



**Kimani (Suing as Co-Administrator to the Estate of Patrick
Kimani Mbugua) v Mwiruti & 4 others (Environment & Land Case
128 of 2019) [2023] KEELC 17400 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17400 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 128 OF 2019**

**JG KEMEL, J
MAY 11, 2023**

BETWEEN

**MARGARET WAMBUI KIMANI (SUING AS CO-ADMINISTRATOR TO THE
ESTATE OF PATRICK KIMANI MBUGUA) PLAINTIFF**

AND

**JOSEPHINE WAITHERA MWIRUTI 1ST DEFENDANT
THE CHIEF LAND REGISTRAR, NAIROBI 2ND DEFENDANT
THE LAND REGISTRAR, KIAMBU 3RD DEFENDANT
THE COUNTY GOVERNMENT OF KIAMBU 4TH DEFENDANT
THE ATTORNEY GENERAL 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff sued the Defendants seeking the following orders:-
 - a. A declaration that the Deceased Patrick Kimani Mbugua is the rightful owner of property number Limuru Township/244 and that the title held by the Plaintiff for the estate is the only legal title deed.
 - b. An order of cancellation of the title deed for land parcel No. Limuru/Municipality/244 and a declaration that the same was obtained fraudulently.
 - c. A permanent injunction against the 1st Defendant either by herself, her servants and/or her agents from accessing, entering, and/or interfering with the Plaintiff's quiet possession of the suit property, being LIMURU TOWNSHIP/244, or in any other manner endangering the Plaintiff's ownership and use of the suit property.



- d. Costs and interest of the suit.
- e. Any other further relief that this Honourable Court may deem just.
2. The Plaintiff has filed suit in her capacity as the legal administrator to the Estate of Patrick Kimani Mbugua; Deceased.
3. It is the Plaintiff's case that at all material times the Deceased was the registered owner of Limuru Township/244 (hereinafter the suit land) having been issued with a title on 2/12/2009, whereupon he took possession and carried out extensive developments.
4. That given the above background, it came as a shock when the 1st Defendant alleged ownership of the suit land and attempted to evict the Plaintiff. She was categorical that the suit land has never been transferred to anyone least of all the 1st Defendant.
5. The Plaintiff pleaded particulars of fraud under paragraph 12 against the Defendants as follows:-
 - a. That the 1st Defendant caused the unlawful allocation and transfer of the suit property.
 - b. By the 2nd, 3rd and 4th Defendants usurping the powers of their offices to deceive and steal the Plaintiff's land.
 - c. By altering false documents of registration to the suit property.
 - d. That the 1st Defendant presenting unverified and forged documents aided by the 2nd, 3rd and 4th Defendants to acquire the title.
 - e. That the 2nd and 3rd Defendants knowingly and fraudulently issued a land title deed for suit property in favour of the 1st Defendant fully aware of the existence of the land title deed held by the deceased's estate.
 - f. Purporting to be allocated a parcel of land that belongs to the deceased's estate.
 - g. Processing registration of the land without obtaining a proper procedural and valid consent of the relevant Land Control Board and other consents and clearances yet the suit land is held under lease.
6. On the 2/8/2010 the 1st Defendant denied the Plaintiff's claim. In her defence she contended that the Plaintiff's predecessor had no lawful title thus passed no legal title to the Plaintiff.
7. In her counterclaim she sought the following orders:-
 - a. Dismissal of the Plaintiff's suit with costs to the 1st Defendant.
 - b. An Order that the Plaintiff be evicted from L.R. No. Limuru Township/244.
 - c. Damages for trespass onto L.R. No. Limuru Township/244.
 - d. Mesne profits.
8. It was her case that she is the lawfully registered owner of the land and sought to put the Plaintiff to strict proof.
9. The 2nd – 5th Defendants denied the Plaintiff's claim and in particular the claim of fraud and sought to put the Plaintiff into strict proof.



