



**Wachira v Gituthu (Environment & Land Case E007 of 2023)
[2024] KEELC 13535 (KLR) (22 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13535 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E007 OF 2023
AK BOR, J
NOVEMBER 22, 2024**

BETWEEN

EDWARD MACHARIA WACHIRA PLAINTIFF

AND

MONICA MUTHONI GITUTHU DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on 13/4/2023 claiming that through his father Samuel Chira Ngure, he was registered as a member of Othaya Mahiga Chinga Exffaco Limited (the Company) in 1973 and that upon payment of Kshs. 420/= he acquired 20 shares in the Company formed for purposes of buying land and allocation to its members. He claimed that in 1975, he was allocated plot no. 96 measuring two acres for the 20 shares and that he settled on the land in 1976 following issuance of the letter of allocation dated 29/6/1975. He claimed that he established his homestead on the suit land and constructed three houses and planted trees on the land. In the mid-1980s when the land was resurveyed, his parcel was given a new number being plot no. 97 but on the ground it remained the same. He was allocated ballot no. 97 to confirm that he was the rightful owner of plot no. 97.
2. The Plaintiff claimed that he enjoyed peaceful occupation of the suit land from 1976 to 2001 when he relocated from Uruku where the land is situated and moved to Othaya in Nyeri. He averred that the Defendant connived with the officials of the Company and got the Plaintiff's name cancelled from the register and in his place, the Defendant's name was inserted as the owner of plot no. 97 which had become Mutara Mutara Block 11/97 (Uruku) and that she was issued a title deed on 14/11/2006. He pleaded particulars of fraud against the Defendant in obtaining registration as proprietor of the suit land.
3. The Defendant filed her defence in which she denied the Plaintiff's claim and averred that she was rightfully issued a clearance receipt by the Company to enable her process the title deed for Mutara Mutara Block 11/97 (Uruku). She denied that the Plaintiff had been in occupation of the suit property



- while averring that she found a third party on the suit land and not the Plaintiff. Further, that the third party vacated the suit property allowing the Defendant to enjoy peaceful possession since 2020. The Defendant added that the Plaintiff had been indolent and had not pursued his title since 1976.
4. The hearing of the suit commenced on 26/2/2024. The Plaintiff gave evidence and told the court that he used to stay at Uruku in Laikipia but relocated to Othaya in 2001. He claimed that in 1973, his father Samuel Chira Ngure registered him as a member of the Company and paid for him the requisite fees of Kshs. 400/= pursuant to which he was issued share certificate no. 2434 in the name of Edward Gichuru Chira which was the name his father used to register him. At the time, he had not obtained a national identity card. He later obtained an identity card bearing the name Edward Macharia Wachira. He relied on the affidavit which he swore in 1987 to correct the name on the register.
 5. He told the court that he was allocated plot no. 96 in 1975 and that when the land was resurveyed, it was given a new number which is 97. He was also issued a ballot card for 0097. He moved from Uruku, Laikipia to Othaya in 2001 and left his parcel of land plot no. 97 under the care of Jeremiah Mwangi Warui. He told the court that he had built two houses and planted trees on the suit land. Sometime in 2020, he was informed that somebody else was claiming ownership of the suit land but he could not travel to Mutara. He claimed that that was when the Chief allowed the Defendant to start cultivating on his land except the part with his homestead. He reported the matter to the Rumuruti Criminal Investigations Department (CID) and the Defendant was summoned.
 6. When they perused the register of allottees forwarded to the Rumuruti Land Registry, they noted that his name had been canceled against plot no. 97 and the Defendant's name inserted in the register. He lodged a complaint with the land buying Company but they could not resolve the matter because a title had already been issued to the Defendant. He produced copies of the ballot cards, the share certificate in the name of Edward Macharia Wachira, photographs taken of the structures he had erected on the suit property and the search done on 23/7/2020 as well as the abstract of title confirming that a title over the land was issued to the Defendant on 14/11/2006.
 7. On cross-examination, he stated that he was born in 1957 but his identity card showed 1960. He chose to go by 1960 as his year of birth. By 1976 he was 16 years old. He maintained that his father registered him as a shareholder in the Company in 1973. His father had 5 sons and his brothers got land elsewhere. By 1976 he had not married. He told the court that he moved on to the land in 1982 but he built in 1980. He swore the affidavit in 1987 to change his name.
 8. When he went to collect his title he was told that it had a case. He stated that he balloted in 1987 for the suit land. He went back to Othaya in 2001. He moved to the land with his wife and two children. He gave his wife's name as Peris Wangechi. The area Chief called him in 2020 but because he had broken his leg, he could not go to see the Chief to present his documents. He did not know when his name was cancelled from the register. He did not go to the chief's office but came to court instead. He did not know that the Defendant's late husband was a shareholder in the Company. On re-examination he stated the he was given the suit land in 1976 and entered it in 1980 and started living with his family. He was informed in 2020 by the people in the area that some people had gone to plough the land.
 9. The Plaintiff called Alice Wangari Wachira to give evidence on his behalf. She told the court that she knew the Plaintiff, and that he was her neighbour in Mutara Location. Her plot was no. 156 was in her husband's name, Ephantus Wachira Ndegwa. She bought the land with her husband in 1985 and they moved onto the land in 1988. Their land measured 2 acres just like all the parcels which were allocated by the Company. The person who sold them the land had a ballot card with the plot number. They got the title in 2021.



