



REPUBLIC OF KENYA



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**Kariuki v Magana & another (Environment & Land Case E016 of 2022)  
[2025] KEELC 1425 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1425 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE E016 OF 2022**

**JM MUTUNGI, J  
MARCH 20, 2025**

**BETWEEN**

**IRENE WANJIKU KARIUKI ..... PLAINTIFF**

**AND**

**MURAGE MUCHAHILI MAGANA ..... 1<sup>ST</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff commenced this suit vide a Plaint dated 4<sup>th</sup> May 2022 seeking the following orders;
  - a. Entries No. 4 and 5 on the register of land parcel Kiine/Gacharo/2236 be canceled.
  - b. Proprietorship of land parcel Kiine/Gacharo/2236 does revert to Plaintiff.
  - c. Cost of suit.
2. The Plaintiff vide the Plaint claimed she was the legal owner of land parcel Kiine/Gacharo/2236, (herein after referred to as “the suit land”), and asserted that she was in possession of it. She stated that on or about 11<sup>th</sup> April, 2008, the 1<sup>st</sup> Defendant fraudulently caused the suit land to be registered in his name. The Plaintiff averred that she discovered the fraud on 28<sup>th</sup> July 2021 while conducting a routine search at the Land Registry at the Kirinyaga Land Office. Following this discovery, she reported the fraud to the Directorate of Criminal Investigations (DCI) Kirinyaga. However, the DCI Kirinyaga informed her that they were unable to locate the 1<sup>st</sup> Defendant and that prompted the Plaintiff to institute the present suit.
3. The 2<sup>nd</sup> Defendant filed a Statement of Defence denying the Plaintiff’s allegations against it as set out in the Plaint. The 1<sup>st</sup> Defendant was served by way of substituted service by way of advertisement in the Standard Newspaper and never appeared or file a defence.



## Evidence Of The Parties

4. On 15<sup>th</sup> October, 2024, the Plaintiff and the Land Registrar, Kirinyaga presented their evidence when the suit was fixed for hearing. The Plaintiff, Irene Wanjiku Kariuki, testified that her parents gave her the suit land as a gift. She stated that she did not know the 1<sup>st</sup> Defendant and only learnt of him when she conducted a routine search of the suit land, which revealed that he was registered as the proprietor. The Plaintiff reported the suspected fraud to the DCI, but they informed her that they could not trace the 1<sup>st</sup> Defendant. The Plaintiff testified that she still held the original title deed for the suit land, which was issued to her on 14<sup>th</sup> September 2006. She also confirmed that she had been using her land and had never sold it to anybody and she had no dealings with the 1<sup>st</sup> Defendant.
5. During cross-examination, the Plaintiff reiterated that she was given the land by her father. She affirmed she never made any complaint against the Land Registrar as his duty included registration of documents presented to him. The Plaintiff confirmed at the time her father gave the land to her, they attended the Land Control Board and were issued a consent for transfer. She stated the necessary documents were presented to Land Registrar before she was registered as owner of the suit land and issued with a title deed.
6. Anthony Mwadime Mwakio, the Land Registrar Kirinyaga County in his testimony adopted his witness statement dated 14<sup>th</sup> November 2023, and relied on the bundle of documents filed by the 2<sup>nd</sup> Defendant as evidence. In cross-examination the Land Registrar stated he was the custodian of lands records but stated he was not able to trace documents supporting entries 4 and 5 in the title register of the suit land. He testified that entry No. 1 showed that Joseph Kariuki and Milka Muthoni were the original owners of the suit land. He added that the plaintiff was registered as the owner on 12<sup>th</sup> September 2006, and received the title deed two days later.

## Submissions Of The Parties

7. The Plaintiff filed her written submissions on 29<sup>th</sup> October 2024, addressing two issues for consideration: first, whether the circumstances surrounding the transfer and registration of the suit property in favour of the 1<sup>st</sup> Defendant were fraudulent; and second, whether the 1<sup>st</sup> Defendant's title and/or registration should be cancelled, allowing the title to revert to the Plaintiff.
8. Regarding the first issue, the Plaintiff asserted that she was gifted the suit land by her parents, Milkah Muthoni and Joseph Kariuki Mukimbiro, the original owners of the land. She stated that she still possessed the original title to the suit land and had not relinquished it. The Plaintiff questioned how the 1<sup>st</sup> Defendant could have the suit land transferred to his name without the original title, especially since the law required the surrender of the original title for cancellation when a transfer occurred. She pointed out that the answer to this question was not available, as DW1 being the custodian of land records and documents had failed to produce the transfer instrument and any documents that supported Entry No. 4 and 5 made on the title register. The Plaintiff asserted that she had demonstrated that the 1<sup>st</sup> Defendant acquired the suit land fraudulently and/or illegally, and hence the title held by the 1<sup>st</sup> Defendant was challengeable under Section 26 (1) (a) and (b) of the [Land Registration Act, 2012](#).
9. Regarding the second issue, the Plaintiff argued that she had provided sufficient evidence to prove that she was the legitimate owner of the disputed land. She submitted the 1<sup>st</sup> Defendant did not file a defence and that her evidence remained unchallenged.
10. The 2<sup>nd</sup> Defendant submitted that the Plaintiff had not demonstrated any cause of action against the Attorney General and the allegations of fraud had not been proved against the Land Registrar for



