



**Maragara v Murage & 4 others (Environment & Land Case  
E004 of 2022) [2025] KEELC 1494 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1494 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E004 OF 2022**

**JA MOGENI, J  
MARCH 25, 2025**

**BETWEEN**

**LUCIA WANJIKU MARAGARA ..... PLAINTIFF**

**AND**

**JOYCE WANJIRU MURAGE ..... 1<sup>ST</sup> DEFENDANT**

**GRACE MUKUHI MWANIKI ..... 2<sup>ND</sup> DEFENDANT**

**DAVIS MBUIRIA MURAGE ..... 3<sup>RD</sup> DEFENDANT**

**HANNAH WANJIKU KANJA ..... 4<sup>TH</sup> DEFENDANT**

**HANNAH NDUNDU MURAGE ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Vide a Complaint dated 17/12/2021 the Plaintiff instituted this suit claiming the following:
  - a. That the Defendants joint registration and issuance of title for Nguirubi/thigio/836 on 14/05/2019 be declared illegal and void ab initio and further the same be annulled and revoked.
  - b. That upon grant of relief (a) herein above annulling/revoking the registration for title No. Nguirubi/thigio/836 on 14/05/2019 to the Defendants the Honorable Court be pleased to reinstate the Plaintiff's registration to Proprietorship for title Nguirubi/thigio/836.
  - c. That further to the foregoing grants of reliefs (a) and (b) herein the Land Registrar to Kiambu Lands Registry to effect registration process pursuant to Court directions
  - d. That costs of this suit be provided for
  - e. Any other ancillary relief just and equitable to be granted.



2. The Plaintiff's case is as follows. That on 14/07/1993 the Plaintiff became the proprietor to title Nguirubi/thigio/836 measuring three (3) Hectares and located in Thigio within Kiambu County. That some time in 2019 she conducted an official search of the referenced title and to her dismay she realized that the title of ownership in the land parcel Nguirubi/thigio/836 had been transferred to the Defendants on 14/05/2019 and a title had already been issued. It is her contention that she is still in custody of the original title issued to her on 14/07/1993.
3. The Plaintiff alleges that there was fraud perpetrated by the Defendants where the suit property was transferred without obtainance of Land Control Board Consent and without the Plaintiff assenting to execution of a transfer instrument. That it was also done without consideration and or payment of stamp duty.
4. The Plaintiff thus wants the Court to annul the Defendants' registration and to authorize the Land Registry in Kiambu to effectuate the process of reinstating the land to her.
5. Despite being served through substituted service as was directed by the Court on 15/02/2023 and advertised through the Standard Newspaper on 4/05/2023 through the classified section, the Defendants did not enter appearance and so the suit proceeded undefended on 27/01/2024.

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

6. The Plaintiff testified in Court on 27/01/2025 and asked the Court to adopt her witness statement dated 17/12/2021 including a list of documents of even date. It was her testimony that she was in Court because she was informed that her shamba was stolen and that she did not know why and by whom. That the parcel that was stolen was at Ngong and it was approximately 7 acres.
7. In support of her case, the Plaintiff filed the following documents as evidence;
  - i. Her own witness statement.
  - ii. Copy of the green card to parcel Nguirubi/thigio/836
  - iii. Copy of the title deed to parcel Nguirubi/thigio/836
8. It was her testimony that she served the Defendants through substituted service but they never entered appearance. She testified that she did not know why the original title shows three (3) hectares yet the copy of the green card shows 2:00 hectares. She told the Court that she was sold the land by some people when she was coming from the market after selling bananas. With that she closed her case.

#### **Analysis and Determination**

9. I have considered the pleadings filed by the Plaintiff and the evidence adduced before Court. The issue for determination is whether the Plaintiff has a valid claim over the suit property and whether she is entitled to the reliefs sought.
10. The suit is undefended. However, it is trite that the burden of proof still lies on the Plaintiff to prove their case on a balance of probabilities. In the case of Susan Mumbi Vs. Kefala Grebedhin; (Nairobi HCC No. 332 of 1993) Justice J. V. Juma had this to say:-

“The question of the Court presuming adverse evidence does not arise in civil cases. The position in civil cases is that whoever alleges has to prove. It is the Plaintiff to prove her case on a balance of probability and the fact that the Defendant does not adduce any evidence is immaterial.”