10. In 1988 when they moved and settled on their plot no. 156, they found the Plaintiff occupying his parcel no. 97 also measuring 2 acres. She stated that he had constructed three houses and that the main house and the kitchen were still intact. He had also planted trees. They remained good neighbours until 2001 when the Plaintiff relocated to Othaya and left his son Chira behind. When his son relocated the home was occupied by Mogaka for about a year. Jeremiah Mwangi moved into the Plaintiff's homestead after Mogaka left. She told the court that a tractor was taken to plough the suit land in 2021 and she assumed the Plaintiff had sold his land. She called him and he confirmed that he had not sold the land.
11. On cross-examination, she told the court that the Plaintiffs' wife was called Veronicah Wangechi and that they shared a boundary. She knew his children one of whom was in school with her own children before they moved out. She was looking after the suit land because it was nearby and Chira had asked her to watch over it.
12. Misheck Theuri Mwai was also called by the Plaintiff to give evidence. He is a former director of the Company having been elected on 21/11/1991. The other directors had died. The Company was formed in 1968 with the aim of acquiring land for its members. To be a member of the Company, one was supposed to buy shares. One share was equivalent to Kshs. 20/= and one was required to buy twenty shares and pay registration fees of 20/= all amounting to Kshs. 420/=. He confirmed that the Plaintiff was a member of the Company and had been allocated plot no. 96 measuring two acres on which he constructed houses and planted trees.
13. When new directors came into office in 1980, they resurveyed the farm and in 1985, members were invited to ballot again. The Plaintiff's land was given number 97. He could not recall the date when the Defendant went with the ballot card for no. 97 and he cancelled the Plaintiff's name and inserted the Defendant's name as the owner of the suit land. When he was cancelling the register, he did not know that the plot was already occupied by the Plaintiff. He asserted that the Plaintiff was the rightful owner of the suit land having settled on the land in 1976 and that the Defendant's title should be cancelled.
14. On cross-examination, he told the court that the Plaintiff's land was resurveyed and became parcel no. 97. He explained that the Defendant went with the second ballot no. 97 which was yellow in colour while the Plaintiff took ballot no. 96. He explained that a person with the second ballot had been told to return the ballot to the Company if he found the land ploughed or developed but the Defendant did not return the ballot. He did not have the minutes of the meeting in which this resolution was passed. The witness stated that he knew the Plaintiff but did not know the Defendant.
15. He claimed that the Plaintiff settled on the suit land in 1976 but the Defendant took the card to him sometime around 1990. The Plaintiff was not staying on the suit land but his things were on the land. He was referred to the receipt issued by the Company dated 15/11/1993 for survey fees which gave the plot no. as 362/97. He was emphatic that Kaguru was to follow 362 to see the new number but not 97. He confirmed that the Company had indicated that plot no. 362 had become number 97. He conceded that the receipt issued to Njuguna Kaguru for payment of Kshs. 50/= indicated parcel no. 97 as the new number with the old number being 362.
16. He explained that the Defendant went to the Company's office and at that time the Plaintiff had number 96 for 1975. He did not pick the second ballot issued in 1985 which is why it was collected by the Defendant. He stated that the Defendant refused to return the ballot after she found the land occupied yet the first ballot issued in 1976 was what enabled the Plaintiff to settle on the land. By 1985, the Plaintiff had not collected the second ballot. His reason for cancelling the Plaintiffs name from the register was that he assumed the Plaintiff had another parcel of land. The witness claimed that he went