10. The 4th Defendant in its defence denied the Plaintiff's claim especially the particulars of fraud and averred that the County Government has at all material times protected land owners who followed the proper allocation procedures of their lands. In addition, stated that the registration of land is the mandate of the Land Registrar and not the County.
11. PW1 – Margaret Wambui Kimani testified and relied on her witness statement dated 9/11/2021 in evidence in chief.
12. In support of her case she produced the documents listed as Nos. 1 – 17 and marked PEX No. 1 – 20.
13. She stated that she is the legal representative of the Estate of Patrick Kimani Mbugua, who died on 14/11/2014. That on 30/11/2009 her husband purchased the suit land from George Ndungu Kahiu at a consideration of Kshs. 850,000/-; which was paid in full and took possession of the land.
14. That the transfer was made on 2/12/2009 to the Deceased and a title issued to him. Before his death in 2014 her husband had deposited building materials on the land, fenced and commenced the construction of the 5 storey building. As the construction was ongoing the 1st Defendant claimed the land and demanded that she removes the structures on the land in default eviction would follow.
15. That she took her ownership documents to Kiambu County for verification. She added that her husband carried out due diligence before purchasing the land from George Ndungu Kahiu. That her land is Limuru Township/244 and not Limuru/Mun/244.
16. With respect to the transfer form from George Ndungu to Kimani on page 53 she stated that she did not know if the same was registered. The witness reiterated that her land is Limuru Township/244 while the 1st Defendant's is Limuru/Mun/244.
17. That the land was registered in the name of George Ndungu on 25/8/1992 as per the official search dated 27/12/2009. That the said land became registered in the name of her husband on 2/12/2009 upon transfer from George Ndungu.
18. DW1 – Josephine Waithera Mwiruti testified and relied on witness statements dated 7/2/2022 as evidence in chief.
19. She produced documents on page 8 – 33 of her trial bundle marked as DEX No. 1 – 16 in support of her testimony. The witness stated that she is the registered owner of parcel No. Limuru Mun/244 via Letter of Allotment issued to her in 1992. That on allocation she has paid land rent and rates to the County Government.
20. That in 1998 she sold the land to Julius Kamau Kimani who processed the title in her name which lease was registered in her name on 6/11/2018 and issued with a title.
21. That in 2019 she found a third party digging a foundation on the land claiming to own the land.
22. In cross she stated that there is a 5 storey building on the land which was constructed by the Plaintiff. That she was allocated the land in 1992. That her husband served as a Councillor at Tigon Ward and that at the time of allocation, the suit land was vacant. That it was an open space. That she applied for the land at the Municipal Council and was successfully allocated.
23. That he sold the land to her son in law Julius Kamau Kimani. That for a long time the file at the Lands Office could not be traced hence the delay in processing the title.



24. DW2 – Julius Kamau Kimani relied on his witness statements dated 7/2/2022 as his evidence in chief. He stated that he bought the land from his mother in law the 1st Defendant. That the land is registered as Limuru/Mun/244 in the name of the 1st Defendant on 6/11/2018.
25. He stated that Limuru Township/244 is registered in the name of Patrick Kimani Mbugua. However the land on the ground is the same.
26. Showed the Search dated 27/10/2009, he stated that the land Limuru/Township/244 was registered in the name of George Ndirangu Kahi on 25/8/1992.
27. That he bought the land from the 1st Defendant but could not be transferred because of the file at the Lands Office could not be traced. On the basis of a sale, he lodged a caution on the land. He stated that there is a 5 storey building on the land.
28. DW3 – Roseline Wanjiru Macharia testified and introduced herself as the Land Registrar, Kiambu. She produced documents related to Limuru Township/244 which included-
 - a. Copy of White Card.
 - b. Copy of Lease to the 1st allotment.
 - c. Consent from Municipal Council of Limuru to transfer.
 - d. Copy of Certificate of Lease to Patrick Kimani Mbugua.
 - e. Copy of Search dated 6/2/2014.
 - f. Clearance Certificate for Land Rates dated 14/9/2018 together with the receipts.
 - g. Search dated 12/9/2018.
 - h. Certificate of Search dated 27/10/2009 marked as DEX No. 15 with respect to Limuru/Mun/244.
 - i. A formal complaint by Plaintiff and her children – Boniface Mbugua Kimani and Antony Njau Kimani addressed to the Chief Land Registrar and copied to her office.
29. The witness also produced documents with respect to Limuru/Mun/244 and informed the Court that a lease document in favour of the 1st Defendant was forwarded from Nairobi Head office for registration and a White Card was opened in the name of 1st Defendant and a lease issued on 6/11/2018.
30. That in January 2019 the Land Registrar noted the double allocation and returned the lease to Nairobi vide letter dated 16/1/2019 addressed to Chief Land Registrar for further directions and advise. That the Chief Land Registrar responded on 1/2/2019 confirming that the lease originated from Ardhi House, a genuine lease and the Land Registrar should proceed and register it. She produced the following documents with respect to the suit land - Limuru/Mun/244.
 - a. White Card for Limuru/Mun/244.
 - b. Letter dated 16/1/2019.
 - c. Letter dated 1/2/2019.
31. In cross the witness confirmed that the land is the same and that is why the Land Registrar had raised the issue of double allocation. That the office of the Chief Land Registrar did not resolve the stalemate



when it directed that the 2nd lease in the name of the 1st Defendant to be registered. She stated that Limuru /Mun/244 only exists on paper and not on the ground.

