The court was therefore of the view that the Plaintiff had the requisite capacity to institute this case. The question of locus standi is therefore settled.

63. The second and central question I am called to determine is the legal effect of the revocation of the grant issued by Keroka Court in Keroka SRM Succession Cause No 4 of 2012 vide Kisii HC Miscellaneous Civil Application No 187 of 2012 vis a vis section 93 of the *Law of Succession Act*.

64. It is not in dispute that the Grant issued in Keroka SRM Succession Cause No 4 of 2012 was revoked by the High Court vide HC Miscellaneous Civil Application No 187 of 2012. It is also not in dispute that by the time the said grant was revoked, the 1<sup>st</sup> defendant had transferred land parcel number 3017 to the 2<sup>nd</sup> Defendant who in turn sold it to the 6<sup>th</sup> Defendant. The 6<sup>th</sup> defendant in turn sold the suit property to the 3<sup>rd</sup> Defendant What then is the effect of the transfer that was effected under the revoked Grant?

65. Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> defendants has contended that the transfer of parcel No 3017 from the 1<sup>st</sup> to the 2<sup>nd</sup> Defendant was protected by Section 93 of the *Law of Succession Act*. The said section provides thus:

' Validity of transfer not affected by revocation of representation:

S.93 (1) All transfers of any interest in immovable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the Grant either before or after the commencement of this Act.

Section 93 of the *Law of Succession Act* has been the subject of judicial interpretation in a number of cases. In the case of *Adrian Nyamu Kiugu vs. Elizabeth Karimi Kiugu and Anor [2014] eKLR* the High Court at Meru stated:

' Whereas the above section states that a transfer by person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act, I am of the considered view that such transaction can only be relied upon where the legal representative is entitled to grant of representation but not where one is not and where one has obtained the grant fraudulently. The purchaser in this cause came from the neighborhood of the objector and it is not possible that he did not know of the objector herein. I therefore find and hold the sale to be invalid.'



In the case of *Musa Nyaberi Gekone & 2 others v Peter Mijienda & Another (2015)eKLR* the Court of Appeal relied on *In Re Estate of Christopher Jude Adela (Deceased) [2009] eKLR*, where KH Rawal, J (as she then was) had this to say in reference to Section 93 of the *Law of Succession Act*;

' The correct reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of section 23 of the RTA (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a Carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal action prejudicing the interests and rights or right beneficiaries of the estate.

In short, I do not agree that section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative.'

66. The court thus held that Section 93 of the *Law of Succession Act* did not afford the 3<sup>rd</sup> Appellant protection.
67. In the instant case the Grant which the 1<sup>st</sup> Defendant relied on to transfer parcel number 3017 was revoked on the ground that the Magistrate's court at Keroka had no jurisdiction to issue a grant in respect of a property valued at more than Kshs 100,000. Further, the grant was obtained fraudulently by concealing material facts that the deceased was not only survived sons but by daughters. The court held that the omission of the daughters was fraudulent and was in violation of section 27 of the *Constitution* of Kenya which provides for equality and freedom from discrimination.
68. It is trite law that a transaction founded on a fraudulent procedure cannot be sanctioned by a court of law. Similarly, a grant which was issued by a court without jurisdiction and which has subsequently been revoked cannot form the basis for transferring property from one party to another as such a grant is null and void. In the case of *Macfoy v United Africa Company Limited (UK) 1962 AC 152* Lord denning succinctly stated as follows:

' If an act is void then it is in law a nullity, it is not only bad, but it is incurably bad and every proceeding which is founded on it is also bad and incurable bad. You cannot put something on nothing and expect it to stay there, it will collapse'.
69. The effect of revoking the grant is that it renders all dealings including transfers of the suit property null and void since the title that was held by the 1<sup>st</sup> Defendant was defective as the same was acquired through a defective Grant of Letters of Administration. This means that the transfer of parcel number 3017 to the 1<sup>st</sup> defendant as well as all subsequent transfers to the 2<sup>nd</sup>, 6<sup>th</sup> and 3<sup>rd</sup> Defendants are null and void. Additionally, the sub-division of parcel 3017 into parcels 3303-3308 and subsequent amalgamation of the said titles into parcel 3728 are equally null and void. Land parcel number 3728 must therefore revert to Abigael Kemunto Opande (Deceased) for distribution among all her beneficiaries.
70. The third issue for determination is whether the prohibitory injunction issued on 23.05.2012 in Kisii HC Miscellaneous Civil Application No 187 of 2012 was effective in restraining the 1<sup>st</sup> Defendant from selling/transferring land parcel number NYARIBARI CHACHE/KEUMBU/3017 to the 2<sup>nd</sup> defendant.



