



**Karissa v Juma & 3 others (Environment and Land Case
E038 of 2023) [2025] KEELC 3137 (KLR) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3137 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E038 OF 2023**

EK MAKORI, J

APRIL 2, 2025

BETWEEN

LAWRENCE CHARO KARISSA PLAINTIFF

AND

JUMA PAMBA JUMA 1ST DEFENDANT

OMAR PAMBA JUMA 2ND DEFENDANT

INUKA AFRICA PROPERTIES LIMITED 3RD DEFENDANT

REGISTRAR OF LANDS, KILIFI 4TH DEFENDANT

The defence of bona fide purchaser for value is not applicable to a title that was originated from a fraudulent judgment

The case involved the fraudulent transfer of land parcel No. Kilifi/Roka/308 from the plaintiff to the 1st and 2nd defendants based on a forged judgment falsely attributed to the late Mukunya J. The land was later sold to the 3rd defendant. The court found the judgment to be fake, declared all subsequent transfers null and void, and held that the 3rd defendant could not rely on the defence of a bona fide purchaser. Title was restored to the plaintiff, the 3rd defendant was ordered evicted, and Kshs. 5,000,000 awarded in damages.

Reported by John Ribia

Jurisdiction – jurisdiction of the Environment and Land Court (ELC) – pecuniary jurisdiction of the ELC – documents that could be used by the court to assess the value of the property – sale agreement - whether a sale agreement could be relied upon for a fair determination of the value of a property so as to determine the pecuniary jurisdiction of a court – Constitution of Kenya article 162(2)(b); Environment and Land Court Act (cap 8D) section 13(1).

Land Law – title – indefeasibility of title – bona fide purchaser for value – where a title was obtained via fraudulent judgment – general damages - whether title in property can pass to a third party via a fraudulent judgment - whether the defence of bona fide purchaser for value was applicable to a title that was originated from a fraudulent judgment - whether a bona fide owner of property that was dispossessed of the property fraudulently



was entitled to an award of general damages - Constitution of Kenya article 40(6); Land Registration Act (cap 300) section 24(a).

Constitutional Law – right to property - title – indefeasibility of title – bona fide purchaser for value – where a title was obtained via fraudulent judgment – whether persons that obtained a title to land that passed due to a fraudulent judgement breached the right to property of the title holder - of a title of land - Constitution of Kenya article 40(6); Land Registration Act (cap 300) section 24(a).

Brief facts

In 2002, Lawrence Charo Karisa lawfully purchased land parcel No. Kilifi/Roka/308 from the registered owner, Hamisi Alawi Mbwana, after confirming clean title and vacant possession. The property was duly transferred to the plaintiff, who took possession and began development. Unbeknownst to him, a long-running dispute involving the same land had been filed in 1996 by one Juma Pamba Ismael against the original seller. That suit lay dormant for years and was revived in 2002 after the plaintiff had already acquired title.

In 2014, a judgment allegedly issued by the late Mukunya J. was relied upon by the 1st and 2nd defendants to claim ownership of the suit land. However, that judgment was later declared fraudulent and void by Justices Munyao and Kibunja. Despite this, the 1st and 2nd defendants used the fake judgment to effect a transfer of the property into their names and subsequently sold it to the 3rd defendant, Inuka Africa Properties Ltd., on September 3, 2020.

The 3rd defendant claimed to be an innocent purchaser for value without notice. However, evidence showed that at the time of entering the sale agreement, the property was still registered in the plaintiff's name. The 3rd defendant nonetheless proceeded to acquire title based on the fraudulent transfers. The plaintiff, upon discovering the fraud, moved the court to cancel the illegal titles, citing constitutional violations of his property rights.

Issues

- i. Whether a sale agreement could be relied upon for a fair determination of the value of a property so as to determine the pecuniary jurisdiction of a court.
- ii. Whether title in property can pass to a third party via a fraudulent judgment.
- iii. Whether the defence of bona fide purchaser for value was applicable to a title that was originated from a fraudulent judgment.
- iv. Whether a bona fide owner of property that was dispossessed of the property fraudulently was entitled to an award of general damages.

