



**Kayongo v Gikonyo & another (Environment & Land Case
E291 of 2022) [2025] KEELC 3356 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 3356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E291 OF 2022**

AA OMOLLO, J

MARCH 6, 2025

BETWEEN

MONICA ATIENO KAYONGO PLAINTIFF

AND

CHRISTOPHER KIMANI GIKONYO 1ST DEFENDANT

EGLAH WANGARI MURINA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed a plaint dated 14th September 2022 and amended on 18th October 2023 seeking for the following orders;
 - i. An Order of permanent injunction prohibiting the defendants whether in person or through their servants, employees, agents, or any other person acting under his instructions from entering, remaining on, occupying, trespassing onto or demolishing any development and improvements on properties situate in Utawala area, within the City of Nairobi and more particularly known as LR No. Nairobi BA declaration that the suit property situate in Utawala area, within the City of Nairobi and more particularly known as LR No. Nairobi Block 105/4990 and Nairobi Block 105/4991.
 - ii. An Order of mandatory injunction compelling the defendants to restore the suit property to the position it was in before their unlawful invasion of the same.
 - iii. A declaration that the suit property situate in Utawala area, within the City of Nairobi and more particularly known as LR No. Nairobi Block 105/4990 and Nairobi Block 105/4991 are the lawful properties of the plaintiff herein and that the defendants have no legal claim thereon.
 - iv. An eviction Order removing the defendant, his agents, servants, tenants or any other persons who may have gained entry into the property to be enforced by Ruai Police Station.



- v. An order directing the Chief Lands Registrar to cancel Certificates of Leases over LR No. Nairobi Block 105/4990 and Nairobi Block 105/4991 purportedly issued to the 2nd Defendant on 19th September 2016.
 - vi. General Damages for trespass to land.
 - vii. Costs of this suit.
2. The plaintiff claims ownership of properties located in the Utawala area of Nairobi, specifically LR No. Nairobi Block 105/4990, 105/4991, 105/4998, and 105/4999, which she and her late husband purchased from Embakasi Ranching Co. Ltd in 2007. She pleaded that after purchasing the said properties, they took possession and developed them by building a permanent house and farming in the remaining land.
 3. However, despite fully paying for the properties and taking possession, the plaintiff did not receive the leasehold titles as expected from Embakasi Ranching Co. Ltd. This prompted the plaintiff to file a lawsuit in 2016 (Milimani ELC No. 1125/2016) for specific performance, which resulted in a favorable judgment on 9th September 2021, ordering the company to issue them with Certificates of Lease.
 4. While waiting for the titles, the Plaintiff was contacted by the 1st Defendant on 6th September 2021, who claimed to have bought two of the properties (LR No. Nairobi Block 105/4990 and 105/4991) herein after referred to as “the suit properties” from the 2nd Defendant and demanded that she vacate the land. The plaintiff then informed the 1st Defendant that she was the lawful owner and warned him against being misled by fraudsters regarding the properties. Despite this, the 1st Defendant continued to mention the 2nd Defendant as the seller, even though the plaintiff had never engaged in any dealings with the 2nd Defendant.
 5. That on 8th September 2021, just two days after the 1st Defendant's claim, the plaintiff's property was invaded by the Defendants and armed individuals who destroyed the fence and threatened the caretaker. The Plaintiff said she reported the incident to Ruai Police Station, and an investigation was initiated but three days later, the Defendants returned and began digging on the land, presumably preparing to build structures.
 6. The plaintiff further asserts that after initiating the lawsuit and serving the Defendants with legal documents, she presented to her Certificates of Lease for LR No. Nairobi Block 105/4990 and 105/4991, purporting to have been issued to the 2nd Defendant on 19th September 2016, just four days after the Plaintiff filed her previous case. The plaintiff argues that these titles were fraudulently obtained, as she has remained in peaceful possession of the properties for over six years, even after the 2nd Defendant allegedly obtained the titles.
 7. The plaintiff seeks this court's intervention to prevent further damage or loss to her by granting the reliefs set hereinabove.

Defendants' statement of defence and 2nd Defendant's Counter claim

8. The Defendants filed statement of defence which included the 2nd Defendant's counter claim both dated 8th December 2022. They denied the claim by the Plaintiff and the 2nd Defendant is seeking for the following reliefs;
 1. A Declaration that the 2nd Defendant EGLAH WANGARI MUNIRA is the lawful, registered owner of the parcels of land known as L.R. Nairobi Block 105/4990 and C.R. Nairobi Block 105/4991.