- to the suit land and found the Plaintiff's structures on the land. He denied clearing the Defendant for issuance of the title.
17. On re-examination, he clarified that the Plaintiff's name was written against no. 97 on the register. When they cancelled the Plaintiff's name from the register, he was not on the land even though his things were there. The registrar used to issue the titles from Nanyuki before he moved to Rumuruti. The register is what was used to process titles. Through the cancellation of the register and insertion of the Defendant's name she was able to get a title.
 18. Margaret Njoki Mwangi, the Rumuruti Land Registrar came to court to testify after receiving summons. She produced the green card for Mutara Block 2/97 and the members' register for the Company. She explained that there was an old register which they received from Nanyuki land registry and carried to Rumuruti but in May 2023 the Company through the National Land Commission forwarded another register asking them to use it. The new register showed that parcel no. 97 was allotted to the Plaintiff. According to the old register, plot no. 97 was in the Plaintiff's name. Both registers did not have his identity card number. The second entry on the green card which was opened for the suit land on 2/9/1996 showed that the Defendant was registered as the proprietor of the suit land on 14/11/2006 and a title deed was issued to her. She clarified that the old register was handwritten while the new one was typed.
 19. On cross-examination, she explained that she did not know the basis upon which a title was issued to the Defendant. They did not have the parcel file to support the transactions that took place in 2006. When somebody goes to collect a title, they confirm using the register. She did not know the register appearing in the Plaintiff's trial bundle or where it came from. When the lands office moved from Nanyuki to Rumuruti, they did not have a movement register, only a handover report was done of the records sent to Rumuruti. She acknowledged that they were the custodians of the registers brought by the Company. She was emphatic that they did not alter the register at the lands registry and added that access to the register is restricted. She stated that the clearance certificate issued by the Company were bigger than what the Defendant was relying on with the original one being yellow and signed by two directors. That that had been the practice in Rumuruti since 2021. She confirmed that the titles issued before she joined were valid. She did not have any documents to support the transaction of 2006.
 20. Isaac Kimani Njuguna gave evidence for the defence. He told the court that his mother, who is the Defendant, was the registered proprietor of the suit land. His late father Njuguna Kanguru alias Kaguru joined the Company on 2/11/1971 and bought 20 shares. He was issued share certificate no. 1419. His father was allocated plot no. 362 measuring two acres on 29/6/1975. At that time, the allocation cards were issued in Kikuyu language and showed the names of the Company's directors. The Company surveyed its land in 1981 which meant all shareholders were required to pay survey fees. His father paid Kshs. 10/= and was issued a receipt by the Company dated 4/9/1981. He paid a further sum of Kshs. 50/= on 1/8/1983. After the survey was concluded and new numbers given, each shareholder was required to pay Kshs. 750/= to be issued ballot cards for the new numbers. Njuguna Kaguru was allocated plot no. 97 to replace no. 362.
 21. He went on to explain that between 28/6/1993 and 15/11/1993, Njuguna Karugu paid a total of Kshs. 7800/= for allocation of plot no. 97. He was issued the ballot card indicating plot no. 97. In 1994, his father took his wife, who is the Defendant to the Company offices at Ndaragwa and they got his name replaced with hers in the register of the Company. Unfortunately, Njuguna Kaguru died on 31/3/1999. His mother used to conduct businesses on behalf of his father including collecting bonus on his behalf. By the time his father died, the Defendant had taken over from him in 1994 and could therefore participate in the affairs of the Company as a member including processing the title for plot no. 97.



