



REPUBLIC OF KENYA



KENYA LAW
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**Kyalo v Nduuti (Environment & Land Case 226 of 2017)
[2025] KEELC 1454 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1454 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 226 OF 2017**

**TW MURIGI, J
MARCH 12, 2025**

BETWEEN

PATRICK NTHIWA KYALO PLAINTIFF

AND

MUTUA KATUMO NDUUTI DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit against the Defendant vide a Plaint dated 7th December, 2012 seeking the following orders: -
 - a. Permanent injunction restraining the Defendant, his agents, servants and or employees from leasing, transferring, cultivating or in any other way whatsoever from interfering with the Plaintiff's ownership of Title No. Makueni/Nguu Ranch/388.
 - b. Vacant possession by the Defendant of Title No. Makueni/Nguu Ranch/388.
 - c. A declaration that the Plaintiff is the bona fide owner of Title No. Makueni/Nguu Ranch/388.
 - d. Costs of the suit plus interest at court rates.
2. The Defendant filed a Statement of Defence dated 13th March, 2015 seeking the following orders against the Plaintiff: -
 - a. That all letters of allocation, acceptance and title deed issued to the Plaintiff be cancelled.
 - b. The Defendant's name be inserted in the register as the bona fide owner of the suit land.
 - c. The Plaintiff's suit be dismissed with costs.



The Plaintiff's Case

3. The Plaintiff Patrick Nthiwa Kyalo testified as PW1 and called one witness in support of his case. He adopted his witness statement dated 7/12/2012 as his evidence in chief. He also produced the documents in his list dated 7/12/2012 as PEX 1 – 6.
4. PW1 testified that he was issued with a letter of offer dated 5/10/2011 by the Director of Land Adjudication in respect of the suit property. He further testified that after he complied with the requirements by making payments for the suit property, he was issued with a letter of acceptance dated 12/10/2011. He further averred that he paid Kshs. 21,900/= for transfer and discharge of charge. It was his testimony that he was issued with a title deed on 24/04/2012 after his documents were verified by Kibwezi and Wote Lands offices.
5. He went on to state that he was unable to take possession of the suit property because there were other people on the ground. He testified that he wrote a letter to the survey office in Kibwezi requesting that they identify to him the boundary of the land. He further testified that he reported the matter to the chief's office since the Defendant had refused to vacate the suit property. He urged the court to grant the orders sought in the plaint.
6. On cross-examination by Mr. Hassan, he testified that he had never utilized the suit property since he was issued with the title deed. He further testified that he was not aware whether Nguu Ranch Settlement Scheme was reissuing title deeds and added that he did not have a map showing his land.
7. In re-examination, he testified that officers from Kibwezi survey office identified to him the suit property after he was issued the title deed for the same.
8. PW2, Catherine Makau, a Land Registrar based at Makueni Lands Registry produced two green cards in respect of the suit property. She testified that the first green card was opened on 27/10/1999 in the name of the Settlement Fund Trustees. That thereafter, the suit property was transferred to the Plaintiff and a title deed was issued on 24/04/2012. That on 06/09/2022, the Plaintiff ID number recorded against the title was rectified and a fresh title deed was issued.
9. With regards to the second green card, PW2 testified that it was opened on 08/01/2019 and registered in the name of the Defendant. She stated that the Defendant was issued with a title deed on 11/10/2019. She further stated that the green card does not indicate that the land originally came from the Settlement Fund Trustees. According to PW2, one parcel of land cannot have two title deeds or two green cards concurrently.
10. In cross-examination, she admitted that both green cards originate from the Lands office.
11. PW2 explained that the Land Adjudication Officer is tasked with the duty of verifying land ownership records within a Settlement Scheme and thereafter forward the same to the lands office for preparation of a title deed. She stated that the correction of the Plaintiff's ID Number and issuance of a title deed on the same day was in order.

The Defendant's Case

12. The Defendant Mutua Katumo Nduuti testified as the sole witness in support of his case. He adopted his witness statement dated 25/05/2022 as his evidence in chief. He also produced the documents in his list of even date as DEX 1 – 8 respectively and a supplementary list dated 27/03/2023 as DEX 9.
13. DW1 testified that his father was allocated the suit property by the Government in the year 1995. It was his testimony that his father left the land for him and that they had enjoyed quiet occupation since then.



