



**Wafula v Mwangi & 4 others (Environment & Land Case
E104 of 2022) [2025] KEELC 4074 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4074 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E104 OF 2022**

CA OCHIENG, J

MAY 28, 2025

BETWEEN

LYNETTE NASIMIYU WAFULA PLAINTIFF

AND

DAVID MWANGI 1ST DEFENDANT

ISAAC KINUTHIA NJOGU 2ND DEFENDANT

SYLVESTER KAITAN 3RD DEFENDANT

NAFTALI WAHOME 4TH DEFENDANT

MWEMBIA 5TH DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by a Plaint dated the 3rd March 2022. She contends that she is the registered proprietor of Land Parcel No. Nairobi/Block 118/1531, hereinafter referred to as the ‘suit land’. Her case is that the Defendants have wrongfully entered thereon and constructed illegal structures with the intention of dispossessing her. She prays for judgement against them jointly and/or severally for:
 - a. An injunction restraining the Defendants, their servants, workmen and agents, from entering on and/or from erecting or causing to be erected thereon any structures, or from in any way interfering with the Plaintiff’s use and enjoyment of the Plaintiff’s land parcel No. Nairobi/Block 118/1531.
 - b. An order of eviction from the said premises and demolition of any illegal structures erected on Land Parcel No. Nairobi/Block 118/1531.
 - c. Damages.



- d. Interest thereon.
- e. Costs of this suit.
- f. Any other relief as the court deems fit to grant.

The Defendant's case

2. The Defendants filed a joint defence dated the 14th April 2022. They denied the allegations levelled against them, in the Plaintiff and contended that the suit land was hived from LR No. 11594, which was owned by Drumvale Co-operative Society Ltd, hereinafter referred to as 'Drumvale', that had allocated the same to Mr. Isaac Mumo Sila, who was its member. Subsequently, Mr. Isaac Mumo Sila sold the same to one Evelyn Gatune Mwiandi, hereinafter referred to as 'Evelyn', who later subdivided the said land into plots and sold to them.

The Plaintiff's evidence

3. The Plaintiff as PW1 adopted her witness statement as her evidence in chief. She stated that she is the registered owner of the suit land and after purchasing it, she relocated to Bungoma County where she does subsistence farming. She claims in 2021, she learnt from a friend that strangers had taken advantage of her absence, trespassed and erected houses on the suit land. Following the trespass, she instructed her advocates to serve the Defendants with a Ninety (90) days' notice to vacate the suit land but they deliberately refused to vacate and due to their actions, she is suffering irreparable loss and damage.
4. PW1 confirmed that she purchased the suit land from Baffine Juma Sumbule, hereinafter referred to as 'Baffine', on 14th July 2001. Further, that Baffine had in turn purchased the suit land from Isaac Mumo Sila. She confirmed that she was issued with a Beacon Certificate from Arch Surveys and a transfer was effected, with the suit land being transferred to her, on 19th July 2007.
5. She produced the following documents as exhibits: Certificate of Lease for the suit land; Beacon Certificate from Arch Surveys; Land Rent demand for Nairobi/Block 118/1531; Notice to vacate dated 5th November 2020; Subdivision receipts; Various Correspondences dated 14th October 1999, 14th July 2001, Sale Agreements dated 14th July 2001 and 14th October 1999.
6. During cross-examination, PW1 stated that she did not have evidence of payment of consideration in court. She admitted that she had filed another case in respect to the suit land. Further, that Isaac Mumo Sila bought the suit land from Drumvale. She claimed that she has been on the suit land from the time of purchase upto 2006. Further, that she purchased the land using proceeds of harvested cane. She did not produce any rates receipts.
7. In re-examination, PW1 stated that she paid for the suit land in cash in the presence of her advocates.

Evidence of the Defendants

8. DW1 Peter Wocu Koburu, confirmed he was a former Operations Manager for Drumvale. He stated that he chaired a meeting over the dispute surrounding the suit land as the society would attempt to solve disputes internally. It was his testimony that on 16 May 2019, Baffine who claimed that he resides in Bungoma visited their offices and lodged a complaint regarding the suit land, which he stated belonged to him and his wife Evelyn (now deceased) but he did not produce any documents. Further, that Baffine explained that his wife had sold the same land to a third party.