71. Having held that the transfers carried out pursuant to the revoked grant were null and void, it is not necessary to consider the effect prohibitory injunction issued on 23.05.2012 in Kisii HC Miscellaneous Civil Application No 187 of 2012 and whether it was effective in restraining the 1<sup>st</sup> defendant from selling/transferring land parcel number NYARIBARI CHACHE/KEUMBU/3017 to the 2<sup>nd</sup> defendant.
72. I will now turn to the fourth issue, which is whether Abigael Kemunto Opande was a trustee for the 1st Defendant vis a vis parcel number 3017 and if so, whether the said trust was extinguished upon her death.
73. In her evidence, the Plaintiff traced the origin of parcel number LR No NYARIBARI CHACHE/KEUMBU/3017 to land parcel number LR No NYARIBARI CHACHE/KEUMBU/909 which belonged to her late father Stanley Opande Nyakundi. It was her evidence that after her father's death, her mother Abigael Kemunto Opande and her stepmother Teresa Mochere were appointed as joint administrators of the estate of her late father vide HC Succession Cause No 59 of 2007. The said parcel number 909 was listed as one of the assets of the deceased. According to the evidence on record, the Plaintiff was one of the Proposed Sureties in the Petition for Letters of Administration. At the time of applying for confirmation of Grant Teresa Mochere who was a co-Petitioner to the Plaintiff's mother in her affidavit sworn on the September 3, 2009 at paragraph 5 deponed as follows:
- ' (5) That we have also agreed on the mode of distribution of the said estate which is as follows;
- a. Parcel No NYARIBARI CHACHE/KEUMBU/909 be registered in the name of Abigael Kemunto Opande to hold in trust for her sons'.
74. In her evidence, the plaintiff confirmed that the sons of Abigael were George Morara and the 1<sup>st</sup> Defendant. It is not in dispute that Abigael subsequently sub-divided parcel number into parcels number 3017 and 3018. She then transferred parcel 3018 to George Morara while parcel number 3017 remained in her name as she planned to transfer the same to the 1<sup>st</sup> Defendant. It was the 1<sup>st</sup> Defendant's evidence that before she died, Abigael had told him to travel to Kisii so that she could transfer the said parcel to him. It is therefore the 1<sup>st</sup> Defendant's case that parcel no 3017 did not form part of the estate of Abigael as she held it in trust for him and it was therefore not available for distribution among her beneficiaries including the Plaintiff.
75. Learned counsel for the 1<sup>st</sup> Defendant submitted that by purporting that parcel no 3017 formed part of the estate of Abigael, she is seeking to re-open the succession proceedings in HC Succession Cause No 59 of 2007 which determined how parcel 909 should be distributed.
76. I am of the view that the question as to whether parcel number 3017 was held by Abigael in trust for the 1<sup>st</sup> defendant is a valid one given the fact that the said parcel emanated from parcel number 909 which belonged to the late Stanley Opande Nyakundi, the husband to the Abigael and father to both the Plaintiff and 1<sup>st</sup> Defendant. However, this question ought to be addressed by the High Court at the time of distributing the assets of Abigael in the succession case.
77. The fifth question relates to the reliefs sought by the plaintiff and whether she is entitled them. In her Plaint the Plaintiff alleged fraud against the 1<sup>st</sup> 2<sup>nd</sup> and 4<sup>th</sup> Defendants. Additionally, she has pleaded that the alleged sale, transfer and registration of the suit properties in the name of the 3<sup>rd</sup> defendant was irregular, illegal, null and void. She therefore prayed for inter alia a declaration that the sub-division of the original parcel number NYARIBARI CHACHE/KEUMBU/3017 was unlawful, irregular,



