



**Waithaka v Maina & 2 others (Environment & Land Case
E134 of 2023) [2025] KEELC 4170 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4170 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E134 OF 2023**

CA OCHIENG, J

MAY 29, 2025

BETWEEN

JACKSON KINYANJUI WAIHAKA PLAINTIFF

AND

ANTONY MAINA 1ST DEFENDANT

PENINA W MAINA 2ND DEFENDANT

REGISTRAR OF TITLES 3RD DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by a Plaint dated the 5th April 2023 and amended on 3rd November 2023. He contends that he is the legal and beneficial owner of land parcels No. Nairobi Block 105/7039, Nairobi Block 105/7040 and Nairobi Block 105/7041, hereinafter referred to as the 'suit lands', which he took possession of, in 2003 upon purchase from the original shareholder/allotee at Embakasi Ranching Company Limited. It is his case that the Defendants hold Certificates of Lease to the suit lands, which he contends they obtained fraudulently and illegally and are claiming to be the registered proprietors of the said lands.
2. She prays for judgement against the Defendants for:
 - a. A declaration that the Plaintiff is the sole legal owner and or proprietor of all that piece or parcel of land known as Plot No. Nairobi Block 105/7039, Nairobi Block 105/7040 and Nairobi Block 105/ 7041 situate at Ruai within Nairobi County.
 - b. A declaration that the certificates of lease issued to the Defendants on 27th March 2019 were irregularly, illegally and fraudulently issued and should be revoked and or declared null and void.



- c. An order directing the 3rd Defendant to proceed to rectify the land register in respect of the suit properties to reflect that the Plaintiff is the sole proprietor.
 - d. A permanent injunction against the Defendants jointly and severally prohibiting trespass into, transfer, sale, alienation, encumbrance, subdivision, charge disposal of, interference, intermeddling in or any dealings in all that piece and or parcel of land known as Nairobi Block 105/7039, Nairobi Block 105/7040 and Nairobi Block 105/7041 by their agents, successors, assigns, representatives and employees.
 - e. Costs of the suit plus interest therein at court rates.
 - f. Any other further relief that this court may deem fit and just to grant.
3. Despite being duly served, the Defendants failed to enter appearance or file any response, thus the suit proceeded undefended.

Evidence

4. The Plaintiff as PW1 adopted his witness statement as his evidence in chief. He testified that he is the beneficial owner of the suit lands, which he was allocated by Embakasi Ranching Company in the year 2003 having bought shares from an original member of the said company in 1998. Further, that he has been on the suit lands since 2003, which is over 20 years uninterrupted.
5. He claims that in early 2023, while working on the suit lands, he was approached by the 1st Defendant who claimed to be the registered owner of the said properties and had Certificates of Lease to that effect. Further, this prompted him to conduct an official search at the Central Lands Office, which confirmed that the Defendants were the original owners. He reported the matter to Embakasi Ranching Company Limited who summoned the Defendants for questioning but they did not appear.
6. He avers that the purported registration to the Defendants was illegal and was achieved fraudulently as the Defendants do not hold a Sale Agreement, where Embakasi Ranching Company Limited sold them the suit lands. It was his further testimony that the Defendants were in the process of selling and transferring the suit lands to unsuspecting parties as on several occasions, he has seen people visiting the said lands with an intention to purchase them.
7. He produced the following documents as exhibits: Police Abstract dated 10th April 2017, application for reissuance of Share Certificate, Payment receipts from Embakasi Ranching Company Limited, Letter dated 8th March 2022 to the Permanent Secretary, Ministry of Lands and Physical Planning, Copy of Certificate of Lease dated 27th March 2018 in the name of the 1st and 2nd Defendants and an excerpt of the member's register at Embakasi Ranching Company.
8. PW2 was Samuel Wachoki Kinyanjui, the Plaintiff's son. He adopted his witness statement as his evidence in chief. His evidence mirrors that of PW1. Further, he states that his father holds a shareholder certificate number 1459 and had built their home on Nairobi Block /105/7039 where they have lived to date. Further, that he erected rental houses on Nairobi Block /105/7040 and planted trees on Nairobi Block 105/7041.
9. It was his testimony that he is the one who went to the Land's Office on PW1's instructions to conduct an informal search as Certificates of Lease issued to the 1st and 2nd Defendants are yet to be uploaded on the Ardhisasa portal. Further, that Embakasi Ranching Company Limited also confirmed that the Plaintiff is the rightful owner of the suit lands and even issued him with an excerpt of their Member's register.



10. He explained that out of curiosity, together with his sister, they contacted the 1st and 2nd Defendants enquiring on the intended sale of the suit lands and even conducted false negotiations on the purchase price, which negotiations culminated at their Advocates offices. Further, they informed the Defendants that they were the Plaintiff's children and cautioned them against advertising to sell the suit lands, without their father's permission. He claims that the 1st and 2nd Defendants denied that they were selling the suit lands and contended that, there could have been a mistake with the Land Surveyors on the numbering of parcels of land as their parcels are the ones adjacent to the suit lands.

Submissions

11. The Plaintiff in his submissions contends that he has made a case for issuance of a permanent injunction as sought. He also submits that even though he does not hold Certificates of Lease to the suit lands, the documents produced herein prove that he is the beneficial owner thereof thus the Defendants titles were issued unprocedurally and they ought to be impeached under Section 26(1) of the [Land Registration Act](#). He further submits that in the absence of support of the legitimacy of the registration in the names of the 1st and 2nd Defendants and the abundance of evidence to support his ownership, this court should cancel the Defendants' Leases and order rectification of the register under Section 80 of the [Land Registration Act](#).
12. To buttress his averments, he relied on the following decisions: Kenya Power & Lighting Co. Ltd v Sheriff Molana Habib [2018] eKLR; Munyu Maina v Hiram Gathiha Maina [2013] eKLR; Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR and Hubert L. Martin & Others [2016] eKLR.

