



REPUBLIC OF KENYA



**KENYA LAW**  
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**Irungu v Njuguna & 8 others (Environment & Land Case  
75 of 2020) [2025] KEELC 4116 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4116 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 75 OF 2020**

**JG KEMEI, J  
MAY 29, 2025**

**BETWEEN**

**EDWARD NJOROGE IRUNGU ..... PLAINTIFF**

**AND**

**JOHN MBUGUA NJUGUNA ..... 1<sup>ST</sup> DEFENDANT**

**NORMAN KHAGAI ASEGA ..... 2<sup>ND</sup> DEFENDANT**

**FRANCIS MAINA GITAU ..... 3<sup>RD</sup> DEFENDANT**

**JAMES MUIRURI GITAU ..... 4<sup>TH</sup> DEFENDANT**

**PETER NJOROGE KINYANJUI ..... 5<sup>TH</sup> DEFENDANT**

**MICHAEL MITHAMO GATERE ..... 6<sup>TH</sup> DEFENDANT**

**THE LAND REGISTRAR RUIRU ..... 7<sup>TH</sup> DEFENDANT**

**THE LAND REGISTRAR ..... 8<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 9<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**The Pleadings**

1. Edward Njoroge Irungu filed suit against the Defendants vide a plaint dated the 10/9/2020 seeking the following orders;
  - a. A declaration that the Plaintiff is the legitimate and bonafide owner of the Property known as Title No Ruiru/Kiu Block2/3595 (the suit land).



- b. An order of permanent injunction restraining the defendants, their agents' servants' employees or any other person acting through them from trespassing transferring selling charging leasing disposing of alienating or in any manner interfering with the suit land.
  - c. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants registration as proprietors of the suit land was obtained through fraud is illegal null and void.
  - d. A declaration that the decision by the 7<sup>th</sup> and 8<sup>th</sup> defendants to cancel the title of the suit land issued in the name of the Plaintiff and instead issue it to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants was illegal unprocedural and therefore null and void.
  - e. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not have title to the suit property capable of transferring the same to the 5<sup>th</sup> and 6<sup>th</sup> Defendants and subsequently to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  - f. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants purported title to the suit land was bad defective null and void and was incapable of conferring any lawful interest to the 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> defendants.
  - g. An order directing the 7<sup>th</sup> Defendant to rectify the Land Register by deleting and or cancelling the registration of the 1<sup>st</sup> -6<sup>th</sup> Defendants as proprietors of the suit land and an order directing the 7<sup>th</sup> Defendant to enter the Plaintiff as the proprietor in the green card of the suit land.
  - h. Special damages of Kshs 15,000/-
  - i. General damages for loss of use of the suit property
  - j. Costs of the suit and interest
2. The Plaintiff avers that he is the registered owner of the suit land having purchased it for the consideration of Kshs 270,000/- in 2005 from one Mary Wangui Kirumbi.
  3. He stated that upon issuance of title in 2008, enjoyed quiet and peaceful possession and fenced the property.
  4. On or about the Month of November 2017 he carried out an official search of the suit land at the Land Registry and to his shock and surprise discovered that the land had been registered in the names of 1<sup>st</sup> and 2<sup>nd</sup> Defendants and issued with a title in 2015. Further historical searches on the green card revealed that the 3<sup>rd</sup> -6<sup>th</sup> Defendants had been registered as owners of the land at various times.
  5. It is the Plaintiffs case that the whole process of acquisition of the suit land by the Defendants was illegal and fraudulent and that no bonafide title was passed at all. He has itemised the particulars of fraud against the 1<sup>st</sup> -9<sup>th</sup> Defendants under para 20 of the Plaint.
  6. The Plaintiff has entreated this court to declare him as the registered and lawful owner of the suit property and order that the title reverts to him.
  7. The 1<sup>st</sup> -5<sup>th</sup> Defendants have denied the Plaintiffs claim vide the statement of defence dated the 18/11/2020.
  8. The 1<sup>st</sup> -5<sup>th</sup> Defendants contend that the alleged vendor Mary Wangui Kirumbi never owned the suit land and could not have conveyed any title to the Plaintiff and impugned the process in which the Plaintiff acquired title as fraudulent and illegal. They denied any fraud on their part and insist that they acquired a valid title from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, who are the sons and heirs of Peter Gitau Kage,