Held

1. The case highlighted a troubling scenario in which, with the aid of court registry personnel, court documents were destroyed, judgments were manufactured and falsified, and misleading returns submitted to circumvent justice. The fraudulent judgment which was central to the lawsuit, was wrongfully attributed to having been written, signed, dated, and delivered by Mukunya J; who tragically passed away in a road accident on September 18, 2018. The the esteemed Judge did not issue the judgment in question; it was done by a cabal of frauds, not by an ELC judge in the name of Mukunya J. Any endorsements, approvals, consequential orders, and repercussions stemming from the deceitful judgment; had been declared null and void by Munyao J. and Kibunja J.
2. This incident constituted a grave violation of the judiciary's mission to promote social change through equitable access to justice. Suppose court decisions could be fabricated, and various government agencies and institutions acted upon these fraudulent judgments; in that case, the fundamental principle of the rule of law in a transparent democratic society was at risk of being undermined by corrupt and criminal elements.
3. A sale agreement could not be relied upon for a fair determination of the value of the suit property. The 3rd defendant was expected to present a Valuation Report as evidence to establish the property's



- value. No such report had been submitted to the court. The plaintiff has provided a Valuation Report prepared indicating that the current market value of the property is Kshs. 28,000,000.
4. There was no provision in the Constitution or any statute that limited the jurisdiction of the Environment and Land Court (ELC) with respect to any dispute involving the environment and land. The 3rd defendant's objection was both factually and legally unfounded. The ELC enjoyed unlimited original jurisdiction over matters concerning the environment and land.
 5. The 3rd defendant's title originated from the titles of the 1st and 2nd defendants, which were acquired fraudulently. The doctrine of a purchaser for value without notice was not available to the 3rd defendant as a defense. To benefit from the defense of a bona fide purchaser for value without notice, a purchaser must take the necessary steps to investigate the history of the land and examine the root of the title rather than simply assuming that the title held by the seller demonstrated the seller's absolute and indefeasible title.
 6. The defense of a bona fide purchaser for value without notice did not hold up. The title was based on fraud. Article 40(6) of the Constitution, therefore, extended the protection of property rights only to those properties acquired legally, and such legality encompasses the acquisition process.
 7. The 3rd defendant's only witness admitted during cross-examination that they had searched to determine the ownership of the suit property before executing the sale agreement. The search in question was conducted before September 3, 2020, when the agreement was ultimately executed. As of September 3, 2020, the plaintiff was still the registered owner of the suit property. The transfer of the property in favor of the 1st and 2nd defendants took place on November 12, 2020, long after both the agreement and the search mentioned by the 3rd defendant. When the parties signed the sale agreement, they were either aware or ought to have been aware through the official search indicating that the property was registered in the name of the plaintiff and not the 1st and 2nd defendants. Therefore, the 3rd defendant could not be a bona fide purchaser for value without notice.
 8. The search conducted by the 3rd defendant, dated April 20, 2021, indicated that the 1st and 2nd defendants, as registered owners, emerged much later. A search should have been conducted before executing the sale agreement. If it was done as indicated by the 3rd defendant, the ownership status of the plaintiff, which was still subsisting on the record, was swept under the carpet.
 9. It was not a coincidence that the same individuals who were fraudulently listed as plaintiffs in ELC No. 39 of 1996, and that those are the same individuals who were dealing with the 3rd defendant in anticipation of an illegality that was yet to be committed. The 3rd defendant could not rely on the principle of the bona fide purchaser for value without notice in an attempt to conceal the fraudulent transactions.
 10. The plaintiff acquired the suit property by purchasing it. The property was transferred to the plaintiff on June 11, 2002. Throughout the pendency of ELC No. 39 of 1996, the plaintiff has remained the bona fide registered owner of the suit property. To the date of the instant judgment, the plaintiff's title had not been cancelled by any court order or by the Registrar of Lands. The plaintiff's interest in the suit property was only interrupted by the illegal eviction from the property and the issuance of the title to the 1st and 2nd defendants based on the forged judgment dated February 11, 2014. The court in ELC No. 39 of 1996 had since declared the judgment dated February 11, 2014 to be invalid and incapable of conferring any title.
 11. With the cancellation of all transfers registered pursuant to the fake judgment, the property reverted to its original status prior to the transfers. Before the illegal and fraudulent transfers, the plaintiff was the duly registered owner of the subject property. The plaintiff should be declared the bona fide registered owner of the suit property.
 12. Every person had the right, either individually or in association with others, to acquire and own property. An individual could not be arbitrarily deprived of the right, nor could the enjoyment of such property be denied to them. Furthermore, under article 40(6) of the Constitution, the rights specified



in article 40(1) did not extend to property acquired illegally. Neither the 1st, 2nd nor the 3rd defendant had any color of interest in the suit property. Their continued possession and occupation of the suit property were adverse to the plaintiff's interest and constituted an infringement of the plaintiff's rights under article 40. Since the 3rd defendant's possession was inconsistent with the provisions of article 40(1), it constituted a continuous infringement of the plaintiff's constitutional rights under that same article. The only remedy available to halt this infringement was the eviction of the 3rd defendant from the suit property and the return of vacant possession of the property to the plaintiff. The absolute ownership of the suit property, together with all rights and privileges belonging or appurtenant thereto vested in the plaintiff pursuant to section 24(a) of the Land Registration Act 2012.