9. DW1 also stated that the records at Drumvale show that the original allottee of the suit land was Isaac Mumo Sila, who was its member but it changed hands. Further, that on 5th February 2016, Evelyn visited Drumvale's offices to request for a letter, which she was given after reporting that she was residing on the suit land. He stated that the original list of ownership is with the Liquidator.
10. In DW1's report which he produced as an Exhibit, it is also alleged that Baffine also reported a family dispute between his wife Evelyn and himself, resulting in a divorce in 2008. Further, he claimed that they reconciled in 2010 and that is when he allowed his wife Evelyn to occupy the suit land. It is also stated that Evelyn had applied for a Lease for the suit land, through Drumvale, following surrender of the allotment letter by Isaac Mumo Sila. Further, that Evelyn subdivided the suit land into smaller plots, which she sold to fund her children's education.
11. During cross-examination, DW1 stated that he relied on an affidavit and an Allotment Letter issued to Isaac Mumo Sila, while drafting the letter dated the 26th November 2018. Further, he indicated that Evelyn had stated that she had lost the Sale Agreement between the original owner, Isaac Mumo Sila and herself, but she had reported the loss to the Police. He made reference to another letter from Drumvale's Liquidator dated the 5th February 2016. He was emphatic that Evelyn had produced an Allotment Letter issued to Isaac Mumo at the Liquidator's Office, which keeps the original documents. He explained that Baffine did not sign anywhere on his report and he did not provide Drumvale's offices with a copy of his Lease. He stated that he never summoned Baffine and the Plaintiff to Drumvale's offices. Further, according to him, the dispute seemed to have been a family matter.
12. In re-examination, DW1 maintained that he did not know where Isaac Mumo Sila is and asked the court to rely on his report, which captures all details as narrated to him by Baffine including his claim that he purchased the suit land for Kshs.120, 000/= but he did not produce proof.
13. DW2 Mercy Gakii Gatune who is an Administrator of the estate of Evelyn (deceased) adopted her witness statement as her evidence in chief. She confirmed that all the Defendants herein bought portions of the suit land from her mother (Evelyn) who passed away before she was able to obtain title to the said land or subdivide it formally to the various purchasers.
14. She explained that Drumvale was the original owner of a large parcel of Land being L.R. 11594, which was subdivided and allocated to its members. Further, that one of the members was Mr. Isaac Mumo Sila who was allocated parcel number Nairobi/Block 118/1531 who sold it to her mother. It was her testimony that her mother later subdivided and sold plots to the Defendants herein. She pointed out that the Plaintiff had filed Misc. Case number ELC 122 of 2021 against the Defendants herein, which was dismissed by this court for want of prosecution.
15. She produced the following documents as exhibits: Letters of Administration; Subdivision approval for Nairobi/Block 118/1531 issued to Isaac Mumo Sila on 15th November 1993; Letter from Drumvale Co-operative Society Limited and the Liquidator; Sale Agreements to Defendants; Police Abstract as well as a Letter from the Assistant Commissioner of Cooperatives.
16. In cross-examination, DW2 stated that Baffine is her dad. She confirmed that she did not participate in the acquisition of the suit land. She insisted that the Plaintiff acquired the suit land fraudulently. She explained that she did not inquire from her father on whether he sold the suit land to the Plaintiff as they were not in speaking terms. She clarified that Letters from Drumvale were issued after it had been placed under liquidation.



17. In re-examination, DW2 stated that her father, Baffine left them when she was in class one. She confirmed that she has been residing on the suit land since 2024, had never seen the Plaintiff thereon and did not know her.