- the original owner of the suit land. The Court was urged to strike out the Plaintiffs suit on the basis that it was time barred.
9. In their counterclaim the 1<sup>st</sup> -5<sup>th</sup> Defendants particularised fraud and illegality on the part of Plaintiff and or Mary Wangui Kirumbi and sought the following orders;
- a. The Plaintiffs suit against Defendants be dismissed with costs.
  - b. A declaration that the Plaintiffs acquisition and registration of the suit property in his favour was unlawful unprocedural and fraudulently procured and the same is null and void.
  - c. A declaration that the late Peter Gitau Kage was the rightful owner of the suit property known as Shamba parcel No 3595 pursuant to Ballot No 1412 and share certificate No 2849 issued to him by Githunguri Constituency Ranching Company Limited.
  - d. A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were the absolute and genuine owners of the suit property and subsequent transfers to the 5<sup>th</sup> and 6<sup>th</sup> Defendants and thereafter the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be upheld.
  - e. A declaration do issue that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the absolute owners of the suit property.
  - f. A permanent injunction restraining the Plaintiff either by himself his servants' agents' employees assigns person representatives or otherwise from encroaching upon trespassing onto alienating or disposing of or in any other way whatsoever dealing with the suit property.
  - g. An order directing the 9<sup>th</sup> defendant to rectify cancel and deregister any and all entries in favour of the Plaintiff in respect of the suit property and for any title deed held by the Plaintiff to be nullified.
  - h. An order for compensation for violation of the defendant's constitutional rights
  - i. Costs of the suit
10. Despite service of the summons having been effected, the 6<sup>th</sup> Defendant neither entered appearance nor filed a defence.
11. The 7<sup>th</sup> -9<sup>th</sup> Defendants too denied the Plaintiff's claim vide its statement of defence dated the 7/10/2020. They contend that if at all the suit property was registered in the names of the 1<sup>st</sup> -5<sup>th</sup> Defendants then the same was based on documents presented before them upon which they exercised due diligence. They denied allegations of fraud and illegality and sought to put the Plaintiff to strict proof. On a without prejudice basis they aver that should they be found culpable by the court for the registration of the 1<sup>st</sup> -5<sup>th</sup> Defendants on reliance on the information of or the misrepresentation of the 1<sup>st</sup> -5<sup>th</sup> Defendants and the Plaintiff will have suffered loss and damage, they shall seek indemnity under the provisions of Order 1 rule 24 of the Civil Procedure Rules against the 1<sup>st</sup> -5<sup>th</sup> Defendants. Lastly, they urged the court to dismiss the Plaintiff's suit with costs.

### **The evidence**

12. PW1 – Edward Njoroge Irungu testified and relied on his witness statement dated the 10/9/2010 and produced documents marked as PEX No 1-32 in support of his case.
13. He stated that he bought the suit land from Mary Wangui Kirumbi (Mary) whom he met three times in the process of the transaction. He referred to the undated sale agreement of 2005 between him and the said Mary. That he was introduced to the property and to Mary by an agent by the name of



Njuguna who is deceased. He informed the court that despite the meeting Mary never gave him her phone number nor her physical address. He confirmed that Mary was present when they applied for the land control board consent. He believes that Mary must have given the documents in respect to the title she held to her lawyers given that the transaction took place 17 years ago. He stated that he did not verify the ID and the KRA PIN for the said Mary as he left the documents to his lawyers to scrutinise on his behalf. He admitted that he neither has a copy of a green card showing his ownership status nor that of Mary in respect to the suit land. That he had no evidence to show that Mary was a member of the Githunguri Ranching Company Limited (GRCL), the original owners of the land. In addition, that he never carried out any due diligence at GRCL despite knowing the land emanated from it. Asked why he did not sue Mary and GCRL he responded that he did not believe that Mary conned him in any way but instead laid blame on the Land Registrar for registering the Defendants as proprietors of his title which he continues to hold the original title to date.