whom the Attorney General was sued on behalf of. The 2<sup>nd</sup> Defendant argued the Plaintiff had not discharged the burden of proof in terms of Sections 107 and 108 of the *Evidence Act*, Cap 80 Laws of Kenya.

11. The 2<sup>nd</sup> Defendant further submitted that it was not within the Land Registrar's authority to consent to the transfer of the suit land to the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant argued that if a transfer did take place, the Land Registrar was fulfilling his statutory duty and did so within the scope of the law. The 2<sup>nd</sup> Defendant relied on several cases to support its argument, including *Yalwala & 2 Others (Sued in their capacity as Board of Trustees of Chavakali Yearly Meeting of Friends (Quakers) v. Kadenge & 3 Others (2022) KEELC 2510 (KLR)*, *Edward Mwangi Irungu v. Chief Land Registrar & Others (2018) eKLR*, *Kuria Kiarie & 2 Others v. Sammy Magera (2018) eKLR* and *Kinyanjui Kamau v. George Kamau Njoroge (2015) eKLR*. The 2<sup>nd</sup> Defendant asserted that the Plaintiff had not provided sufficient evidence to substantiate her claim of fraud against the 2<sup>nd</sup> Defendant.

#### **Analysis, Evaluation And Determination: -**

12. I have reviewed and considered the pleadings, the evidence and the submissions made on behalf of the parties. The issues that arise for determination in the suit are as follows:-
  - i. Whether the Plaintiff was the legal owner of land parcel Kiine/Gacharo/2236?
  - ii. Whether land parcel Kiine/Gacharo/2236 was lawfully and validly transferred to the 1<sup>st</sup> Defendant?
  - iii. Whether Entries No. 4 and 5 on the title register of land parcel Kiine/Gacharo/2236 were obtained fraudulently and ought to be cancelled and the title reverted to the Plaintiff?
13. The Plaintiff testified that she was gifted the land parcel Kiine/Gacharo/2236 by her parents, Joseph Kariuki Mukumbiro and Milka Muthoni Kariuki, who were the registered owners. She testified that the land was a resultant subdivision from land parcel Kiine/Gacharo/1262 and was transferred to her on 12<sup>th</sup> September 2006 and she was issued a title deed on 14<sup>th</sup> September 2006. The Plaintiff produced a copy of the title deed issued to her and at the hearing exhibited the original copy of the title deed. The abstract of title (green card) exhibited in evidence showed that the register of the suit land was opened on 31<sup>st</sup> October 2003 when Joseph Kariuki Mukumbiru and Milka Muthoni Kariuki were registered as joint owners. The land was transferred to the Plaintiff by way of gift on 12<sup>th</sup> September 2006 and she was issued title on 14<sup>th</sup> September 2006. On 11<sup>th</sup> April 2008 the land is shown to have been transferred to Murage Muchahili Magana and a title issued to him on the same date. The green card does not indicate what the consideration for the transfer was. A caution was placed by the Plaintiff against the title on 28<sup>th</sup> July 2021.
14. On the evidence it is evident that the suit property was legally and validly transferred to the Plaintiff by her parents and she therefore obtained a valid title to the property. The Plaintiff has denied she sold and/or transferred the suit property to the 1<sup>st</sup> Defendant who she claimed she did not know. How then was the property transferred to the 1<sup>st</sup> Defendant?
15. The Plaintiff testified that she had always been in possession and occupation of the suit property and that she had been carrying on subsistence farming on the land without any interference from anybody. She testified that in 2021 during the construction of the Kenol – Sagana-Nyeri Road her land was affected and that verification of ownership was required for compensation purposes. It is then she carried out a search on her property only to discover the 1<sup>st</sup> Defendant had been registered as owner without her knowledge. The Plaintiff explained that the 1<sup>st</sup> Defendant was unknown to her. She



reported alleged fraud by the 1<sup>st</sup> Defendant to the Directorate of Criminal Investigations (CID) who apparently informed her they could not locate the 1<sup>st</sup> Defendant. The Plaintiff instituted the instant suit and was granted leave by the Court to effect service on the 1<sup>st</sup> Defendant by way of substituted service by way of advertisement in the Newspaper which she duly did on 28<sup>th</sup> February 2023 through the Standard Newspaper.