illegal fraudulent and void for all intents and purposes and for cancellation of the said titles. She also prayed for a declaration that the sale, transfer and registration of the suit properties in favour of the 3<sup>rd</sup> defendant was unlawful, illegal, invalid and void in so far as the suit properties arising from LR No NYARIBARI CHACHE/KEUMBU/3017 were and/or still are the subject of succession proceedings in respect of the estate of the deceased. She further prayed for cancellation of the titles in respect of LR No NYARIBARI CHACHE/KEUMBU/3303-3304,3305,3306,3307 and 3308 respectively and rectification of the register in respect of parcel number NYARIBARI CHACHE/KEUMBU/317 with a view to reinstating and/ restoring the title in respect of the original parcel of land. Finally, she prayed for a permanent injunction to restrain the 3<sup>rd</sup> defendant from taking possession, building on or dealing with the suit properties as well as general damages and costs.

78. In their respective submissions, counsel for the Defendants submitted that the Plaintiff had not proved fraud against any of the defendants. In particular Counsel for the 4<sup>th</sup> and 5<sup>th</sup> submitted that none of the allegations of fraud attributed to the 4<sup>th</sup> defendant were proved as the 4<sup>th</sup> defendant discharged his duties in accordance with law. He pointed out that according to the entries captured on the green card which were explained by DW3, the Land Registrar received and verified all the necessary transfer documents presented to him and that there was no lapse or mistake on his part. He cited the case of *Kinyanjui Kamau v George Kamau (2015) eKLR* for the proposition that allegations of fraud must be pleaded and strictly proved.
79. Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants submitted that the plaintiff did not adduce any evidence to prove the allegations fraud particularized in the plaint. He relied on the case of *Evans Otiemo Nyayakwana v Cleophas Bwana Ongaro (2015) eKLR* where Majanja J held that proof of fraud involves questions of fact and that it is not enough to simply raise issues of fraud in the pleadings without proof.
80. The plaintiff produced a bundle of documents as exhibits to show how the transactions on the suit property were done. Among the plaintiff's exhibits are the ruling of the Court in HC Misc Application No 187 of 2012 at page 29 of the Plaintiff's bundle of documents. The said ruling is to the effect that the Grant issued to the 1<sup>st</sup> Defendant in Keroka SRM Succession Cause No 4 of 2012 is unlawful, null and void.
81. Counsel for the 3<sup>rd</sup> Defendant submitted that the transfer of parcel number 3017 from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> defendant on May 11, 2012 was lawful as there was nothing prohibiting the said transfer. He further submitted that since the prohibitory order that had been issued by the court was lifted on September 25, 2012 as demonstrated by the green cards, the subsequent transactions on the suit property including the sub-division of parcel number 3017 into parcels number 3303-3308 and, transfer of the same to 6<sup>th</sup> Defendant and the ultimate amalgamation of the same into parcel number 3728 were lawful, regular and unassailable. He relied on Section 26 of the *Land Registration Act* and contended that the plaintiff had failed to prove fraud against the 3<sup>rd</sup> Defendant. He cited the case of *Dr Joseph Arap Ngok v Justice Moiwo Ole Keiwa & 5 Others Nai Civil Appeal No 60 of 1997 (Unreported)* cited in the case of *Corner Motor Works Limited V Intex Construction Limited (2018) eKLR* where the court dealt with the issue of indefeasibility of title.

Section 26 provides the criteria for impeaching a title to land. It provides as follows;

- ' 26. Certificate of title to be held as conclusive evidence of proprietorship
- (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.

82. Although I agree with counsel for the 3rd Defendant that the law is protective of titles under section 26 of the *Land Registration Act*, it is imperative to note that the protection is not absolute. It can be removed and title impeached in two instances. The first is where the title is obtained by fraud or misrepresentation and the second is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. This was emphasized in the case of *Elijah Makeri Nyangura vs- Stephen Mungai Njuguna & Another [2013] eKLR* where Munyao J, answered the question as to whether title is impeachable under section 26 (1) (b) of the said Act as follows;

‘First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.’

83. I have held earlier in this judgment, the invalidity of the transactions relating to parcel number 3017 and its resultant titles stems from the fact that the Grant that was issued to the 1<sup>st</sup> Defendant was revoked on the grounds that it was illegal, null and void and that is a fact that was pleaded and proved by the plaintiff.