14. Although he did not present any official land search documents, the witness stated that his lawyers carried out due diligence on the title held by Mary and obtained an official land search. In effect he stated that he did not present any documents showing that Mary was the registered owner. He stated that he paid the purchase price in cash and has no documents evidencing receipt or acknowledgement before the court. When shown the documents, the witness could not explain why the land control board (LCB) consent was obtained on 10/1/2006 before the application was even made dated the 29/11/2007.
15. The witness stated that he got information that there were strangers who were viewing his property and asked his wife to lodge a caution dated 10/9/17 on the same to protect it.
16. With respect to the summons by the Land Registrar vide the letter dated the 15/6/2015, the witness stated that though he received the letter 2 months later he did not comply with the summons nor presented his title documents before the Land Registrar or challenged the decision of the Land Registrar issued on the 21/7/2015.
17. With respect to para 5 of the Plaintiff citing the particulars of fraud, the witness informed the court that unlike the defendants he holds a genuine title and urged the court to uphold it and proceed to cancel that of the defendants since in his own words is a product of fraudulent schemes and machinations committed by the Defendants.
18. DW1 – Norman Khagai Asega stated that he is the 2<sup>nd</sup> Defendant and co -owner of the suit land. He relied on his witness statement dated the 18/10/2020 as his evidence in chief and produced documents marked as DEX No 1-16 in support of his case.
19. He stated that upon carrying out due diligence they purchased the suit land from the 5<sup>th</sup> and 6<sup>th</sup> Defendants vide a sale agreement dated the 3/9/2015 at the consideration of Kshs 12 Million. That upon completion they took possession of the suit land, fenced and are farming thereon to date.
20. Though the witness stated that he paid the purchase price in full, he conceded that he had not produced any documents in support thereof in court. While admitting that the land was transferred three times between the defendants within a period of 2 months, he stated that there is no law prohibiting expedient transactions like in the instant case. The witness admitted that the purchase price was not disclosed in either the transfer, application for land control board consent and the transfer lodged on 15/9/15 and that title issued the same day. He informed the court that he did not produce stamp duty receipts. He stated that he was aware that the property belonged to a deceased person namely Peter Kage who died on 4/6/2008 and that his sons had sold the same to the vendors whom he acquired the land from.



21. DW2- Francis Maina Gitau testified and relied on his witness statement dated the 18/11/24. He stated that he and the 4<sup>th</sup> Defendant inherited the suit land from their deceased father Peter Gitau Kage (Kage) who died in 2008. That the said Kage was a member of GRCL and held share certificate No 2849 issued to him on 1/2/1973 which entitled him to the suit land. That armed with the death certificate together with the chiefs letter, the officials of GCRL transferred the shares to them in the members register and issued them with a new share certificate No 1278 dated the 13/3/2015 and thereafter they were issued with a clearance certificate for purposes of issuance of title in their names. That upon visiting the Land Registry to process title it was discovered that the title had been registered in the name of the Plaintiff. That what followed was the summons by the Land Registrar to all the parties for verification of the documents held by each with respect to the suit land but the Plaintiff failed to attend upon which the Land Registrar issued a title in their favour on 4/8/2015.
22. In cross, the witness informed the court that though he is the son of Kage, he has not produced any documents in support. He stated that he and his brother did not petition for succession or obtain letters of grant of administration before selling the land. He stated that his father left the land to them upon his demise. That his mother separated with his father when they were young and that they are the only children of his late father.
23. In addition, the witness stated that his father never sold the land to the plaintiff. That he and his brother sold the land to the 5<sup>th</sup> and 6<sup>th</sup> Defendants at the consideration of Kshs 8 Million which he was paid in full.
24. DW3 – Robert Mugendi Mbuba testified and introduced himself as the Land Registrar, Ruiru Land Registry. He relied on his witness statement dated the 28/6/21 and produced documents marked as DEX No 19-23 in support of his testimony.
25. The witness gave the details of the entries on the register showing the registration of the 1<sup>st</sup> -6<sup>th</sup> Defendants at various periods resting with the 1<sup>st</sup> and 2<sup>nd</sup> defendants who are the alleged current proprietors.
26. Having been shown the original title in the name of the Plaintiff, the witness stated that there was no register for the title held by the Plaintiff. He disowned the searches in the possession of the Plaintiff and stated categorically that they did not emanate from the Ruiru Land Registry. He was emphatic that the law requires a grant of letters of administration when dealing with a property of a deceased person.
27. DW4 – Ochieng Gabriel Arwa testified and stated that he is the Registrar of Persons serving in the Department at the Immigration Offices, Nairobi. That that ID No 06347436 purporting to belong to Mary Kirumbi actually is registered under the name of Edward Makhakha Mutali.
28. DW5- John Maina Mburu stated that he is the Chairman of GRCL. He relied on his witness statement dated the 29/9/23 and produced documents marked as DEX 26-36. He stated that Peter Gitau Kage was allotted shares in the company in 1985. He confirmed that the estate of Peter Kage was not succeeded before the shares were transferred to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. That he died in June 2008. Shown the title belonging to the plaintiff he observed that the register was opened in 1994 during the lifetime of Kage and title was issued to the Plaintiff in July 2008 after the demise of Kage. That he was aware that Kage was in possession of his land till his demise as he never raised any complaint at all with GRCL. That in this case the 3<sup>rd</sup> and 4<sup>th</sup> Defendants presented the death certificate, chiefs' letter as well as the original share certificate and since there was no dispute on the shares and the ownership of the land, the company transferred the shares to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and issued them with a clearance certificate for titling in 2015.