14. He further testified that he is the registered proprietor of the suit property where he has been living for more than forty years. He went on to state that his eldest son aged 27 years was born in the suit property and that he was the one who had planted the trees therein. He further testified that sometimes in the year 2012 the Plaintiff and the District Officer coerced him into signing an admission that he would vacate the suit property. He asserted that the Plaintiff had fraudulently acquired the title deed and urged the court to cancel the same.
15. On cross-examination by Mr. Kabaiku, he testified that he was given the title deed for the suit property by the area Chief and added that he did not present any documents to the adjudication office in Kibwezi. On being referred to the letter of allocation for Plot No. 2658 Nguu Settlement Scheme (DEX 2), the Defendant admitted that he was allocated the plot and had paid for the same. He further testified that he was told to stay on Plot No. 388 by the survey office even though he did not have any document to confirm the same.
16. In re-examination, he reiterated that the District Officer forced him to sign the notice to vacate the suit property.
17. After the close of the hearing, the parties agreed to file and exchange their written submissions.

The Plaintiff's Submissions

18. The Plaintiff filed his submissions dated 17th October, 2024. On his behalf, Counsel identified the following issues for the court's determination: -
 - a. Who between the Plaintiff and the Defendant can be considered the bona fide owner of the land Parcel No. Makueni/Nguu Ranch/388?
 - b. Is there evidence to suggest that fraud was involved in the acquisition and transfer of Title No. Makueni/Nguu Ranch/388?
 - c. Whether the Defendant's action constituting executing a notice to vacate amounts to an indication that indeed the land does not belong to him?
 - d. Who should pay the costs of the suit?
19. On the first issue, Counsel submitted that the Plaintiff is the absolute proprietor of the suit property as he was issued with the title after due process had been followed. Counsel further submitted that the Plaintiff acquired the suit property through a lawful land adjudication process. Counsel further submitted that the Defendant did not substantiate his claim to the suit property by either calling witnesses or presenting supporting documents.
20. With regards to the second issue, Counsel submitted that no evidence was adduced to demonstrate any mistake or fraudulent activity on the part of the Plaintiff that would challenge the validity of his title.
21. On the third issue, Counsel submitted that after the Defendant acknowledged and executed a notice to vacate the suit property that was issued by the Plaintiff, it confirmed that he did not possess a valid title to the suit property.
22. On the issue of costs, Counsel submitted that the Plaintiff had demonstrated his case and is therefore entitled to the costs of the suit. To buttress his submissions Counsel relied on the authorities annexed to the submissions.



The Defendant's Submissions

23. The Defendant filed his submissions dated 5th February, 2025.

On his behalf, Counsel submitted that the Plaintiff had no right to be allocated land as he is not a member of Nguu Ranch Multipurpose Cooperative Society. Counsel further submitted that it was unclear how the suit property initially allocated to one C.W. Njeru changed hands to become the Plaintiff's land.

24. Counsel submitted that the Defendant has been in possession of the suit property for over forty years and has therefore acquired equitable rights to the land. Concluding his submissions, Counsel urged the court to dismiss the Plaintiff's suit with costs. To buttress his submissions, Counsel relied on the authorities annexed to the submissions.

Analysis and Determination

25. Having considered the pleadings, the evidence on record and the submissions by the parties, the following issues fall for determination: -

i. Who between the Plaintiff and the Defendant holds a valid title?

ii. What orders should issue?

26. It is not in dispute that there are two title deeds for the suit property issued in the names of the Plaintiff and the Defendant. It is also not in dispute that both parties are claiming ownership over the suit property.

27. It is the Plaintiff's case that he holds a valid title to the suit property having acquired the same through the land adjudication process. In this regard, the Plaintiff produced a letter of offer from the Settlement Fund Trustees (SFT) dated 5th October 2011 (PEX-2), payment receipts (PEX-3) and a letter of acceptance dated 14th June 2012 (PEX-4) and stamp duty forms. The payment receipts show that the consideration for the suit property was Kshs. 21,789/= which the Plaintiff paid in addition to other connected expenses related to transfer of the suit property.

28. PW2 produced two green cards registered in the name of the Plaintiff and the Defendant. The green card registered in the Plaintiff's name (PEX-7) outlined five entries that have been made in respect of the suit property. Entry No. 1, indicates that the suit property was originally registered in the name of the SFT. The subsequent entries corroborate the Plaintiff's evidence that the suit property was indeed transferred to him after complying with the mandatory requirements laid down by the SFT.