22. His mother paid Kshs. 2125/= to the Company for issuance of the title for plot no. 97 on 6/11/2006, and the Company sent her to the Laikipia District Land Registry. She submitted her receipts to the lands office on 7/11/2006 and was told to pick her title after one week. She collected her title over the suit property on 14/11/2006. Nobody challenged the process until 2020 when she went to check her land and found Jeremiah Mwangi Warui on the land. When she informed him she was the registered owner of the land and wanted to use it Jeremiah left the land. He told the court that the Defendant did not find the Plaintiff on the land. The Defendant had been cultivating the land since 2020. He maintained that this mother obtained the land legally.
23. He produced copies of the title deed issued in the Defendant's name on 14/11/2006, certificate of death for Njuguna Kaguru, share certificate no. 1419 issued on 2/11/1971 to Njuguna Kaguru, ballot paper issued in Kikuyu language by the Company to Njuguna Kaguru on 29/6/1975 for plot no. 362, receipt dated 4/9/1981 on account of survey fee paid by Njuguna Kaguru, receipt issued by the Company on 1/8/1983 to Njuguna Kaguru for payment of survey fees for plot no. 362, receipt dated 28/6/1993 issued to Njuguna Kaguru as registration fee in respect of certificate no. 1419 old no. 362 new 97, receipt issued by the Company dated 28/6/1993 for payment of Kshs. 150/= for plot no. 362/97, receipt dated 15/11/1993 issued to Njuguna Kaguru on payment of Kshs. 600/= for plot no. 362/97 and members ballot card no. 97 issued to Njuguna Kaguru signed by the chairman, vice chairman, secretary and treasurer of the Company.
24. He also produced a copy of the letter dated 19/11/1984 issued by the Chief of Kiiru Location authorising the Defendant to collect the bonus on behalf of Gituthu Kanguru. He also tendered in evidence the receipt dated 6/11/2006 for payment of Kshs. 2125/= to the Company for title clearance for plot no. 97. He produced a copy of the letter dated 19/6/2023 from the Chief, Mutara Location regarding the complaint by the Defendant that somebody had entered her land.
25. On cross-examination, he told the court that he was the Defendant's son and that his mother was issued a ballot for plot no. 97. He did not have the register of members with him but maintained that his mother was a member of the Company. He told the court that his mother started cultivating the land in 2020 and by then somebody had a structure on the suit land. He was emphatic that the structure on the suit property did not belong to the Plaintiff and that it belonged to Jeremiah Mwangi Warui. They did not sue Jeremiah because he was willing to leave the land.
26. He explained that the Defendant became a member of the Company by virtue of being the wife of Njuguna and that the Company records reflected Njuguna Karugu's name. He conceded that the survey fees was paid for plot no 362 but was emphatic that that number changed to plot number 97. He pointed out that the receipt bore the old no. 362 and the new number 97. He told the court that his mother fenced the land in 2020. He maintained that Macharia constructed the structures on the land but they found Jeremiah Warui on the land and not Macharia.
27. James Etir Eleman the Chief of Mutara gave evidence, and told the court that on 27/7/2020 the Defendant went to complain that Jeremiah Warui had gone to occupy her land. Mr. Eleman called Warui who expressed his willingness to move out of the land but referred the Chief to somebody called Macharia. When Macharia was called to go to the office to present his receipts and ballot card for the plot he failed to show up. Consequently, the Chief allowed the Defendant to continue using the suit land since she had all the legal documents. He produced a copy of the register for block 11/97 Mutara area which the former chief had handed over to him.
28. On cross-examination, he stated that he had been a Chief since 1999 and that the suit property was 15 kms away from his office. After the complaint was raised he went to the land later. When he summoned the Plaintiff he did not go to his office. The Chief confirmed writing the letters dated 19/6/2023 and the



second one in 2020. He told the court the he did not know the Plaintiff and that it was Jeremiah Warui who was staying on plot no. 97. To determine disputes, he would look at ballot cards. He confirmed that in some instances there were two ballot cards for one parcel of land. The second ballot card was yellow and had the plot number. He was emphatic that when he called the Plaintiff on telephone and wrote him a letter, the Plaintiff failed to take documents to his office to prove that he owned the suit land.