16. The 1<sup>st</sup> Defendant did not appear and did not file any defence. In the premises the Plaintiff's evidence as against the 1<sup>st</sup> Defendant remained unchallenged. Simply put the Plaintiff's evidence as against the 1<sup>st</sup> Defendant was that she never carried out any transaction relating to the sale of the suit property with him, she never sold her land to him, never executed any transfer in favour of the 1<sup>st</sup> Defendant, never attended any Land Control Board for purposes of obtaining consent for sale in favour of the 1<sup>st</sup> Defendant. The Plaintiff asserted that she did not know the 1<sup>st</sup> Defendant insinuating that the 1<sup>st</sup> Defendant could only have fraudulently caused the transfer of her land to his name. The Plaintiff in fact exhibited the original title that was issued to her on 14<sup>th</sup> September 2006 to illustrate that no valid transfer would have been effected without the surrender of the title for cancellation.
17. The evidence of the Plaintiff having not been challenged by the 1<sup>st</sup> Defendant could only be taken to be correct. The Court has no reason to disbelieve the Plaintiff, and accepts the Plaintiff's evidence as truthful. The title that the 1<sup>st</sup> Defendant held over the suit property was under challenge and the burden fell on the 1<sup>st</sup> Defendant to prove that he had acquired the same legally and procedurally. See the Case of *Munyu Maina –vs- Hiram Gathia Maina* (2013) eKLR where the Court of Appeal held that where the root of the title was under challenge, it was not sufficient to merely waive the title to prove ownership and that one had to go beyond the title and prove that he acquired the title procedurally. In the case the Court of Appeal stated:-

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

18. In the face of the Plaintiff's evidence and in the absence of any evidence, from the 1<sup>st</sup> Defendant to challenge the Plaintiff's evidence, it is my determination that the transfer to the 1<sup>st</sup> Defendant was fraudulent and that the registration of the 1<sup>st</sup> Defendant as proprietor of land parcel Kiine/Gacharo/2236 was not procured procedurally. The title held by the 1<sup>st</sup> Defendant in my view is impeachable under the provisions of Section 26 (1)(a) and (b) of the *Land Registration Act*, 2012. Section 26(1) (a) and (b) of the Act provides as follows:-

26(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.



19. As against the 2<sup>nd</sup> Defendant, the Plaintiff did not specifically plead any fraud against the Land Registrar, on whose behalf the Attorney General was sued. The Plaintiff only furnished particulars of fraud as against the 1<sup>st</sup> Defendant under paragraph 5 of the Plaint. It is trite law that allegations of fraud must be specifically pleaded and proved. In the Court of Appeal case of Koinange & 13 Others –vs- Charles Karuga Koinange (1986) KEHC 3 (KLR) the Court held:-

“When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”

20. In the instant case as observed no fraud was pleaded against the 2<sup>nd</sup> Defendant. Although the Land Registrar did not avail the documents/instruments that supported the registration of the 1<sup>st</sup> Defendant as proprietor, that alone cannot be held to constitute fraud. I hold that no fraud was established as against the 2<sup>nd</sup> Defendant and consequently no blame can be placed on the 2<sup>nd</sup> Defendant. Thus even though the 1<sup>st</sup> Defendant may have presented fraudulent documents for registration, the Plaintiff did not demonstrate the Land Registrar was part of the fraud and/or was aware of the fraud.

21. Having held that the 1<sup>st</sup> Defendant acquired registration and title to the suit land fraudulently, it follows that the title he holds is null and void and the same ought to be cancelled. It is my holding and determination that the Plaintiff has proved her case against the 1<sup>st</sup> Defendant on a balance of probabilities. The case against the 2<sup>nd</sup> Defendant has not been proved to the required standard and is dismissed. I enter Judgment against the 1<sup>st</sup> Defendant in favour of the Plaintiff and make the following consequential orders:-

1. That the Plaintiff, Irene Wanjiku Kariuki is the lawful owner of land Parcel Kiine/Gacharo/2236.
2. The Land Registrar Kirinyaga is ordered to cancel Entry Nos. 4 and 5 on the register of land parcel Kiine/Gacharo/2236.
3. That the Land Registrar, Kirinyaga is ordered to revert the proprietorship of land parcel Kiine/Gacharo/2236 to Irene Wanjiku Kariuki, the Plaintiff herein.
4. The parties shall bear their own costs of the suit.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