29. He was categorical that Mary Wambui Kirumbi was not one of the members of GCRL nor an allottee of the suit land according to the members register.
30. DW6- Peter Njoroge Kinyanjui testified and informed the court that he is the 5<sup>th</sup> Defendant. He relied on his witness statement dated the 18/11/2020 in chief. That he and the 6<sup>th</sup> Defendant purchased the suit land from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. That he did not ask for the letters of grant of administration from the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. Asked about the whereabouts of the 6<sup>th</sup> defendant he stated that he does not know. That he only got to know him during the transaction where they purchased the land at Kshs 8 Million and sold it to the 1<sup>st</sup> and 2<sup>nd</sup> defendants three days later at Kshs 12 Million. He admitted that there was no agreement executed between the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and themselves. They paid the purchase price of Kshs 12 Million in cash. Pressed further, he admitted that there was no evidence of payment at all. No land control board consent was obtained either.
31. DW7- Raymond Ngila introduced himself as the land Registrar, Thika. He presented the presentation book which continued an entry booking for the suit land by the Plaintiff. However, he stated that there are no documents in support of the Plaintiff's title and or the name of Mary in the Thika Land Registry.
32. With that the hearing closed.

### **The written submissions**

33. All the parties filed written submissions which I have read and considered. I thank counsels for their industry and highlights.

### **Analysis and determination**

34. Having considered the pleadings, the evidence adduced at the hearing and the rival written submissions, the key issues for determination are; whether the Plaintiff has proved the root of his title; whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had capacity to transfer the suit land; whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acquired a valid title in the circumstances; costs of the suit and the counterclaim.
35. It is the Plaintiff's case that he is the registered owner of the suit land having purchased it for value from the previous owner namely Mary Wangui Kirumbi in 2008 whereupon he took possession and fenced it. That in the process of planning to develop the suit land, he carried out a search and discovered that the 8<sup>th</sup> Defendant had irregularly and fraudulently registered the suit land in the names of the 1<sup>st</sup> -6<sup>th</sup> Defendants at different and varied times. He sought a declaration that he is the registered owner of the suit land in place of the defendants.
36. The 1<sup>st</sup> -5<sup>th</sup> Defendants on the other hand claim to be the lawful owners of the suit land having acquired the same from the sons of the late Gitau and for valuable consideration. It is commonly observed from their pleadings that the parties are accusing and counter accusing each other of illegality and fraud in the manner in which each side claim to have acquired the suit land.
37. The 7<sup>th</sup> -9<sup>th</sup> Defendants denied the particulars of fraud and insist that the only documents in their custody support the ownership status of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and not the Plaintiff.
38. Before embarking on the issues for consideration, there is an important issue that I need to determine, which is whether the Plaintiff's title was lawfully cancelled by the Land Registrar or at all? It is the Plaintiff's further case that the 8<sup>th</sup> Defendant cancelled his title without his knowledge and consent and without affording him the right to be heard. It is not in dispute that the Land Registrar Thika then one Mr Leitich summoned the Plaintiff his wife Beatrice Nakayemba and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants pursuant to the provisions of Section 14b of the [Land Registration Act](#) (LRA) and section 8 (b) of



the Registration *Land Act* (now repealed) to appear before him on 7/7/2015 with the share certificate from GRCL, transfer and any other documents in respect to the suit land for purposes of rectification of the respective registers.