Written Submissions

32. The firm of Gachoka & Co. Advocates filed written submissions on behalf of the Plaintiff.
33. The Plaintiff submitted that her husband purchased the land from George Ndungu who was issued with a lease on 25/8/1992. George Ndungu sold the land to the Plaintiff's husband who was issue with a title on 2/12/2009.
34. The Plaintiff argued that a claim being brought in 2019 is time barred. The Plaintiff has developed a 5 storey building for rental purposes. Occupation of the property is not in dispute. The suit land is in the hands of the Plaintiff's family.
35. That the Court was urged to rely on the evidence of the Land Registrar and find in favour of the Plaintiff for several reasons: the Land Registrar confirmed that by the time the lease of the 1st Defendant was registered in 2018 an earlier one had been registered in the name of the Plaintiff in 1992; the titles refer to one parcel on the ground; there is no registered area called Limuru/Mun/244; All titles are registered as Limuru/Township; the registration of the 1st Defendant lease is not supported by any documents in the custody of the Lands Registrar, Kiambu. The same was registered despite an issue of double allocation having been raised by the Land Registrar.
36. The 1st Defendants written submissions were filed by the firm of Mwaura Shairi & Co. Advocates.
37. On fraud, the 1st Defendant submitted that the Plaintiff has not proven fraud. Relying on the case of Moses Parantal & Peris Wanjiku Mukuru suing as the legal representatives of the Estate of Sospeter Mukuru Mbeere (Deceased) – Vs- Stephen Njoroge Macharia [2020]eKLR the 1st Defendant submitted that the standard of proof in cases of fraud is beyond that of a balance of probabilities but not beyond reasonable doubt.
38. Though the 1st Defendant testified that her husband was a Councillor, no evidence was led that she acquired the land through fraud, in contrast , she led evidence that she as allocated the land like other Kenyans who applied. That she followed due process in obtaining the land.
39. That the issue of double allocation was noticed by the Land Registrar Kiambu who sought help from the Chief Land Registrar who confirmed the lease to be genuine after which the Land Registrar proceeded to register the 1st Defendant as owner of the land.
40. The 1st Defendant submitted that the 1st Defendant title is Limuru/Mun/244 because by the time of its registration, the town had been conferred with Municipality status on 27/6/2018.
41. On the root of title the 1st Defendant relied on the case of Hubert Martin & 2 Others Vs Margaret J. Kamar & 5 Others (2016)eKLR; where the Court stated as follows:-

“ A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain.”
42. It was submitted that the 1st Defendant has documents to proof title. To the contrary it was submitted that there was no Certificate (title) of Lease issued to George Ndungu. That both the Plaintiff and the



Land Registrar failed to produce the Certificate of Lease. That there was no entry in the green card either.

43. That the only document that trace the Plaintiff's root is the lease registered on 25/8/1992. It was submitted that a lease does not confer title to an owner. That Section 26(1) of the [Land Registration Act](#) takes title as prima facie evidence of ownership. That the Plaintiff failed to produce the root of her title.
44. That the 1st Defendant was steadfast in her testimony on the root of her title. For example, she was issued with Allotment Letter on 28/5/1992 whereupon she paid for the outgoings in acceptance of the offer. Further that the documents of the 1st Defendant had a corresponding file number which shows not only consistency but history and continuity. That the Plaintiff's title has no root, no life and does not exist.
45. It was submitted that the doctrine of first in time is not applicable to this case as there are no equal equities in the case for the reason that the 1st Defendant has a superior title.
46. The Court was urged to find for the 1st Defendant in her counterclaim.
47. The 2nd, 3rd and 5th Defendants submitted that the Plaintiff failed to proof fraud on their part. That no evidence of wrong doing has been proven and urged the Court to dismiss the Plaintiff's suit.
48. In addition, the 2nd, 3rd and 5th Defendants pleaded with the Court to deny the Plaintiff costs for failing to comply with Section 13A of [Government Proceedings Act](#) which provides that no proceedings against the Government of Kenya shall lie or be instituted until after expiry of a period of 30 days after a notice in writing in the prescribed form has been served on the Government of Kenya in relation to the proceedings.