13. The plaintiff has not been able to use the land. The plaintiff has, therefore, suffered damages stemming from the denial of the right of access and use of the suit property. During the period, the 1st and 2nd defendants benefitted from the illegal sale of the suit property while the 3rd defendant had been occupying it to the detriment of the plaintiff. The defendants should not be allowed to benefit from their mischief.
14. The 1st and 2nd defendants, who were the main perpetrators of the fraudulent judgment, should be ordered to pay the general damages suffered by the plaintiff due to their unlawful dispossession of the subject property from the plaintiff's possession. That would assuage the suffering experienced by the plaintiff due to the illegal and unconstitutional deprivation of his property through extrajudicial or kangaroo procedures, which this court disapproves of. The court awarded a sum of Kshs. 5,000,000. That would also send a message that the Judiciary will not tolerate the use of extrajudicial processes to deprive a citizen of their legitimate right to own property. Such actions would lead to chaos.
15. Since it had been determined that the doctrine of bona fide purchaser did not apply, the counterclaim would not be successful.

Petition allowed.

Orders

- i. *Since the judgment dated January 11, 2014, allegedly delivered by the Environment and Land Court (Mukunya J.), had been declared fake, null, and void, the transfers registered in favor of the 1st and 2nd defendants on November 12, 2020, pursuant to the said judgment, were hereby declared null and void.*
- ii. *Declaration issued that the transfer of all property known as Kilif/Roka/308, registered on November 29, 2021, in favor of the 3rd defendant, was consequently null and void.*
- iii. *Declaration was issued that the title held by the 3rd defendant in respect of all the property known as Kilifi/Roka/ 308 was cancelled, and the title of the suit property was restored to its status before the registration of the transfer on November 12, 2020 in favor of the 1st and 2nd defendants.*
- iv. *An eviction order was issued, directed at the 3rd defendant, to vacate the suit property immediately and to surrender vacant possession to the plaintiff. Failure to comply shall result in forcible eviction after 90 days from the date of the instant judgment.*
- v. *Kshs. 5,000,000 awarded in general damages to the plaintiffs against the 1st and 2nd defendants.*
- vi. *Both in the main suit and the counterclaim were awarded to the plaintiff, including interest at court rates.*

Citations

Cases

1. *Arthi Highway Developers Limited v West End Butchery Limited, Solomon Mwinzi Mwau, John Mucheni Musa , Attorney General, Kenya Medical Association Cooperative Society Ltd, Yamin Construction Co Ltd & Gachoni Enterprises Civil Appeal 246 of 2013; [2015] KECA 816 (KLR) - (Explained)*
2. *Dina Management Limited v County Government of Mombasa & 5 others Petition 8 (E010) of 2021; [2023] KESC 30 (KLR) - (Followed)*



3. *Funzi Island Development Limited & 2 others v County Council of Kwale & 2 others* Civil Appeal 252 of 2005; [2014] KECA 882 (KLR) - (Followed)
4. *Kamere ,Samuel v Lands Registrar, Kajiado* Civil Appeal 28 of 2005; [2015] KECA 644 (KLR) - (Explained)
5. *Mohamed , Abu Chiaba v Mohamed Bwana Bakari & 2 others* Civil Appeal 238 of 2003; [2005] KECA 328 (KLR) - (Followed)
6. *Welimo, Peter Wafula – A Legal Representative of the Estate of Welimo Mukati v Mukhwana Walucho Kituyi* Environment and Land Miscellaneous Application 155 of 1999; [2020] KEELC 950 (KLR) - (Explained)

Statutes

Kenya

1. Constitution of Kenya articles 40(1)(6); 65;162(2)(b) - (Interpreted)
2. Environment And Land Court Act (cap 8D) section 13(1) - (Interpreted)
3. Land Registration Act (cap 300) section 24(a) - (Interpreted)

Advocates

Mr. Wameyo for Plaintiff

Ms. Kanasi H/B for Odunga for 3rd Defendant

JUDGMENT

1. This case highlights a troubling scenario in which, with the aid of court registry personnel, court documents can be destroyed, judgments can be manufactured and falsified, and misleading returns can be submitted to circumvent justice. The fraudulent judgment, dated 11 February 2014, which is central to this lawsuit, was wrongfully attributed to having been written, signed, dated, and delivered by my late brother and friend, Mukunya J., who tragically passed away in a road accident on 18 September 2018. As will be elaborated upon later in this judgment, the esteemed judge did not issue the judgment in question; it was done by a cabal of frauds, not by an ELC judge in the name of Mukunya J. Any endorsements, approvals, consequential orders, and repercussions stemming from this deceitful judgment - have been declared null and void by my brothers, Munyai J. and Kibunja J.
2. This incident constitutes a grave violation of the judiciary's mission to promote social change through equitable access to justice. Suppose court decisions can be fabricated, and various government agencies and institutions act upon these fraudulent judgments; in that case, the fundamental principle of the rule of law in a transparent democratic society is at risk of being undermined by corrupt and criminal elements.
3. Here, I resonate with the sentiments expressed by my brother, Olao J., in the case of *Peter Wafula Welimo – A Legal Representative of the Estate of Welimo Mukati v Mukhwana Walucho Kituyi* [2020] eKLR, where he comically and wittingly stated that acts of this nature, done knowingly, will be recounted before our Creator on Judgment day and these individuals may not attain salvation:

“In the Book of Luke(NIV), Chapter 13 Verse24-25, it is written: -

“Make every effort to enter through the narrow door because many, I tell you, will try to enter and will not be able to. Once the owner of the house gets up and closes the door, you will stand outside, knocking and pleading, “Sir, open the door for us.” But he will answer “I don’t know you and where you come from.”



For those members of staff at this court who caused the disappearance of Bungoma Chief Magistrate’s Court Misc Application FileNo 49 of 1999 and Bungoma High Court Civil Misc Application FileNo 155 of 1999, when you finally arrive in heaven, you will find the gate closed and when you ask the Angel “Sir open the door for us,” he will reply “Sorry, the keys to the gate are lost like the two files that you hid at Bungoma Court”.

4. Before the commencement of a full trial, an application was submitted on 29 May 2023, by Mr Wameyo, the esteemed counsel representing the plaintiff. This application sought a mandatory injunction to require the defendants to vacate land parcel No. Kilifi/Roka/308 (the suit property), as it was alleged that a fraudulent judgment order facilitated the transfer of interests in this land to the 3rd defendant. The alleged counterfeit order originated from a judgment purportedly issued by the late Mukunya J on 11 February 2014, in Mombasa High Court Civil Case No 39 of 1996. Subsequent declarations by Justices Munyao and Kibunja deemed this judgment to be fraudulent and, therefore, null and void, which, by extension, invalidated any transfer of property rights concerning the disputed land to the 3rd defendant.

5. On 13 December 2023, after reviewing the arguments presented by both parties and the submissions from counsels, Mr Wameyo for the applicants and Mr Odunga for the 3rd respondent, the court delivered its ruling significantly thus:

“In this case, the 3rd defendants claim to be an innocent purchaser for value without notice. This is a matter which is not simple, clear, and straightforward to be decided in a summary manner. In my view, A full trial has to be conducted. It is reckoned by this Court for all purposes that a fake judgment was used to have the land transferred to the 3rd defendant. The question at the trial hereof will be - was the 3rd defendant well aware of this fake judgment? Did 3rd defendant act in concert with the other defendants? As of now, I don’t know.”

6. The 1st, 2nd, and 4th defendants failed to appear or submit their defenses. Consequently, the trial focused solely on the plaintiff’s case against the 3rd defendant, specifically addressing whether they qualified as bona fide purchasers for value without notice and whether they should be recognized as such, as outlined in the defense and counterclaim dated 7 September 2023. Additionally, the trial sought to determine who should bear the costs associated with the lawsuits.

7. At the conclusion of the trial, the court instructed the parties to submit their written arguments. Mr Wameyo, representing the plaintiffs, complied with this directive, while Mr Odunga, representing the defendant, failed to submit any closing submissions.

8. Plaintiff Lawrence Charo Karisa testified on 6 May 2024, adopting his witness statement dated 30 May 2023. He stated that in May 2002, he was informed that plot No. Kilifi/Roka/308 was for sale. The vendor was Hamisi Alawi Mbwana, the registered owner of the property. The plaintiff was shown a copy of a letter of allotment and a title deed, both of which identified Hamisi Alawi Mbwana as the bona fide owner. He later consulted the Lands Registry and confirmed that the plot was indeed registered in Hamisi Alawi Mbwana’s name. He also established that the plot was free from any inhibition, caution, restriction, or encumbrance. The plaintiff subsequently visited the plot to verify the situation on the ground. He confirmed that the land was vacant and that no one was residing there. At that time, the area was overgrown with bushes. Satisfied with both the legal and physical status of the plot, the plaintiff purchased the property. After meeting all legal requirements, the property was eventually transferred to him on June 11, 2002. Thereafter, he took possession of the land and began its development.