39. Following the said summons, the Land Registrar heard the parties in the absence of the Plaintiff and made the following findings;

“upon hearing the parties and looking at the supporting documents, I noted the following ; the company register recognises Peter Gitau ( deceased) as a lawful allottee for the plot. A certificate of clearance from the company was given to Gitau. Edward Njoroge Irungu is a stranger to the owner as well as to the company.

From the above, it is clear that Edward Njoroge Irungu has no lawful claim over the land. The genuine allottee is Peter Gitau , deceased and his dependants and beneficiaries. The existing register, if any will therefore be expunged from the record and genuine claimant be registered.”

40. Section 14 (b) of the *Land Registration Act* empowers the Land Registrar to summon any person to appear and give any information or explanation in respect to land lease charge instrument certificate document or plan relating to the land lease or charge in question and that person shall appear and give the information or explanation.
41. The word expunge means to strike out, obliterate, or mark for deletion, or to eliminate from one's consciousness or record.
42. Contrary to the evidence of the Land Registrars that there was no register for the title held by the Plaintiff, the above excerpt reveals a different story. The conclusion of the court is that there was a register otherwise what was the land register expunging from the record.
43. The court observes further that contrary to the finding of the Land Registrar there is no provision in the Act which empowers the Land Registrar to expunge a document let alone a title. The Court was called upon to make a finding that the Land Registrar can cancel a title on account of fraud under section 79 of the Act. The section provides as follows;

- (1) The Registrar may rectify the register or any instrument presented for registration in the following cases—
- (a) In formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
  - (b) In any case and at any time with the consent of all affected parties; or
  - (c) If upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
  - (d) For purposes of updating the register;
  - (e) For purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

The foregoing provisions envision rectification that does not affect the rights/interest of registered property loosely translated, basic and apparent errors or mistakes. The rectification can only occur with the proprietor's consent unless:



- (a) The proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
- (b) It would for any other reason be unjust for the alteration not to be made.

44. I agree with the Plaintiffs submissions that save for the rectification of mistakes omissions and or errors on the title, the Land Registrar has no power to cancel title. These are powers that have been donated to the court by the law as set out in Section 80 of the Act. The section provides as follows;

“(1) 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.

(2) 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 caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

45. This Court agrees with the sentiments of the Court of Appeal in *Super Nova Properties Limited & another v District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties)* [2018] eKLR that;

“The only institution with mandate to cancel a title to land on the basis of fraud or illegality is a Court of law”.

46. The court finds that the Land Registrar acted ultra vires the powers vested upon it by the law and therefore the finding made above is illegal null and void.

47. The next area of consideration is whether the Plaintiff acquired the suit land lawfully or put simply whether the Plaintiff has established the root of his title.

48. In the case *Hubert L Martin & 2 others Vs Margaret J Kamar & 5 others* (2016) EKLK where the Court held 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 might 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 mot without li break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its mot. No party should take it for granted that simply because they have a tide deed or Certificate of lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold Every party must show that their title has a good foundation and passed properly to the current tide holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as fib the only way I can determine which of the two titles should be upheld”

49. The Court has already made a finding that there are two titles in respect to the suit land; the first one is held by the Plaintiff and the other by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and this court is being entreated to



decide as to who between the two parties are holding a lawful title that deserves the protection of the law. In our jurisdiction it is illegal for a parcel of land to have two titles. It is also the law that property rights are part of the bill of rights that enjoy constitutional protections. That said Art 40 (6) of the said Constitution offer no protection to any property that has been found to have been unlawfully acquired.

50. The *Evidence Act*, Cap 80 Laws of Kenya Section 107 (1) provides that:"

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”

51. Further Section 107(2) of the *Evidence Act* provides:

“When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

52. Similarly, Section 109 of the *Evidence Act* provides:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the pivot of the fact shall lie on any particular person”.

53. The sum total of the above statutory provisions is that the Plaintiff and the 1<sup>st</sup> -5<sup>th</sup> Defendants , on account of their counterclaim, bear the responsibility to discharge the burden of proof. The old adage of he who alleges must proof is applicable in this case.