29. The court directed parties to file written submissions after conclusion of the hearing the case. The Plaintiff submitted that he joined the Company and was registered as a member in 1973 through his father. That he was issued share certificate no. 2434 after acquiring 20 shares for the sum of Kshs. 420/=. In 1975 the Company allocated him plot no 97 measuring 2 acres where he settled in 1976 and established his homestead that comprised of three houses and planted trees. In the mid-1980s, the Company resurveyed the land where his parcel of land was and where he had settled and gave it plot no. 97. He was issued a card for plot no. 97 confirming that he was its owner.
30. He enjoyed peaceful and uninterrupted occupation and use of the land from 1976 to 2001 when he relocated from Uruku in Laikipia to Othaya in Nyeri. Sometime in 2020 he received a letter from the Chief of Mutara Location requiring him to present documents of ownership of the suit property for further investigations. That is when he learnt of the registration of the Defendant as proprietor of the suit land. He lodged a criminal complaint with the investigative authorities and visited the land Registry in Rumuruti where he obtained documents showing the status of registration of the suit land and the documents which the Defendant used to acquire the title deed over the suit land.
31. The Plaintiff submitted that the Defendant acquired title over the suit property fraudulently in connivance or collusion with the Company officials where his name was canceled from the register as the owner of plot no. 97 and instead the Defendant's name was inserted. He relied on the particulars of fraud he pleaded in the plaint. He submitted that he was challenging the validity of the Defendant's title and was seeking its cancellation before he can be declared the rightful owner of the land.
32. He cited Section 26 of the [Land Registration Act](#) which provides that courts are to take as a prima facie evidence, the certificate of title issued to a person as proprietor of the land as being the absolute and indefeasible owner of the land subject to the encumbrances and conditions endorsed on the certificate. Further, that the title of the proprietor can only be challenged on the grounds of fraud or misrepresentation which he is proved to have participated in, or where the certificate of title was acquired illegally, unprocedurally or through a corrupt scheme. The Plaintiff invited the court to look at the root of the title obtained by the Defendant and cited David Kiptorgen v Commissioner of Lands & 4 Others [2015] eKLR and what the court observed regarding proof of the acquisition of title. Unfortunately, the Plaintiff did not furnish a copy of that decision to the court.
33. The Plaintiff submitted that he produced a copy of the land allocation card issued to him by the Company and that he had testified that he settled on the land in 1976. Further, that he produced receipts confirming purchase of shares in the Company. He relied on the evidence of Misheck Theuri Mwai, a former director of the Company who testified that the Defendant went to his office with ballot card no. 97 as a result of which he cancelled the Plaintiff's name from the Company register and inserted the Defendant's name without knowing that the land was occupied by the Plaintiff.
34. The Plaintiff relied on the extract of the register of the allottees of the Company which showed that his name was cancelled and that of the Defendant inserted in the register. He also relied on the evidence of the Land Registrar including the register of the allottees of the Company's land which had his name as the owner of plot no. 97. He maintained that the Defendant's title could not be said to have a good root. He adverted to the evidence of Misheck Theuri Mwai who stated that in the 1990s when the