Submissions

18. In her submissions, the Plaintiff urged the court to consider the fact that she availed an Agreement dated 6th October 1999 between Isaac Mumo Sila and Baffine and another Agreement dated 14th July 2001 between Baffine and herself, which agreements were not disputed. Further, that Evelyn did not have anything to show that she had purchased the suit land from Isaac Mumo Sila. She contended that an Affidavit and Police Abstract cannot confer ownership of land and having lost a Sale Agreement, Evelyn had a duty to avail a witness to the alleged sale from Isaac Mumo Sila.
19. She submitted that the reason why the Liquidator was of the view that the suit land belonged to the late Evelyn was because she had informed them that she was residing thereon but DW2 was categorical in evidence that her late mother did not reside on the suit land but she started residing thereon in 2024. Further, that DW 1 did not discharge its duty to prove that the suit land was purchased by the late Evelyn from Isaac Mumo Sila. She suggested that it is possible that the late Evelyn had access to the documents obtained by her husband from Isaac Mumo Sila and used them to take over the suit land. She submitted that only Baffine had a right to sell the suit land, as he is the only one who could pass a good title to her.
20. She further urged the court to consider that the suit land was sold to her in July 2007 yet the Sale Agreements exhibited by the Defendants were entered into between 2017 and 2018, which was ten (10) years after the land had been registered in her name, so they ought to have conducted a search to ascertain ownership and in any case, the late Evelyn did not have a written agreement or original title to the suit land.
21. On their part, the Defendants submitted that while a Certificate of Title is conclusive evidence of proprietorship under section 26 of the Land Registration Act, the Court has to evaluate the documents in support of the title. They pointed out that the Plaintiff failed to attach any Letter of Allotment issued to Baffine whom she claimed to have purchased the suit land from, or any document from Drumvale showing how Baffine Sumbule came into ownership of the suit land.
22. Further, that there was no explanation on how the Plaintiff registered a new Grant without an Allotment Letter or confirmation from Drumvale. They contended that the Plaintiff failed to call Baffine to explain why Drumvale, which is the keeper of members records had no record of his purchase from Isaac Mumo Sila and had no proof of payment of the purchase price or stamp duty. They argued that the Plaintiff is a co-conspirator in a land fraud and should not be granted the orders sought. To this end, they pointed out that Mr. Baffine had told DW1 that the Plaintiff was his sister, which is baffling as DW2 did not know her and she failed to call the said Baffine to testify. The court was urged to consider the evidence of DW1 and DW2 which was not contested by the Plaintiff, including a Police Abstract confirming that DW2's mother had lost the original Sale Agreement between Isaac Mumo Sila and herself.
23. To buttress their averments, they relied on the following decisions: Iqbal Singh Rai vs. Mark Lecchini and the Registrar of titles, civil Case No. 1054 of 2001; Munyu Maina v Hiram Gathiha Maina [2013] eKLR; Uganda Court of Appeal case of Katende v. Haridar & Company Ltd cited with approval in Kenya High Court case of Lawrence Mukiri v. Attorney General & 4 Others [2013] eKLR and Alberta Mae Gacii v Attorney General & 4 Others (2006) eKLR.



Analysis and Determination

24. Upon consideration of the Plaintiff, Joint Statement of Defence, Witness Testimonies, Exhibits and rivaling submissions, the following are the issues for determination: Whether the Plaintiff's title to the suit land is valid. Whether the Defendants have trespassed thereon. Whether the Plaintiff is entitled to the orders as sought in the Plaintiff.

As to whether the Plaintiff's title to the suit land is valid and if the Defendants have trespassed thereon.

25. It is the Plaintiff's claim that she holds a Certificate of Title to the suit land, wherein the Defendants have trespassed and caused her irreparable damage. The Plaintiff as PW1 testified that she purchased the suit land from Baffine on 14th July 2001. Further, that Baffine had also purchased the suit land from Isaac Mumo Sila. The Plaintiff confirmed that she was issued with a Beacon Certificate from Arch Surveys and the suit land was transferred to her, on 19th July 2007. She claimed to have in possession of the suit land after purchase.

26. During cross examination, the Plaintiff stated that she paid the purchase price in cash and hence did not have any proof of payment. She however admitted that she had filed another case in respect to the suit land. Further, that Isaac Mumo Sila bought the suit land from Drumvale. She claimed that she has been on the suit land from the time of purchase upto 2006. She also failed to produce any rates receipts.

27. The Defendants opposed the Plaintiff's claim insisting that the suit land was owned by Evelyn who sold it to them. DW1 who was an official from Drumvale that was owner of the larger parcel of land where the suit land emanated from, explained that Baffine came to see him claiming he was owner of the suit land and had allowed his wife Evelyn to occupy it. Further, that Evelyn sold the suit land to third parties and he advised him to report the issue to the Police Station but he never reverted to him. DW1 contended that Baffine never availed any documents to Drumvale to support his claim. DW1 further confirmed that Evelyn had the Allotment Letter from the initial Allottee.