54. The starting point is the examination of the documentary evidence on record.

55. It is the Plaintiff's case that he purchased the suit land from Mary vide a sale agreement undated of 2005 at the consideration of Kshs 270,000/-. That the land was sold with vacant possession but includes any development thereon if any. The Plaintiff led evidence that he was introduced to the said Mary by a land agent who has since died . That he met with Mary three times, that is when they viewed the property, at his lawyer's office and the last time is when they sought the land control board consent in 2006. Save for the booking form dated the 17/10/2007 and the receipt dated the 29/11/2007, no duly executed transfer form executed by the parties was adduced to evidence the conveyance of the interest held by Mary in the suit land to the Plaintiff. What followed are copies of official searches dated the 14/11/2013, 29/10/2012, 15/5/2015 showing the plaintiff as the owner of the suit land. The Plaintiff adduced the original title in court issued on 9/7/2008 in his favour.

56. In his submissions, the Plaintiff submitted and acknowledged that the suit land emanates from GRCL. He argued that Gitau may have sold the land to Mary in his lifetime noting that the transaction took place in 2005 when Gitau, the previous owner was still alive. That said the Plaintiff failed to present any documents in support of any transaction between Mary and Gitau. The court found this evidence to be speculative and of no probative value.

57. DW4 – Ochieng Gabriel Arwa, the Registrar of Persons led unchallenged evidence and produced an identification report from his official records that the purported ID No 634736 appearing in the sale agreement of 2005 against the name of Mary actually belongs to a Mr Edward Makhakha. The Plaintiff led evidence that he did not know the whereabouts of Mary and neither did he have her particulars such as phone number, ID and or PIN raising serious concerns about the existence of the said Vendor.



- The mystery is further compounded by the undisputed evidence of the 1<sup>st</sup> – 5<sup>th</sup> Defendant that the PIN Number for the said Mary does not exist in the records of Kenya Revenue Authority (KRA).
58. The Plaintiff admitted that he did not produce any documents to show that Mary was ever registered as owner of the land in form of a title, green card from the Lands Office and or share certificate, ballot and clearance from GRCL despite acknowledging that the root of the title is traceable to GRCL.
  59. It is now recognised that for one to proof ownership of land in GRCL and all land buying companies for that matter one must proof that he has a membership certificate, ballot, payment receipts, members register and clearance certificate, being the key documents supporting ownership.
  60. DW5- John Maina Mburu, the Chairman of GRCL was categorical that according to their records the owner of the suit land was Peter Gitau Kage. He produced copies of the ballot No 1412, members register, several payment receipts dating back to 1985 share certificate No 2849 and clearance certificate issued to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
  61. The Land Registrars from Ruiru and Thika Land Registries both confirmed that title register, clearance certificate and a copy of title in the name of Mary are missing leading to the conclusion that the alleged proprietorship of Mary was highly in doubt. Further that the basis of the Plaintiff's title was unknown since the title, and the official searches exhibited could not be vouched from the official records at the Lands office.
  62. Arising from the nature of the evidence led above, the court concludes that the Plaintiff has failed to establish the root of his title.
  63. Turning to the second issue, undisputed evidence was led that Peter Gitau Kage was a member of the GRCL, was allocated a ballot and shares in the Company constituting parcel No 3595. It is commonly acknowledged that Gitau passed away on 4/6/2008. See the death certificate dated the 19/2/2015.
  64. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants have urged the court to find that they inherited the suit land from their father. They have adduced a copy of a letter from the Chief, Engineer, stating that the duo are the only sons and beneficiaries of Kage. DW2 admitted that they have not petitioned for succession in the estate of their late father. In cross he stated that his mother separated from his father when they were young and that the two are the only children of the deceased. DW5, the Chairman of GRCL while acknowledging the legal place of letters of administration in the estate of a deceased person, informed the court that GRCL issued the clearance certificate to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the basis of the letter from the chief and the death certificate.
  65. It is not disputed that the estate of Gitau is yet to be succeeded. The purpose of filing succession is for the court to ascertain the free assets of the estate, identify the beneficiaries and distribute the estate of the deceased. In the absence of letters of grant of administration, the court is unable to tell who the legal representatives of the estate of Kage, deceased are.
  66. Section 45 of the *Law of Succession Act* (LOSA) provides as follows;
    - “(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
    - (2) Any person who contravenes the provisions of this section shall—