- Defendant presented herself to the office with a ballot card for plot 97, that is what paved the way for her to be issued a clearance certificate after Mr. Mwai had unprocedurally cancelled the Plaintiff name from the Company register as the allottee of plot no. 97.
35. He went on to argue that the cancellation of his name from the Company register and replacement with the Defendant's name as the owner of plot no. 97 may have been an act of connivance with the official or a genuine mistake of commission. He faulted the land registrar for issuing a title to the Defendant yet they had a register supplied by the Company which clearly showed that plot no. 97 belonged to him. Based on this, he submitted that the Defendant's title deed was obtained illegally, unprocedurally and that the Defendant could not find refuge in Section 26 of the *Land Registration Act*. He referred to other authorities which he did not provide to the court.
 36. The Plaintiff also submitted that the Defendant obtained a title deed for the suit land in 2006 but did not attempt to take possession until 2020 when she sought the intervention of the area Chief to take possession of the land and vacant possession. According to him, the Defendant had not given any plausible explanation as to why she waited for 14 years before attempting to take possession of the suit land. He went on to argue that the Defendant may have had good reason for not testifying personally and instead sent her son who was a police officer to argue her case. That by so doing, she denied the court the opportunity to appreciate whether she influenced the process of acquisition of the title over the suit land or whether she was innocent.
 37. The Plaintiff submitted that it was trite that fraud must be proved on a standard higher than balance of probabilities but below beyond reasonable doubt. He urged that the only irresistible conclusion one could reach based on the evidence adduced was that the Defendant was a party to the fraud in the acquisition of the title over the suit property. On the other hand, he had been in occupation of the land from 1976 to date and that he had constructed his homestead either directly with his family or family members or by somebody authorized by him to stay on the land. He maintained that it was not disputed that the suit property was being occupied when the Defendant visited it in 2020. He relied on the evidence of the Chief on this and urged that he had proved his claim to the required standard and was therefore entitled to the reliefs sought in the plaint.
 38. The Defendant submitted that Sections 24, 25 and 26 of the *Land Registration Act* protected the rights of a registered owner as indefeasible and absolute while setting out the circumstances under which such a title could be impeached. She relied on *Wainaina Kiguru & Another (ELC Case E023 of 2021) [2022] KEELC 3261 (KLR) (28 July 2024) (Judgment)* on the point that when a registered proprietor's root of title was challenged, they had to go beyond the instrument to prove the legality of how the title was acquired.
 39. The Defendant submitted that her husband Njuguna Kaguru was a member of the Company and that he was allocated plot no. 362 and that when the resurvey was done, he was allocated plot no. 97. He relied on the evidence of Misheck Theuri Mwai who confirmed that the Defendant complied with all the processes including having a share certificate and original ballot card which was white in colour. She submitted that the Company cleared her to process the title and that it was Misheck Theuri Mwai who canceled the Plaintiff's name from the register and inserted her name. The Defendant also relied on the evidence of the Chief who stated that the Plaintiff failed to supply documents confirming his ownership of the suit land.
 40. The Defendant submitted that the Plaintiff was not being candid to the court for he told the court that he was initially allocated plot no. 96 and that when the resurvey was done, he did not follow up with the Company to establish which plot number he had been reallocated. The Defendant pointed out that the effect of a resurvey meant that all the plot numbers would change and fresh ballot numbers would



be issued to the members. She was emphatic that Njuguna Kaguru was the first one to be allocated plot no. 97 and that his title should prevail. On this point, the Defendant submitted that Mischek Theuri confirmed that the Plaintiff did not collect his ballot card after a resurvey and reallocation of the plot numbers.