9. In September 2002, the plaintiff was advised by Advocate Chalalu Kofa Chalalu, who was then representing Mr Hamisi Alawi Mbwana, that one Juma Pamba Ismael had filed a lawsuit against Mr Hamisi Alawi Mbwana concerning the same plot. Since the property had already been transferred to the plaintiff, the advocate informed him about the status of the suit, clearly stating that an interlocutory application for an injunction had become moot due to the previous purchase and transfer of the plot in favor of the plaintiff. The plaintiff was, therefore, to wait for the service of the amended pleadings, in which he would be joined as a party to the suit. Subsequently, the plaintiff received no further communication and assumed that the dispute had either been abandoned or resolved. It was not until December 2004, over two years later, that the plaintiff received a notice to appear before the Bahari Land Dispute Tribunal.
10. The plaintiff later conducted another search during this period and confirmed that he remained the registered owner. The Bahari Land Dispute Tribunal subsequently adjourned the hearing of the matter filed before it, pending the hearing and determination of ELC No 39 of 1996, which Juma Pamba Ismael had by then filed against Hamisi Alawi Mbwana. The plaintiff then instructed Musinga & Co. Advocates to ensure his interest in the property was protected. Following these instructions, the plaintiff applied to be joined as a defendant in ELC No 39 of 1996. The plaintiff was joined as a defendant on October 9, 2008.
11. Pamba Juma Ismael died in 2000. Through an application dated 20 October 2001, the court was moved to revive the case, which had abated due to his death. In a ruling delivered by Onyancha J on 28 February 2002, the court directed that:
 - a. The suit shall be revived.
 - b. Mishi Pamba Juma, the wife of the deceased, shall be appointed as the personal representative of the deceased's estate.
12. The plaint was subsequently amended, substituting Pamba Juma Ismael with his widow, Mishi Pamba Juma. The 1st and 2nd defendants were never joined in the suit. Thereafter, the matter in ELC No 39 of 1996 proceeded as follows:
 - a. On 10 October 2011, the matter came up for hearing before Muriithi J, during which Mishi Pamba Juma testified as PW1.
 - b. On 25 January 2012, Anthony Mwenga testified as PW2.
 - c. On 3 July 2012, the matter came before Muriithi J. and was scheduled for mention on 6 December 2012.
 - d. On 6 December 2012, the matter was set for hearing on 7 February 2013.
 - e. On 7 February 2013, the matter was listed before Hon. Odero J., who ordered that the file be taken before Muriithi for directions.
 - f. On the same day, Muriithi J scheduled the matter for hearing on 20 March 2013, before the judge in charge of the Land Division, as he was leaving the station on transfer.
 - g. Thereafter, the plaintiff failed to schedule a further hearing for the matter.
13. The plaintiff was subsequently served with an application before the Principal Magistrate in Kilifi, seeking his eviction from the suit property based on a final judgment allegedly rendered in ELC No 39 of 1996 (Mukunya J). The application was opposed and ultimately dismissed. The 1st and 2nd



defendants filed a similar application in ELC No 39 of 1996, referencing the alleged judgment in that case, which the plaintiff knew to be fraudulent.

14. The plaintiff testified that he moved the court in ELC No 39 of 1996 for a declaration that the alleged judgment was a forgery. Meanwhile, using the impugned judgment, the 1st and 2nd defendants caused the property to be transferred to their names. They subsequently demolished the plaintiff's structures on the subject land and chased away his caretaker. The plaintiff, feeling a deep sense of betrayal, reported the matter to the police and received an occurrence report (OB). He also registered a prohibition against the title. Despite this, the 1st and 2nd defendants still managed to transfer the property to the 3rd defendant. This occurred because they relied on what was presented as an authentic judgment of this court, which they assumed was binding on the Land Registrar.
15. The 3rd defendant, a land-buying and selling company, called its sole witness Joseph Muchere, the director, who testified on July 29, 2024, adopting his witness statement dated September 7, 2023. The highlights of his testimony are that the 3rd defendant is, in essence, a land-buying and selling company. It purchases land, subdivides it, and resells it on the overt market. In this case, they became aware of the suit property, which was for sale, and approached the 1st and 2nd defendants – ostensibly the owners – to purchase it. A sale agreement was entered into on September 3, 2020, with a consideration agreed at Kshs 10,200,000.
16. Before the purchase, due diligence involved checking the land registry, which indicated that the land belonged to the 1st and 2nd defendants, who were issued titles on 12 November 2020. A certificate of search dated 13 April 2021, was also provided.
17. Mr Muchere confirmed that a visit was conducted to the site, and it was verified that the land was vacant.
18. Upon signing the sale agreement, all necessary steps were taken, and relevant consents were obtained, resulting in a transfer dated 5 November 2021. This transfer involved the legal process of transferring ownership of the property from the 1st and 2nd defendants to the 3rd defendant. Subsequently, a title deed was issued on 12 November 2021, confirming the 3rd defendant's ownership of the suit property.
19. Mr Muchere stated that, despite following all legal procedures to purchase the suit property and being innocent purchasers for value after subdividing the land, a court order dated 17 February 2022, placed an inhibition on the title. The 3rd defendant seeks the removal of this inhibition and requests that the court declare them the rightful owner of the suit property.
20. Mr Muchere concluded that the 3rd defendant was never involved in any fraudulent transaction in concert with the 1st and 2nd defendants to deprive the plaintiff of the suit property based on a counterfeit judgment. Their deal was above board.
21. Before I address the main issues in this trial, the third defendant states in paragraph three of the statement of defence that: "this court is not clothed with the requisite pecuniary jurisdiction to determine this matter." The basis for the 3rd defendant's assertion is the claim that the suit property was valued at Kshs 10,200,000 in 2020. To support this claim, the 3rd defendant referenced the Agreement for Sale dated September 3, 2020, which indicates that the property was allegedly sold to the third defendant for Kshs 10,200,000.
22. I concur with Mr Wameyo for the plaintiff that a sale agreement cannot be relied upon for a fair determination of the value of the suit property. The 3rd defendant was expected to present a Valuation Report as evidence to establish the property's value within the range pleaded by the 3rd defendant. However, no report has been submitted to the court. Meanwhile, the plaintiff has provided a Valuation