Analysis and Determination

13. Upon consideration of the Plaintiff's testimony, exhibits and submissions, the following are the issues for determination: Whether the Plaintiff is the legal owner of Nairobi Block 105/7039, 105/7040, and 105/7041. Whether the registration of the Defendants as proprietors of suit lands and issuance of Certificates of Lease was irregular, illegal, and/or fraudulent.

I will deal with both issues jointly.

14. The Plaintiff claims to be the beneficial owner of the suit lands, which he was allocated by Embakasi Ranching Company in the year 2003, having bought shares from an original member of the said company in 1998. It was PW1's testimony that he has been in possession of the suit lands, since 2003, which is over 20 years.
15. It was PW1's further testimony that in early 2023, while working on the suit lands, he was approached by the 1st Defendant who claimed to be the registered proprietor of the said properties and had Certificates of Lease to that effect. Further, upon undertaking an official Search at the Central Lands Office, it revealed that the Defendants had been registered as original owners of the suit lands. It was his contention that he reported the matter to Embakasi Ranching Company Limited who summoned the Defendants for questioning but they failed to appear. The Plaintiff hence seeks to be declared owner of land parcels Nairobi Block 105/7039, Nairobi Block 105/7040, and Nairobi Block 105/7041 and for the Certificates of Lease in the names of the Defendants to be revoked. I note the Defendants though duly served failed to enter appearance and defend the suit.



16. In *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the court stated as follows in relation to an undefended claim;

“It is not automatic that in instances where the evidence is not controverted, the claimant’s claim shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest”.

17. Looking at the documents presented by the Plaintiff which include the Police Abstract dated 10th April 2017, application for reissuance of Share Certificate, Payment receipts from Embakasi Ranching Company Limited, Letter dated 8th March 2022 to the Permanent Secretary, Ministry of Lands and Physical Planning and an excerpt of the member’s register at Embakasi Ranching Company, I opine that this demonstrates the root of the Plaintiff’s beneficial ownership to the suit lands. Further, I note Embakasi Ranching Company Limited vide their letter dated the 8th March, 2022 addressed to the PS, Ministry of Lands and Physical Planning, confirmed that the Plaintiff who was owner of Share Certificate No. 1459 Computer No. 0357095 and Plots Nos. P2039, P2039B, A14B is the proprietor of parcel numbers Nairobi Block 105/7039, 105/7040 and 105/7041 which are the suit lands herein. Even from the excerpt of the Members Registers which was produced as an exhibit, it reveals as follows: Plots P 5440 - 7039, P 5441 – 7040 and P 6222 – 7041 belong to the Plaintiff. It is hence not clear how the 1st and 2nd Defendants acquired their Certificates of Title to the said suit lands and from this evidence, it emerges that the said Certificates of Lease were acquired fraudulently.

18. The Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR held as follows:

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

19. The Supreme Court held as follows in *Dina Management Limited v County Government of Mombasa & 5 Others* [2023] KESC 30 (KLR):

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...”

20. While the Court of Appeal stated as follows in *Wambui vs Mwangi & 3 Others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR):

“...No court of law should sanction either the acquisition of title to property in favour of a party (christened crooks by the court) who has acquired such title from a legally registered innocent proprietor using forgery, deceit or any kind of fraud...”

21. Based on the facts as presented which include pleadings and witness testimonies as well as exhibits produced while relying on the legal provisions quoted and decisions cited, it is my considered view that the Plaintiff has indeed demonstrated the root of title to the suit lands. Further, from the Members’ Register, it is clear that the Plaintiff’s title emanated from the Embakasi Ranching Company Limited and it is not clear how the Defendants’ title was processed.



22. In the foregoing, while relying on section 80 of the *Land Registration Act*, I find that the 1st and 2nd Defendants' title to the suit lands should hence be revoked, as they were acquired fraudulently and unprocedurally.
23. Since the Defendants did not file a Defence to rebut the Plaintiff's claim, I find that the Plaintiff is indeed entitled to the orders as sought in the Plaint.
24. In the circumstances, I find that the Plaintiff has proved his case on a balance of probability and will proceed to enter judgement in his favour in the following terms:
 - a. A declaration be and is hereby that the Plaintiff is the sole legal proprietor of all those pieces or parcels of land known as Plot No. Nairobi Block 105/7039, Nairobi Block 105/7040 and Nairobi Block 105/ 7041 situate at Ruai within Nairobi County.
 - b. A declaration be and is hereby issued that the Certificates of Lease issued to the Defendants on 27th March 2019 were irregularly, illegally and fraudulently issued and are declared null and void, hence should be revoked.
 - c. An order be and is hereby issued directing the 3rd Defendant to proceed to rectify the land register in respect of the suit properties (Plot No. Nairobi Block 105/7039, Nairobi Block 105/7040 and Nairobi Block 105/ 7041) to reflect the Plaintiff as the sole proprietor.
 - d. A permanent injunction be and is hereby issued against the Defendants jointly and severally prohibiting trespass into, transfer, sale, alienation, encumbrance, subdivision, charge disposal of, interference, intermeddling in or any dealings in all that piece and or parcel of land known as Nairobi Block 105/7039, Nairobi Block 105/7040 and Nairobi Block 105/7041 by their agents, successors, assigns, representatives and employees.
 - e. Costs of the suit is awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

No appearance for Parties

Court Assistant: Halima

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