28. What we need to ponder is that if Evelyn had the Letter of Allotment from the original Allottee, then how did the Plaintiff process her Lease. I note Evelyn before her death subdivided the suit land and sold certain portions to the Defendants herein. Further, DW2 confirmed she had never seen the Plaintiff on the suit land, never met her and she had resided thereon from 2024. I note the Plaintiff never called Baffine to testify to confirm, he sold her the suit land. Further, the Plaintiff except for producing her Certificate of Title and Sale Agreement, did not produce documents to prove payment of Stamp Duty, Rate Payment Receipts, Consents to Transfer or duly filled in Transfer Forms. The Plaintiff further admitted that she had been on the suit land from the time of purchase upto 2006.

29. DW1 was emphatic that as per the Drumvale Records, the land reverted from Isaac Mumo Masila to Evelyn. Further, that Evelyn and Baffine were married but divorced, although Baffine claimed he had allowed her to occupy the suit land. It also emerged that the Defendants were sold for their respective plots by Evelyn and this was confirmed by DW2. There was no indication nor records produced from Drumvale that Isaac Mumo Masila ever transferred the suit land to Baffine. I opine that the burden of proof was upon the Plaintiff to demonstrate the root of her title and explain how Isaac Mumo Masila transferred the suit land to Baffine, who in turn transferred it, to her, but she failed to discharge it. It is my considered view that there are so many missing links, to demonstrate the process the Plaintiff adhered to, to acquire the Certificate of Title to the suit land.

30. It is worth noting that DW1 stated that Baffine said in 2000, he bought one acre of land from Isaac Mumo Sila, which he intended to transfer to his sister Lynette Naismiyu Wafula. Yet the Plaintiff claims she bought the land from Baffine, who was her friend. Further, that he assigned the transfer process to



G N. Congo Advocates and on 19th July, 2007, the Lease was issued to his sister. What is not clear is how could the Plaintiff obtain a Lease to the suit land without Drumvale's knowledge or consent, yet the said land emanated from them. DW1 was emphatic that the process the Plaintiff adhered to, was not supported by an Allotment Letter.

31. On proof of ownership of land, Section 26 of the [Land Registration Act](#) provides that:

“Certificate of title to be held as conclusive evidence of proprietorship

1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

32. In *Daudi Kiptugen v Commissioner of Lands & 4 Others* [2015] eKLR: it was held that:

“...The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

33. While in *Dina Management Ltd v. County Government of Mombasa & 5 Others, Pet. No. E010 of 2021*, the Supreme Court stated that:

“...Where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

34. While in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held that:

“We state that when a registered proprietor's 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 need not be noted on the register.” Emphasis mine

35. Based on the testimonies of the witnesses which I have analysed above, including the exhibits produced, while relying on the legal provisions cited as well as associating myself with the decisions quoted, I find



that the Plaintiff failed to properly demonstrate the root of her title. Except for dangling her Certificate of Title and a Sale Agreement, she did not provide proof of payment of purchase price, whether the Lease was anchored on an Allotment Letter and if she obtained a Consent from Drumvale before she processed her title. Further, a Liquidator for Drumvale vide his letter dated the 5th February, 2016, confirmed it is Evelyn Gatune Mwiandi who is the proprietor of the suit land. In the circumstances, I find that the Plaintiff acquired her Certificate of Lease irregularly and through misrepresentation without adhering to the due process and hence does not hold a valid title. Further, it is trite that once a Certificate of Title held by a party is deemed invalid, by dint of section 80 of the [Land Registration Act](#), the same is subject to revocation, which I will proceed to do.

36. From the evidence before court, I find that since the Plaintiff does not have a valid title, the Defendants could not have trespassed on the suit land as they legally acquired the land they now occupy, from Evelyn, who was its owner, prior to her demise. I further note from the Certificate of Confirmation of Grant dated the 13th December, 2023, issued in Nairobi HC Suc Cause No. E1439 of 2020, the suit land formed part of Evelyn's estate.
37. In the foregoing, I find that the Plaintiff is not entitled to the orders as sought in the Plaintiff.
38. I hence find that the Plaintiff has not proved her case on a balance of probability and will proceed to dismiss it with costs. Further, I direct that the Land Registrar, Nairobi to proceed and cancel the Certificate of Lease for LR No. Nairobi Block 118/1531, issued to Lynette Nasimiyu Wafula and revert it, to the estate of Evelyne Gatune Mwiandi.
39. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF MAY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Wanyonyi for Plaintiff

Angaya for Defendants

Court Assistant: Halima