Report prepared by Rightend Appraisal Ltd, dated 24 February 2024, indicating that the current market value of the property is Kshs 28,000,000.

23. Furthermore, there is no provision in the Constitution of Kenya or any statute that limits the jurisdiction of this court with respect to any dispute involving the environment and land. The 3rd defendant's objection is, therefore, both factually and legally unfounded. The 3rd defendant's contention contradicts the provisions of article 162(2)(b) of the Constitution, which grants this court the same status as the High Court with respect to the environment, use, occupation, and title to land. Section 13(1) of the Environment and Land Court Act No 19 of 2011, provides that:

“The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.”

Therefore, the ELC enjoys unlimited original jurisdiction over matters concerning the environment and land.

24. It is an undisputed fact that the judgment resulting in the transferring of the suit property, ELC No 39 of 1996, is clearly articulated in the decisions made by Munyao J and Kibunja J in subsequent applications before their Lordships. That judgment was declared fraudulent for all purposes and intents. In the order issued by Munyao J on 28 July 2022, the learned judge expressly found and ordered that:

- “1. The purported judgment dated 11.2.2014, alleged to have been written by Mukunya J, is fake, null, and void
2. No person should proceed to give any effect to that purported judgment
3. Whatever purports to be a decree emanating from the alleged judgment is not a decree of this court and should not be acted upon by any entity or person.
4.
5.
6.
7. The Regional Director of Criminal Investigation, Coast Region, to undertake investigations and proceed to gather evidence and take steps to prosecute all those who may have been involved in one way or another to the fake judgment herein”.

25. In the ruling delivered by Kibunja J on 26 June 2023, the learned judge issued the following orders concerning the impact of the fake judgment on the title of the suit property:

“That for avoidance of doubt, the fake judgment alleged to have been delivered by SM Mukunya J, on 11.2.2014 in favour of Juma Pamba and two others, and/or the decree purported to arise therefrom did not emanate from this court. The said judgment is, therefore, a nullity, null and void, and incapable of conferring any interests over the suit property land parcel no Kilifi/Roka/308 to anybody or entity”.

26. Regarding whether the 3rd defendant qualifies as an innocent purchaser for value without notice and holds legitimate title to the subject property, Mr Wameyo, representing the plaintiffs, cited several



- judicial precedents to support his argument. He asserted that had the 3rd defendant conducted due diligence, it would have discovered that the property remained and was in the possession of the plaintiff at the time the sale agreement was executed on September 3, 2020.
27. In the instant case, it is undisputed that the 3rd defendant's title originates from the titles of the 1st and 2nd defendants, which were acquired fraudulently. The issue of fraud is a well-established fact, as stated in ELC No 39 of 1996. I agree with Mr Wameyo that, based on the foregoing, the doctrine of a purchaser for value without notice is not available to the 3rd defendant as a defense.
28. In the case of *Samuel Kamere v Land Registrar* (Kajiado Civil Appeal No 28 of 2005) [2015] eKLR, the Court of Appeal held that:
- “.....In order to be considered a bonafide purchaser for value, they must prove that they acquired a VALID and LEGAL title, secondly, they carried out the necessary due diligence to determine the lawful owner from when they acquired a legitimate title, thirdly that they paid valuable consideration for the purchase of the suit property”.
29. To benefit from the defense of a bona fide purchaser for value without notice, a purchaser must take the necessary steps to investigate the history of the land and examine the root of the title rather than simply assuming that the title held by the seller demonstrates the seller's absolute and indefeasible title.
30. In the instant case, the 3rd defendant's witness admitted during cross-examination that a search was conducted before the sale agreement dated September 3, 2020, was executed. Since, at that time, the property was still registered in the plaintiff's name, it is clear that the 3rd defendant acquiesced to the fraudulent actions of the 1st and 2nd defendants.
31. The defense of a bona fide purchaser for value without notice does not hold up. The title is based on fraud. article 40(6) of the *Constitution*, therefore, extends the protection of property rights only to those properties acquired legally, and such legality encompasses the acquisition process.
32. I am persuaded by the decision cited by Mr Wameyo on behalf of the plaintiffs. Therefore, in the case of *Funzi Development Ltd and others v County Council of Kwale*, Mombasa Civil Appeal 252 of 2005, the court held that:
- “..... a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot, on the basis of indefeasibility of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”
33. Furthermore, as correctly noted by Mr Wameyo, in the case of *Arthi Highway Development Ltd v West End Butchery Ltd and others* [2015] eKLR, the Court of Appeal determined that the appellant was not a bona fide purchaser. The court reasoned that forgeries compromised the appellant's share transfer documents. It observed that fraudsters had utilized these forged documents to sell the disputed property to the appellant, who subsequently subdivided it into various parcels. The court held that no valid title was conveyed to the appellant, as the title was irredeemably fraudulent. Additionally, the court stated that the titles obtained by subsequent purchasers of the subdivisions were also null and void.
34. The Supreme Court, in the case of *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] eKLR, ruled that the protection afforded to a bona fide purchaser for value without notice does not apply when the property title is acquired irregularly or illegally. The court cited with approval the Court of Appeal's decision in *Samuel Kamene v Land Registrar* (*supra*) and concluded