Analysis and determination

49. Having read and carefully considered the pleadings, the evidence adduced on trial, the written submissions and all the materials placed before the Court the issues for determination are:-
 - a. Whether plot No Limuru/Mun /244 and Limuru /Township /244 refer to the same land?
 - b. Whether the Plaintiff has proven fraud on the part of the Defendants?
 - c. Whether the 1st Defendant has proven title in her favour?
 - d. What orders should the Court issue?
 - e. Who meets the costs of the suit?
50. The Plaintiff has filed the suit as the legal representative of Patrick Kimani Mbugua, her deceased husband. She has exhibited the authority from the children and co- administrators of the estate of her late husband.
51. According to the title issued on the 2/12/2009 the late Patrick Kimani Mbugua is the registered proprietor of the suit land. The acquisition is supported by an agreement dated the 30/10/2009 between George Ndungu Kahiu (seller) and the said Patrick Kimani Mbugua (buyer).
52. It is the Plaintiff's case that the 1st Defendant has set a scheme to evict her from the suit land on allegations that she owns the land. She pleads fraud on the part of the defendants in para 12 of the Plaint.



53. The 1st Defendant denied the allegations of fraud and in her counterclaim and sought eviction, mesne profits, damages for trespass for the unauthorised user of her property being Limuru/Municipality/244.
54. The 2nd, 3rd, 4th and 5th Defendants denied the Plaintiff's claim and sought to put her on strict proof.
55. The 4th Defendant did not lead evidence at the trial and therefore the suit against the 4th defendant remains undefended.
56. It is not in dispute that the Plaintiff has been in possession of the suit land since 2009 and has constructed a 5-storey apartment building. It is also acknowledged that the plaintiff and the 1st Defendant each possess a title for the same suit land.

Whether plot No Limuru/Mun /244 and Limuru /Township /244 refer to the same land.

57. The Plaintiff led evidence and produced a copy of the title in the name of Patrick registered in 2009. The description of the land is Limuru/Township /244 while the 1st Defendants title is Limuru/Mun/244. The question is whether the two descriptions refer to the same land.
58. In para 3, 6 and 7 of her defence and counterclaim dated the 30/7/2019 the 1st Defendant referred to the suit land as parcel Limuru/Township/244. Further her letter of offer dated the 28/5/1992 describes the property being allocated as Limuru/Town /244 -Residential. The absence of the word unsurveyed (uns.) means the land was already surveyed. I say so because the letter dated the 5/8/2016 and 28/6/2017 on amendment of the RIM all made reference to the land as Limuru/Township/244.
59. The first time the land is being referred to as Limuru/Mun/244 is in 2018 in the Lease in favour of the 1st Defendant.
60. The Land Registrar led evidence that the land is the same on the ground only described by different LR numbers. She was categorical that the suit land is Limuru/Township/244 and not Limuru/Mun/244. It was her evidence that Limuru/Mun/244 only exists on paper. This evidence was supported by DW2 who led evidence that the suit land is the same on the ground. DW1 stated that the suit land has a storeyed building which evidence is in agreement with that of PW1.
61. Further, the draft valuation roll from the Limuru Town describes the land as Limuru/Township/244. The import of this evidence is that even the Local authority recognised the land as Limuru/Township and NOT Municipality. The defendant submitted that municipality status was conferred upon Limuru Town and hence the description of the land as Municipality. I have seen the Limuru Municipality Charter dated the 27/6/2018. The 1st Defendant's lease was signed on the 24/6/18 before the conferment of the said Municipality status on the Local Authority.
62. The Court finds that Limuru/Township/244 and Limuru/Mun/244 refer to the same land.

Whether the Plaintiff has proven fraud on the part of the Defendants.

63. Fraud is defined as-

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, In the sense of a Court of equity, properly includes all acts, omissions, and



concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another’.

64. Section 26 of the *Land Registration Act* provides 2 instances in which a title may be impugned in law. It sets out the legal provisions as follows:-

“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.”

65. Where a title is challenged on account of fraud, the law is clear that fraud must be pleaded and proved. This has been buttressed in the Court of Appeal case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA. (as he then was) stated 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.”

66. In the Court of Appeal case of *Arthi Highway Developers Limited V West End Butchery Limited & 6 Others* [2015] eKLR it was settled that a person who holds a bad title cannot pass a good title to a purchaser.