41. The Defendant submitted that the Plaintiff had failed to establish a case of fraud on her part to the required standard. She added that during cross-examination, the Plaintiff was not able to tell the court how the Defendant took part in the fraudulent acquisition of the suit property yet he confirmed that the Defendant did not have capacity to prepare or issue documents. She urged that Mischeck Theuri and the Chief confirmed that the Defendant produced the original documents in relation to parcel no. 97, which were the first ballot card which was white and the second ballot card which was yellow and had the plot no.
42. Further, that Mr. Mwai confirmed that the Defendant had all his documents before including her name in the register. The Defendant invited the court to note the fact that the register showed other names which had been crossed out and that it was not only the Plaintiff's name which was crossed out on the register. The Defendant maintained that the evidence adduced showed that she followed due process in acquiring her title and the prayer for cancellation of her title over the suit property must fail.
43. The main issue for determination is whether the court should cancel the title held by the Defendant over the suit property and issue one in the Plaintiff's name. It is not contested that the suit property initially belonged to the Company which was carrying out the business of buying land, subdividing it into small portions and allocating the resultant parcels to its members after subdivision. It did this through the issuance of ballot cards which followed the registration of the member, issuance of share certificates and payment of the requisite fees by the members.
44. The Plaintiff's claim is that his father, Samuel Chira Ngure, bought him shares from the Company in 1973 when he would have been 13 years old at the time. The share certificate and receipts which the Plaintiff relied on were issued in the name of Edward Gichuru Chira, and his contention is that those were the names which his father used to register him as a member of the Company but that when he obtained an identity card, his names appeared as Edward Macharia Wachira. He relied on the affidavit which he swore in 1987 as the basis for the correction by the Company of his name on the register. Ordinarily, a change of name is not done through an affidavit. Apart from the receipts where the name Edward Gichuru Chira was crossed out, no evidence was led to show how the Company got the Plaintiff's name registered as its member in place of Edward Gichuru Chira. It was not proved when it actually happened.
45. The Plaintiff claimed that he settled and established his homestead on the suit property in 1976. By then he would have been 16 years old based on his evidence that he was born in 1960. There were contradictions in his evidence and at some point he told the court that he settled on the land in 1982 but that he built in 1980. He claimed to have lived on the suit property from 1976 until 2001. Alice Wangari Wachira, whom he called as a witness gave a different name for the Plaintiff's wife's from the name which the Plaintiff gave as his wife's name. This raises doubt as to whether they were neighbours from 1988 as she claimed as well as whether the Plaintiff took possession of the suit land from 1976 to 2001 as he claimed. The other contradiction was that the Plaintiff told the court that when he moved to Nyeri in 2001, he left the suit land under the care of Jeremiah Mwangi Warui which contradicts the evidence of Mrs. Wachira who stated that the Plaintiff left his son Chira on the land.
46. What emerged from the evidence of both parties was that initially, the Company allocated members parcels of land which were indicated on the ballot cards and receipts. The Plaintiff claimed that he was allocated plot no. 96 measuring two acres for the 20 shares in 1975 and that when the land was



- resurveyed in the mid-1980s, his parcel was given plot no. 97 even though it remained the same on the ground. He stated in his evidence that he relocated from the suit property to Nyeri in 2001. That means that by the time the Defendant went to the land in 2020 he was not in occupation of the suit land and had not processed the title over the suit land.
47. The Company's former director told the court that the land in dispute was resurveyed when the new directors came into office in 1980 and that members were invited to ballot again in 1985. He stated that the Plaintiff's land was given number 97. He told the court that the Plaintiff took ballot number 96 which was the earlier ballot. When cross-examined, the Company's director told the court that the Plaintiff did not pick the second ballot issued in 1985. During the trial, it emerged that when the resurvey was done, the Plaintiff did not follow up with the Company to establish which plot number he had been reallocated. Moreover, the Plaintiff did not explain why he failed to process his title from the time he was allocated the suit property until 2023 when he filed this suit.
 48. It is not in dispute that the Plaintiff was not on the suit property on 14/11/2006 when the director cancelled his name from the Company's register and inserted the Defendant's name. The director's explanation for cancelling the Plaintiff's name from the register and replacing it with the Defendant's name was that the Defendant presented the second ballot card for parcel number 97 and that he did not know that the suit property was already occupied by the Plaintiff. The former director did not tell the court what would happen in scenarios where a member was already occupying the parcel reflected on the second ballot issued to a different member. One would have expected the company to keep a register of all its members and make sure that all of them were allocated land after the resurvey.
 49. The Company's former director did not provide any evidence to support his assertion that the Defendant was required to return her ballot no. 97 to the Company because the Plaintiff was already on the suit land. Since it was he that crossed out the Plaintiff's name and inserted the Defendant's name, he must have been satisfied that based on the Company's procedures at the time, the Defendant was its bona fide member, had balloted for plot number and deserved to be issued a title deed for parcel number 97.
 50. The handwritten page of the register which the Chief tendered in evidence has other names crossed out and new names inserted. It would have been helpful to the court if the full register had been produced. The court notes that the only page of the register which the Land Registrar produced has blank spaces for members allocated plot numbers 98, 99, 101, 104, 106, 122 and 124. Although similar and handwritten, it is different from the copy which the Chief produced. The court notes that neither copies of the register was certified by the Company which raises doubt about the authenticity of the register as a true reflection of the names of the members allocated land by the Company and the specific parcels they were allocated.
 51. It is noteworthy that on share certificate number 2434 which the Plaintiff relied on, the name Edward Gichuru Chira was cancelled and replaced with Edward Macharia Wachira. This confirms that it was the practice of the Company to cancel names on the ballots, receipts and register and replace them with other names. The Plaintiff produced two ballot cards for no. 97, one of which is in Kiswahili and has alterations to the name with a second one which bears his name. Unlike ballot card no. 96 issued to Edward Gichuru Chira bearing the date of 29/6/75, the two ballot cards number 97 which the Plaintiff produced do not bear the dates they were issued.
 52. In the affidavit which the Plaintiff swore on 5/8/1987, he averred that he bought shares in the Company for Kshs. 400/= and relied on receipts issued on 29/7/76, 15/1/85 and 10/4/84. Further, he averred that when the payments were made and those receipts issued by the Company, he sent his father who gave his name as Edward Gichuru Chiira not realising that he used the names Edward Macharia