11. The Court of Appeal in *Mumbi M’Nabea Vs. David M. Wachira* [2016] eKLR while discussing the standard of proof in civil liability claims in this jurisdiction stated as follows:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not .... The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M’airanyi & Others vs. Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000* [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

12. The Plaintiff’s Counsel filed written submissions dated 12/3/2025 in which he submitted three issues as follows; i. Whether the sale and transfer of the land known as Kajado/Loodariak/697 to the Defendant was illegal, unlawful and or fraudulent? ii. Whether the Plaintiff is entitled to the prayers sought? iii. Who should bear the costs?
13. I have carefully considered all the evidence adduced in this case by the Plaintiff including the witness statement, documentary evidence and the Court testimony. I have also considered the submissions by the Plaintiff’s Counsel.
14. The Plaintiff claim is that she is the legal owner of the suit property by dint of having it registered in her name on 14/07/1993. She claims to have purchased it. In the circumstances, the Plaintiff had a duty to tender evidence before this Court to prove the claim. The only documentary proof presented before Court was the copy of the title deed and a copy of the green card. The process of how she acquired the said suit property was not presented in evidence to support her claim. The copy of the green card showed that the first owner was the County Government of Kiambu. This being the case it means that this is public land. This then begs the question how did the County Government allocate public land to her. No Letter of Allotment was produced to show the root of title.
15. Whereas she claims to have bought the suit property, there was no presentation of any document to support this claim. The question that I posed to myself is whether the contents of the case as presented to me both in writing and in Court and which I read and heard, would suffice for purposes of proving the Plaintiff’s legal or even beneficial ownership of the property. My answer is in the negative. Why is my answer in the negative?
16. The first relief sought in the Plaint was a declaration that the Plaintiff is the legal/beneficial/registered owner of the property known as parcel Nguirubi/thigio/836 the suit property. It was expected that the beneficial ownership would be demonstrated through the history of the property from the time of purchase and or allocation. The sale agreement or the Letter of Allotment was never presented before this Court. The purported green card allegedly showing the Plaintiff’s registration and which show that there are other registered persons has the Kiambu County Government as the first registration but the County was not joined as a party and neither was the Kiambu County Government called as a witness. The nexus between the Plaintiff and the rest of the Defendants including the Kiambu County as the first registered owner to the suit property is not detailed. To me it seemed that the Court was



expected to rely fully on the determination without the necessary documentation to support the claim of ownership.

17. The Plaintiff has stated that the Defendants fraudulently acquired title to the suit property and prayed to Court to cancel the titles. To succeed in claiming fraud, the Plaintiff not only need to plead but also particularize it by laying out water tight evidence upon which the Court would make such finding. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in the case of Kuria Kiarie & 2 Others vs. Sammy Magera [2018] eKLR where it was held:

“The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA (as he then was) states as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

18. The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs. George Kamau [2015] eKLR expressed itself as follows;-

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

19. Thus on the count of fraud the facts laid before the Court were not specific enough to support the claim by the Plaintiff against the Defendants.

20. In my view it behooved this Court to review the documentation and test their veracity against the oral testimony and make its own determination. It was incumbent upon the Plaintiff to produce the documentary proof that would support the claim before the Court wholly but what was tendered fell short of the standard of probability as required under the Civil Procedure. In this regard I am persuaded by the dictum of Onguto, J in the case of Caroline Awinja Ochieng & Another vs. Jane Anne Mbithe Gitau & 2 Others [2015] eKLR where the Court expressed itself thus; -

“The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities



but the Court must be left in no doubt that the holder of the documents proved is the one entitled to the property.”

21. Given the foregoing and guided by the above and this Court’s observation of the material produced before this Court I find that I am not able to declare the Plaintiff as the legal/beneficial/registered owner of the property.
22. The upshot of my observations and findings is that the Plaintiff has failed to prove her case on a balance of probabilities and is also not entitled to the orders sought in this suit. The suit is hereby dismissed with no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA LAW COURTS THROUGH MICROSOFT TEAMS ON THIS 25<sup>TH</sup> DAY OF MARCH 2025.**

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**MOGENI J.**

**JUDGE**

In the presence of:

Plaintiff – Absent

Defendant - Absent

Mr. Melita - Court Assistant

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**MOGENI J.**

**JUDGE**