67. The Land Registrar produced a copy of the lease issued to George Ndungu for the suit land dated the 25/8/1992. On the 2/11/2009 the consent to transfer the land was given by the Municipal Council of Limuru and a title issued to Mbugua on the 2/12/2009.

68. Consequently, a register in the Lands Office Kiambu was opened on the 25/8/92 in the name of Limuru County Council as the lessor and the lessee being George Ndungu Kahiu. According to the green card a title was issued to him on the 25/8/92.

69. It is the Plaintiff’s case that her husband purchased the suit land from George Ndungu who was the previous registered owner of the land. Evidence was led by PW1 that due diligence carried out through an official search dated the 27/10/2009 showed that George Ndungu was the registered owner of the land having been so registered on the 25/8/92. That a sale agreement was entered between the parties on the 30/10/2009 for the sale of Limuru/Township/244 at the sum of Kshs 565,000/- which sum was paid in full.

70. The Plaintiff produced a letter from the County Council of Limuru giving its consent to the transfer on the 2/11/2009 and issued a Clearance Certificate thereon.



71. On the 2/12/2009 Mbugua became registered as the owner of the title. PW1 led evidence that he took possession of the suit land and paid outgoings being land rent and rates as evidenced by the receipts on record. Of importance is that the County Council approved the building plans in 2014 paving way for the development of the 5 storeyed building.
72. I will now examine the documents of the 1st Defendant in support of her claim. The 1st defendant's case is that she was allocated land namely Limuru/Town/244 (residential) on the 28/5/1992 vide reference No 5466/11/85 for a period of 99 years from 1/6/1992. The Letter of Allotment was duly executed on behalf of the Commissioner of Lands.
73. The 1st Defendant led evidence that she paid for the plot rent for the period 1/6/92 – 31/12/92 in the sum of Kshs 350/- vide receipt issued on the 12/7/94. Vide a receipt dated the 12/7/94 she paid the stand premium in the sum of Kshs 3,000/- on the 11/9/2009 and a further sum of Kshs 10,900/- being plot rent for the period 2003 -2008.
74. In the case of Hubert L Martin & 2 others Vs Margaret J Kamar & 5 Others (2016) eKLR the Court held that where a Court is faced with a case of two or more titles over the same land the Court must make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is upheld is that title which conforms to the procedure and can properly trace its roots without a break.
75. In this case the Court is faced with two titles over the same parcel of land what is also known as double allocation.
76. To start with the Lease issued to George Ndungu was issued in 1992. As a matter of fact, it was executed by the Commissioner of Lands on the 15/5/1992 and the same was registered on the 28/8/92. Consequently, a register was opened and title issued on even date. The Letter of Allotment was issued to the 1st Defendant on the 28/5/1992. By the time the Letter of Allotment was issued there was no land available because by then the suit land had been alienated by way of a lease in favour of George Ndungu. The Registrar relied on this lease to register the land in the name of Ndungu in 1992.
77. Furthermore, the Letter of Allotment required the 1st Defendant to pay within 30 days of the date of the letter. The letter went further to state that if the same is not paid and received within 30 days it shall be considered to have lapsed. I find that by the time the Defendant made payments with respect to the Letter of Allotment in 1994 the said offer had lapsed and there is no evidence of the same having been extended.
78. Even if one was to make an argument that the expiry of the Letter of Allotment was cured by the acceptance of the stand premium payments in 1994, the argument would still be untenable given that there was no land available to alienate to the 1st Defendant in 1994, the same having been alienated to Ndungu in 1992.
79. Vide the letter dated the 5/8/2016, the office of the Secretary Lands office wrote a letter to the Director of Survey referring to the letter of offer dated the 28/5/92 asking the Director to amend the RIM for him prepare the lease and assured him that the survey fees in the sum of Kshs 2250/- had been paid vide receipt No F 142344. It is presumed that the letter dated the 28/5/92 was the Letter of Allotment in favour of the 1st Defendant. Neither the 1st Defendant nor the Land Registrar lead evidence to explain the rationale for the amendment of the RIM.



80. That said the letter dated the 28/6/2017 from the Director of Survey of Kenya addressed to the Chief Land Registrar while forwarding amended RIM for Limuru Township parcel 244 stated as follows;

“Date: 28/06/2017

Our Ref: CT 49/VOL.15/44

THE Chief Land Registrar,

Box 30089,

NAIROBI

RE: R.i.m Amendment For Limuru Township Parcel No. 244 (new Grant)

Refer to our letter Ref. No. 142344/14 dated 5th August, 2016 and my letter Ref. No. CT 49/Vol. 6/634 dated 6th March, 1980.