- a. At paragraph 17 of the Plaint, the Plaintiff specifically pleaded as follows: ‘17. The Plaintiff avers and/or contends that the alleged sale, transfer and registration of the properties in the name of the 3<sup>rd</sup> Defendant and the subsequent issuance of title in favour thereof were irregular, illegal and fraudulent, null and void.’

84. Although there was no evidence adduced to demonstrate that the 3<sup>rd</sup> Defendant was party to any fraud or misrepresentation and that it might have been an innocent purchaser for value, yet I am satisfied that the conditions provided for impeachment of a title as per the provisions of Section 26 (1) (b) have been met. I therefore find and hold that the amalgamated title of the 3rd defendant having been obtained illegally, is liable to be cancelled.

85. The 3<sup>rd</sup> Defendant filed a claim against the 6<sup>th</sup> defendant. In the said claim she averred that it was a term of the agreement for sale between her and the 6<sup>th</sup> Defendant that she would transfer to the 3<sup>rd</sup> Defendant a good title devoid of any adverse claims. The 3<sup>rd</sup> Defendant sought indemnity against the 6<sup>th</sup> defendant in the sum of Kshs 46,000,000/= being a refund of the purchase price, costs and expenses incurred by the 3<sup>rd</sup> defendant, compensation for loss of use of the property, costs and expenses incurred in this suit. By entering into the said agreement the 6<sup>th</sup> defendant held herself out as having a valid title to the suit property and agreed to indemnify the 3<sup>rd</sup> defendant in the event that the title was found to be invalid. The 6<sup>th</sup> defendant did not rebut the evidence of the 3<sup>rd</sup> defendant that she paid the agreed



purchase price of Kshs 46,000,000/= as per the sale agreement was acknowledged. The other expenses were however not proved.

86. The upshot is that the plaintiff has proved his case on a balance of probabilities. Additionally, the 3<sup>rd</sup> defendant has proved his cross - claim against the 6<sup>th</sup> defendant. Consequently, I enter judgment for the plaintiff and make the following final orders:

1.

(a) A declaration is hereby made that the sub-division of the original parcel of land that is LR No NYARIBARICHACHE/KEUMBU/3017 was unlawful, irregular, illegal, fraudulent and void for all intents and purposes. The title in respect of LR Nos. NYARIBARI CHACHE/KEUMBU/3303, 3304, 3305, 3306, 3307 and 3308 and all subsequent titles including LR no LR No NYARIBARI CHACHE/KEUMBU/ 3728 are hereby cancelled. The register in respect of LR No NYARIBARI CHACHE/KEUMBU/3728 shall be rectified with a view to reinstating and restoring the title in respect of the original parcel of land.

b. A declaration is hereby made that the sale, transfer and registration of the suit properties that is LR No NYARIBARI CHACHE/KEUMBU/3303, 3304, 3305, 3306, 3307 and 3308 to and in favour of the 3<sup>rd</sup> defendant were unlawful, illegal, invalid and void in so far as the suit properties arising from LR No NYARIBARI CHACHE/KEUMBU/3017 were and still are the subject of succession proceedings vide Kisii HCC Miscellaneous Application No 187 of 2012 in respect of the estate of the deceased.

c. A permanent injunction is hereby issued restraining the 3<sup>rd</sup> defendant either by herself, her agents, and/or servants from entering upon, taking possession, building on, occupying, encumbering and/or dealing with the suit properties arising out of LR No NYARIBARI CHACHE/KEUMBU/3017 and its subsequent subdivisions in such manner and/or otherwise detrimental to the interest of the estate of the deceased.

d. The costs of the suit shall be borne by the defendants.

2. Secondly, I enter judgment for the 3<sup>rd</sup> Defendant against the 6<sup>th</sup> Defendant in the sum of Kshs 46,000, 000/= together with costs and interest from the date of this judgment until payment in full.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MS TEAMS PLATFORM THIS 16<sup>TH</sup> DAY OF FEBRUARY 2023.**

**J.M ONYANGO**

**JUDGE.**

In the presence of;

1. Mr. Mulisa for the Plaintiff
2. Miss kebungo for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants
3. Miss Kellen for Mr. Muumbi for the 3<sup>rd</sup> Defendant
4. No appearance for the 4<sup>th</sup> and 5<sup>th</sup> Defendants
5. Court Assistant: Mr. Oniala