Wachira in all his interests including the identity card. This contradicts the Plaintiff's evidence that it was his father who bought the shares in his name.

53. The assertion in paragraph 3 of the affidavit that his father got the receipts issued in Edward Gichuru Chiira's name and that he did not know that the Plaintiff was using the name Edward Macharia Wachira is not persuasive because a father would ordinarily know his son's name except where the son changed his name or names later in life. In any event, since the Plaintiff claimed to have been born in 1960, he could not have had an identity card in 1976 as he would have been 16 years old. It is doubtful that he would have bought shares or land from the Company at that age.
54. The Defendant produced a copy of the share certificate issued to her late husband, Mr. Njuguna Kaguru on 22/11/71 and the ballot dated 29/6/75 issued in his name for plot number 362. She also produced receipts bearing his name dated 4/9/1981, 1/8/1983, 28/6/1993 and 15/11/1993. The two receipts dated 28/6/1993 and 15/11/1993 give the plot number as 362/97 or old number 362 and new number 97. The Company issued the receipt dated 6/11/2006 to the Defendant on account of payment of Kshs. 2125/= for title clearance no. 97. The Defendant told the court that her late husband requested her to take over his place in the Company in 1994.
55. The thrust of the Plaintiff's contention in the suit is that the Defendant connived with the officials of the Company and got his name cancelled from the register and replaced by the Defendant's name as the owner of plot no. 97 which after registration became Mutara Mutara Block 11/97 (Uruku) and the Defendant was issued a title deed on 14/11/2006. The Company's director who the Plaintiff called as a witness confirmed to the court that it was he who crossed out the Plaintiff's name from the register as the owner of parcel number 97 and inserted the Defendant's name. That is the basis upon which the Defendant obtained a title deed over the suit land in 2006. No evidence was led to prove that the Defendant connived with the Company to have the Plaintiff's name removed from the register.
56. The Plaintiff failed to prove that the Defendant acquired her title over the suit property illegally, unprocedurally or through a corrupt scheme. He failed to prove that the title was obtained through fraud or misrepresentation which the Defendant participated in.
57. The claim fails and is dismissed. Each party will bear its costs for the suit.

DELIVERED VIRTUALLY AT NANYUKI THIS 22ND DAY OF NOVEMBER 2024.

K. BOR

JUDGE

In the presence of: -

Ms. W. Kamau holding brief for Mr. R. Ndubi for the Plaintiff

Mr. Isaac Kimani representing the Defendant

Court Assistant- Vanessa Muiruri

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