that a title document is not sufficient evidence of property ownership. When the origin of that title document has been challenged, the holder must go beyond the instrument itself and demonstrate that the acquisition process from inception was legal.

35. The 3rd defendant's only witness admitted during cross-examination that they had searched to determine the ownership of the suit property before executing the sale agreement dated 3 September 2020. From the testimony of the 3rd defendant's witness, it is clear that the search in question was conducted before 3 September 2020, when the agreement was ultimately executed. As of 3 September 2020, the plaintiff was still the registered owner of the suit property. The transfer of the property in favor of the 1st and 2nd defendants took place on 12 November 2020, long after both the agreement and the search mentioned by the 3rd defendant.
36. This indicates that when the parties signed the sale agreement dated 3 September 2020, they were either aware or ought to have been aware through the official search cited by the 3rd defendant's sole witness (which was not produced), indicating that the property was registered in the name of the plaintiff and not the 1st and 2nd defendants. Therefore, the 3rd defendant could not be a bona fide purchaser for value without notice. It would have been helpful if the sale agreement had been executed after the property was transferred to the 1st and 2nd defendants on 12 November 2020. The lingering question is how the 3rd defendant knew that the property would ultimately be transferred to the 1st and 2nd defendants on the strength of the fake judgment and where the 3rd defendant derived the confidence to pay the 1st and 2nd defendants Kshs 1,500,000/- well before the property was transferred to them on the strength of the fake judgment. The search conducted by the 3rd defendant, dated April 20, 2021, indicates that the 1st and 2nd defendants, as registered owners, emerged much later. As mentioned, a search should have been conducted before executing the sale agreement. Or, if it was done as indicated by the 3rd defendant, the ownership status of the plaintiff, which was still subsisting on the record, was swept under the carpet.
37. The question raised by the plaintiff in submissions is pertinent: How can it be a coincidence that the 1st and 2nd defendants, who were not parties in ELC No 39 of 1996, are the same individuals who were fraudulently listed as plaintiffs in ELC No 39 of 1996, and that these are the same individuals who were dealing with the 3rd defendant in anticipation of an illegality that was yet to be committed?
38. Due to the foregoing, the 3rd defendant cannot rely on the principle of the bona fide purchaser for value without notice in an attempt to conceal the fraudulent transactions.
39. The firm evidence on record indicates that the plaintiff acquired the suit property by purchasing it from Hamisi Alawi Mbwana. The property was transferred to the plaintiff on June 11, 2002. Throughout the pendency of ELC No 39 of 1996, the plaintiff has remained the bona fide registered owner of the suit property. To date, the plaintiff's title has not been cancelled by any court order or by the Registrar of Lands. The plaintiff's interest in the suit property was only interrupted by the illegal eviction from the property and the issuance of the title to the 1st and 2nd defendants based on the forged judgment dated 11 February 2014. It is undisputed that this court, in ELC No 39 of 1996, has since declared the judgment dated 11 February 2014 to be invalid and incapable of conferring any title.
40. Regarding the various orders sought in the plaint, with the cancellation of all transfers registered pursuant to the fake judgment, the property reverts to its original status prior to the transfers. It is not in dispute that, before the illegal and fraudulent transfers, the plaintiff was the duly registered owner of the subject property. In light of the foregoing, the plaintiff should be declared the bona fide registered owner of the suit property.