- (a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) Be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

67. The effect of the above provision of the law is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.

68. Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. In the case of *Re Estate of M’Ngarithi M’Miriti* [2017] eKLR it was held that:

“.....it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*..... any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

69. Section 55 of the LOSA prohibits the distribution or division of the capital assets of the estate of a deceased person until a grant of letters of administration has been issued and confirmed. The intention of the law is to protect the estate of the deceased person.

70. Guided by the statutory provisions of the law, it is clear that the 3rd, 4th and GCRL dealt with the estate of the deceased in a manner not permitted by any law. To the extent that the 3rd and 4th Defendants held no valid letters of grant of administration over the administration of the estate of Kage, they had no capacity to deal with the land including selling it to the 5th and 6th Defendants. The GRCL also erred in issuing a clearance certificate to strangers to the estate of the deceased. In the eyes of the law it matters not the relationship of the intermeddler with the deceased. It is only after the court has clothed one with permission to deal with the estate of the deceased in form of letters of grant of administration that one may proceed in law. Anything else is termed intermeddling illegal null and void.



71. In the case of *Elijah Makeri Nyangw V Stephen Mungai Njuguna & another* [2013] eKLR and held as follows:

“The evidence in this case puts no one in doubt that the title to the 1st defendant was obtained illegally, unprocedurally or through a corrupt scheme. The documents that conveyed title to him were forged. The title could not therefore have been obtained legally or procedurally. I am satisfied that the provisions of Section 26 (1) (b) have been met and that the title of the 1st defendant is liable to be cancelled. I therefore proceed to cancel the title of the 1st defendant and his registration as proprietor of the suit land.

72. In this case the court finds that the 3rd and 4th Defendants had no power to dispose the land to the 5th and 6th Defendants. To the extent that they intermeddled with the title of the estate of the deceased, no valid interest or title was conveyed to the 5th and 6th defendants and mutatis mutandis the 1st and 2nd defendants received no valid and legal interest and title in the suit land.

73. It is the courts finding that the actions of the defendants in purporting to acquire the suit land are acts that are fraudulent and illegal in the eyes of the law and therefore the law offers no protection to the title purportedly acquired.

74. This court is mandated by the provisions of section 80 of the Registered *Land Act* to right the fraudulent and illegal acts of the defendants by ordering the cancellation of the titles and reverting the suit land to peter Gitau Kage, deceased.

75. In conclusion the court finds that in the absence of cogent evidence the Plaintiff’s title is a product of illegality and fraud. It is cancelled. Further the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had no power and capacity to cause the land to be registered in their names and further transfer to the 5<sup>th</sup> and 6<sup>th</sup> Defendants. Consequently, the said defendant acquired no valid interest title in the suit land. Finally, having held that the 5<sup>th</sup> and 6<sup>th</sup> Defendants acquired no valid title and interest in the suit land, conveyed nothing to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

76. With respect to costs. It is trite that costs follow the event. In this case none of the parties have succeeded in their quest for the ownership of the suit land, each shall then bear their costs.

77. Final orders for disposal;

- a. The Plaintiffs case fails. It is hereby dismissed
- b. The 1<sup>st</sup> -5<sup>th</sup> defendants ccounterclaim fails. It is hereby dismissed.
- c. The Land Registrar, Ruiru be and is hereby ordered to cancel the titles in the name of the Plaintiff and that of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and enter the name of Peter Gitau Kage in the register.
- d. In the meantime there shall be no dealings on the title until such time that the succession court appoints the legal administrators of the estate of the deceased.
- e. Since both parties have lost their cases, I order each to meet the costs of the suit and counterclaim.

78. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF MAY, 2025 VIA MICROSOFT TEAMS.**



**J.G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

Mr Musesya for the Plaintiff

Mr Kamotho for the 1<sup>st</sup> -5<sup>th</sup> Defendants

N/A for the 6<sup>th</sup> Defendant

Ms Ndundu for the 7<sup>th</sup> -9<sup>th</sup> Defendants

CA – Ms. Yvette