The Registry Index Map reflects Parcel Number 244 measuring 0.0300Ha. (approx.) as per F/R No. 141/66.

Attached herewith, find a sealed R.I.M copy for your further action.

Kindly confirm the authenticity of allocation documents before registration.

H. G. Macharia

FOR: Director Of Surveys

CC:

County Land Registrar,

Kiambu

County Land Surveyor,

Kiambu.”

81. It would appear that the warning by the Director of Survey was not heeded by the Land Registrar as a register in the name of the 1st Defendant was opened on the 6/11/18 and a title issued on even date but at a peppercorn rent which is at variance with the Letter of Allotment which provided for an annual rent of 300/- .
82. Fast forward to 2019, the Land Registrar Kiambu raised the issue of double allocation on the suit land. The head office assured her that the lease of the 1st Defendant emanated from their office and that it was genuine and that the same should be registered. The scenario presents two possibilities either the lease was registered before the queries were raised or the same was backdated. In either way nothing turns on it.
83. It is imperative to state that the neither the Chief Land Registrar nor the Land Registrar has challenged the title of the Plaintiff. Being the custodians of title, nothing hindered them from doing so given that it was a party to the suit. To the contrary the Land Registrar Kiambu was emphatic in her evidence that the title held by the 1st Defendant existed in paper only. Put differently that it is not supported by land on the ground.
84. The other observation on the Letter of Allotment in the name of the 1st Defendant is that the same describes the land as Limuru/Town /244. This observation is supported by the Land Registrar when



she led evidence that there are no properties registered as Limuru Municipality and all are referred to as 'Township'.

85. The Torrens land system which Kenya subscribes to is one that the sanctity of title is guaranteed by the Government through the office of the Land Registrar. The actions of the 1st 2nd 3rd and 5th Defendants in accepting monies pursuant to an expired letter of offer; preparing and issuing a lease and title to the 1st Defendant in 2018 in the full knowledge that the land had prior been alienated in 1992 to George Ndungu and later sold to the Plaintiffs husband in 2009 amounts to misrepresentation, fraud and illegality to defeat the title of the Plaintiff.
86. Had the 1st Defendant carried out a search in 1994 before paying for the stand premium and or in 2018 before processing the title, she would have found out that the land had long been alienated and was not available for allocation or titling.
87. In conclusion I find that the Plaintiff has proven that the title of the 1st Defendant was issued unprocedurally illegally to defeat the title of the Plaintiff.

Whether the 1st Defendant has proven title in her favour.

88. Having made a finding that the title of the 1st Defendant was issued after the title of the Plaintiff had been alienated, the 1st Defendant failed in her counterclaim to successfully challenge the title of the Plaintiff.
89. The Court answers issue No 3 in the negative.

What orders should the Court issue?

90. Section 80 of the [Land Registration Act](#) provides as follows;
 - a. Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
 - b. The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or cause such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.
91. Having made a finding that the title of the 1st Defendant was obtained fraudulently, which fraud and other malafides involved the 1st Defendant inter alia, the Court has no option but to be pay fidelity to the provisions of Section 80 of [Land Registration Act](#) and cancel the title.
92. Final orders for disposal
 - a. The 1st Defendant's Counterclaim fails. It is hereby dismissed with costs.
 - b. A declaration be and is hereby made that the Deceased Patrick Kimani Mbugua is the rightful owner of property number Limuru Township/244.
 - c. It is hereby ordered that the title deed for land parcel No. Limuru/Municipality/244 stands cancelled.
 - d. A permanent injunction be and is hereby ordered against the 1st Defendant either by herself, her servants and/or her agents from accessing, entering, and/or interfering with the Plaintiff's



quiet possession of the suit property, being Limuru Township/244, or in any other manner endangering the Plaintiff's ownership and use of the suit property.

e. Costs of the suit and the counterclaim shall be in favour of the Plaintiff.

93. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 11TH DAY OF MAY, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Plaintiff – Absent

Ms. Mwaura for 1st Defendant

Ms Mwalozi for 2nd and 3rd Defendants.

Defendant 4 – Absent

Ms. Mwalozi for 5th Defendant

Court Assistants – Kevin/Lilian