41. Article 40(1), subject to article 65, states that every person has the right, either individually or in association with others, to acquire and own property. An individual cannot be arbitrarily deprived of this right, nor can the enjoyment of such property be denied to them. Furthermore, under article 40(6), the rights specified in article 40(1) do not extend to property acquired illegally. Neither the 1st, 2nd nor the 3rd defendant has any color of interest in the suit property. Their continued possession and occupation of the suit property are adverse to the plaintiff's interest and constitute an infringement of the plaintiff's rights under article 40 of the Constitution. Since the 3rd defendant's possession is inconsistent with the provisions of article 40(1) of the Constitution, it constitutes a continuous infringement of the plaintiff's constitutional rights under that same article. The only remedy available to halt this infringement is the eviction of the 3rd defendant from the suit property and the return of vacant possession of the property to the plaintiff.
42. Since the plaintiff is the recognized and bona fide legal owner of the suit property, the subsequent transfers having been rendered null and void by the decisions of the court referred to above, the absolute ownership of the suit property, together with all rights and privileges belonging or appurtenant thereto vest in the plaintiff pursuant to section 24(a) of the Land Registration Act 2012
43. Regarding the issue of General Damages, the plaintiff was unlawfully evicted from the property in question by the 1st and 2nd defendants based on a fraudulent judgment to facilitate the sale to the 3rd defendant; the 1st and 2nd defendants were aware that the plaintiff was the registered owner of the suit property as of September 3, 2020, when the sale agreement between the 3rd defendant and the 1st and 2nd defendants was executed. It has been proven that the 1st and 2nd defendants acted to undermine the plaintiff's interest in the suit property. The 1st and 2nd defendants were aware that they were holding a fake judgment that did not originate from the ELC (Mukunya J). This eviction has resulted in the denial of the plaintiff's rights to the suit property under article 40 of the Constitution and section 24 of the Land Registration Act 2012.
44. The plaintiff has not been able to use the land. The plaintiff has, therefore, suffered damages stemming from the denial of the right of access and use of the suit property. During this period, the 1st and 2nd defendants benefitted from the illegal sale of the suit property while the 3rd defendant has been occupying it to the detriment of the plaintiff. The defendants should not be allowed to benefit from their mischief.
45. As submitted rightly so by Mr Wameyo for the plaintiffs - In the case of Abu Chiaba Mohamed v Mohamed Mbwana Bakari & 2 others [2005] eKLR the court held that:
- “...no man can be allowed to rely on his own wrong to defeat the otherwise valid claim of another man. he cannot be allowed to take advantage of his wrong.....the law will not and cannot permit such a party to rely on his own wrong to defeat an otherwise valid petition.”
46. With the same parity of reasoning, I am inclined to believe that the 1st and 2nd defendants, who are the main perpetrators of the fraudulent judgment, should be ordered to pay the General Damages suffered by the plaintiff due to their unlawful dispossession of the subject property from the plaintiff's possession. This will assuage the suffering experienced by the plaintiff due to the illegal and unconstitutional deprivation of his property through extrajudicial or kangaroo procedures, which this court disapproves of. I will award a sum of Kshs 5,000,000 under this head. This will also send a message that the judiciary will not tolerate the use of extrajudicial processes to deprive a citizen of their legitimate right to own property. Such actions would lead to chaos.



47. Regarding the counterclaim, since it has been determined that the doctrine of bona fide purchaser does not apply, the counterclaim will not be successful.
48. Regarding costs, given the nature of the case, the defendants' behavior before, during, and after the determination of ELC No 39 of 1996, as well as their actions in these proceedings, the defendants shall be liable for the costs of this suit and the counterclaim.
49. These are the court's final orders:
- a. It is hereby declared that since the judgment dated 11th January 2014, allegedly delivered by this court (Mukunya J), has been declared fake, null, and void, the transfers registered in favor of the 1st and 2nd defendants on 12th November 2020, pursuant to the said judgment, are hereby declared null and void.
 - b. A declaration is hereby issued that the transfer of all property known as Kilif/Roka/308, registered on 29 November 2021, in favor of the 3rd defendant, is consequently null and void.
 - c. A declaration is hereby issued that the title held by the 3rd defendant in respect of all the property known as Kilifi / Roka/ 308 is cancelled, and the title of the suit property is restored to its status before the registration of the transfer on 12th November 2020 in favor of the 1st and 2nd defendants.
 - d. An eviction order is hereby issued, directed at the 3rd defendant, to vacate the suit property immediately and to surrender vacant possession to the plaintiff. Failure to comply shall result in forcible eviction after 90 days from the date of this judgment.
 - e. Kshs. 5,000,000 awarded in General Damages to the plaintiffs against the 1st and 2nd defendants.
 - f. Costs of the suit - both in the main suit and the counterclaim- awarded to the plaintiff, including interest at court rates.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 2ND DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr Wameyo, for the Plaintiff

Ms. Kanasi H/B for Odunga for the 3rd Defendant

Happy: Court Assistant