29. In contrast, the Defendant did not produce any documentary evidence in support of his claim to the suit property other than the title deed that was issued to him. It is not in dispute that the suit property which is within Nguu Ranch was wholly owned by the government through the SFT. The Defendant did not produce a letter of offer and a letter of acceptance for Parcel No. 388 nor any payment receipts for the suit property. The evidence he presented as DEX 2 and DEX3 show that he was allocated Plot No. 2658 through the District Land Adjudication and Settlement Office.

30. Although the Defendant has a green card registered in his name, there is no entry to indicate that the SFT was the first proprietor of the suit property. The Defendant did not produce any evidence to show that he was issued with a letter of offer and acceptance in respect of the suit property. Similarly, the Defendant has not adduced any evidence to show that consideration was paid to the SFT with regards to the suit property. Even during cross-examination, when questioned as to the circumstances he took



occupation of the suit property, the Defendant testified that he was orally given permission to do so by the government survey officers.

31. The Defendant's challenged the Plaintiff's title on the on the grounds that it was fraudulently acquired. The Black's Law Dictionary defines fraud as follows:-

“A knowing misrepresentation of the truths or concealments of a material fact to induce another to act to his or her detriment”

It is trite law that allegations of fraud must be pleaded and strictly proved.

32. In the case of *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR Tunoi JA (as he then was) adopted the above position when he aptly held as follows: -

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

33. Section 107 (1) of the *Evidence Act* provides that: -

(1) 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.

34. Although the standard of proof is not beyond reasonable doubt it is higher than proof on a balance of probabilities.

35. To prove fraud, the Defendant relied on the particulars of fraud set out in paragraph 4 of his statement of defence.

36. The Defendant did not adduce any evidence in support of his allegation that the Plaintiff fraudulently acquired all the documents relating to the ownership of the suit property.

37. When a proprietor's title to land has been legally challenged in court, they bear the responsibility of demonstrating that the said title was lawfully obtained by following all the legal channels.

38. In the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held as follows:

“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.”

39. Further, in *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR

“Of course, the issuance of two titles is not contemplated in the law and strictly speaking should not happen... A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and



procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. 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 root. No party should take it for granted that simply because they have a title 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 title holder.”

40. The Plaintiff demonstrated the root of his title. The certificate of title produced by the Plaintiff shows that it emanated from the SFT. The Defendant on the hand did not demonstrate the root of his as he failed to substantiate his claim to the suit property. His title does show where the suit property originated from

41. Section 24(a) of the [Land Registration Act](#) provides for the interest conferred by registration. It provides as follows

Subject to this Act

- a. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”

42. Section 25 of the [Land Registration Act](#) provides for the rights of a proprietor. It provides as follows:

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by this Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject;

43. Section 26(1) of the [Land Registration Act](#), 2012 provides that:-

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.’

These provisions vest the registered owner of land with rights and privileges and provides for instances when the right can be taken away.

44. Having established that the Plaintiff is the registered owner of the suit property, I find that he is entitled to all the rights, interest and privileges belonging thereto. It is not in dispute that the suit property is registered in the name of the Plaintiff and the Defendant. A parcel of land cannot have two titles. The



Plaintiff demonstrated the root of his title. The Defendant therefore does not hold an absolute and indefeasible title.

45. Section 80 (1) of the [Land Registration Act](#) provides as follows: -

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.

46. In the matter at hand, it is not in dispute that there are two titles in respect of the suit property. What this means is that one title must have been obtained irregularly. The Plaintiff has demonstrated the root of his title, the court can safely conclude that the Defendant's title was issued either unprocedurally, through a corrupt scheme or through a mistake.

47. From the foregoing, I find that the Plaintiff has proved his case against the Defendant on a balance of probabilities as required by the law.

48. In the end, I enter judgment for the Plaintiff against the Defendant in the following terms:-

1. A declaration is hereby made that the Plaintiff is the bona fide owner of Title No. Makueni/Nguu Ranch/388.
2. An order is hereby issued cancelling the Defendant's title for land parcel No. Makueni/Nguu Ranch/388.
3. An order of Permanent injunction is hereby issued restraining the Defendant, his agents, servants and or employees from leasing, transferring, cultivating or in any other way whatsoever from interfering with the Plaintiff's ownership of Title No. Makueni/Nguu Ranch/388.
4. An order of vacant possession is hereby issued in favour of the Plaintiff against the Defendant in respect of Title No. Makueni/Nguu Ranch/388.
5. The Plaintiff is awarded Costs of the suit and interest at court rates.

JUDGEMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF MARCH, 2025.

.....

T. MURIGI

JUDGE

In the presence of:-

Absence of the parties.

Ahmed – Court assistant