2. A permanent Injunction against the plaintiff, stopping her, her personal representatives, heirs, assigns, relatives, beneficiaries in title, agents and whomsoever acting on her behalf from entering, building, letting, remaining, alienating and or interfering in any manner whatsoever with the land Title No. L.R. Nairobi Block 105/4990 and L.R. Nairobi Block 105/4991.
 3. Eviction order against the Plaintiff to remove her from the parcels of land L.R. Nairobi Block 105/4990 and L.R. Nairobi Block 105/4991.
 4. The Officer Commanding Ruai Police Station to ensure compliance with the Orders herein.
 5. Costs and interests of this suit.
 6. Any other Orders that this Honourable Court may deem fit and just in the circumstances of this suit.
9. The Defendants deny the plaintiff's claims and assert that the 2nd Defendant is the rightful and registered titleholder of the suit properties. They state that the suit properties were acquired in the early 1980s by the 2nd Defendant and her late husband through buying of shares in Embakasi Ranching Co. Ltd.
 10. The Defendants further challenge the authenticity of the Plaintiff's ownership documents, claiming that they appear to be forged and were not authorized by Embakasi Ranching Co. Ltd. They also dispute the Plaintiff's claims of making payments to the company, asserting that the properties were already allocated to the 2nd Defendant and registered in her name.
 11. They deny the Plaintiff's accusations of eviction and trespassing, arguing that the Plaintiff unlawfully attempted to take possession of the properties. The 2nd Defendant state that he is the duly registered title holder of the properties L.R. Nairobi Block 105/4990 and C.R. Nairobi Block 105/4990 and the said properties have been bare, undeveloped land which the 2nd Defendant and her late husband Geoffrey Kamau Munira (deceased) acquired in the late 1970s and early 1980s upon acquiring shares in Embakasi Ranching Co. Ltd becoming bonafide shareholders with bonafide share certificates.
 12. The 2nd Defendant states that the Plaintiff waves a non-member certificates of plot ownership which are strange documents whose history and source is questionable. Further, that the purported Plaintiff's payments made vide a Barclays Bank cheque no. 000746 was issued to one Omar A. Shenga and not to Embakasi Ranching Co. Ltd. This begs the questions; how could the said OMAR A. SHENGA sell and receive payments for the properties of the 2nd Defendant and her husband who were already holding shares in Embakasi Ranching Co. Ltd. Where did OMAR A. SHENGA derive authority to purport to personally receive payments for sale of properties owned by them who were already holding shares in Embakasi Ranching Co. Ltd?
 13. The 2nd Defendant states that the Plaintiff's purported ownership of the suit properties as a non-member of Embakasi Ranching Co. Ltd is laden with fraud, irregularities and the Plaintiff applied illegal means in a fraudulent scheme to manufacture documents which purport to indicate that she is the owner of the suit properties.
 14. She particularised fraud by the Plaintiff as follows;
 - a. applying illegal means to procure a Non-Member Certificate(s) of Plot ownership in Embakasi Ranching Co. Ltd with the aim of grabbing the suit properties from the 2nd Defendant
 - b. drawing or otherwise procuring illegal transfer documents that are executed by strangers or otherwise unauthorized persons with the aim of grabbing the suit properties.



- c. colluding with strangers and or fraudsters in a fraudulent scheme to obtain land ownership documents aimed at alienating the suit properties and cause a double allocation of the same at the detriment of the 2nd Defendant
- d. deliberately failing to join the 2nd Defendant in ELC 1125/2016 filed and obtaining an ex-parte judgement upon misleading the Court, being aware that the 2nd Defendant was the owner of the suit properties.

Evidence

15. The Plaintiff relied on her sole evidence. She adopted two sets of affidavits dated 14/9/2022 in support of interlocutory application and 24/10/2022 (Replying affidavit) as her evidence in chief. In addition, she produced 15 documents contained in the list dated 14/9/2022 now produced as PExh 1-15. It is her testimony that in 2005, she and her late husband were introduced by a relative to Embakasi Ranching that was selling land in Utawala.
16. That they visited the said company offices along Ngong Road and presented an interest to buy 4 plots as one. They were issued with the non-member share certificates and signed a sale agreement with Embakasi Ranching found at page 61 of her bundle. That the agreement was executed by Joseph Mucheke, as a director and Ahmed Omar as the legal Officer/Secretary on behalf of Embakasi Ranching Company Ltd (ERC Ltd).
17. It is also her evidence that they prepared a cheque for the purchase price in the name of Omar Shenga as directed and thereafter given 4 non-member share certificates signed by the Chairman Muhuri Muchire, Ahmed Omar and one of the directors as shown at Page 64-67 of her bundle. That they were taken by a surveyor from Embakasi Ranching to the ground who showed them beacons, they took possession and instructed their legal counsel to follow up on the titles. She asserted that Embakasi Ranching wrote to the Commissioner of lands seeking for consent to transfer the suit properties to them as shown in page 70—85 of the bundle.
18. She stated that in 2016 she sued Embakasi Ranching after they failed to complete the title process for the purchased plots. She added that she did not know any other person claiming interest in the plots other than Embakasi Ranching Co. Ltd and only came to know of the 2nd Defendant's interest in 2022 when the 1st Defendant came to the suit property claiming to have purchased the same from her. That the 1st Defendant came with goons and demolished the fence which had ring-fenced all the four plots.
19. The witness testified that she developed the suit properties in 2007 when she constructed a 2 bedroomed house and in other parts they grew vegetables and trees. She also stated in the year 2006, Kimani and Susan came to the suit property and demolished the fence but when sued, they disappeared. The case against those two was dismissed because it was her late husband who was following up on the matter before he died.
20. She stated that she has never received a notice to vacate from the property from the Defendants and has never been evicted to date, having been in occupation since 2005. PW1 stated that she was declared the owner of the suit properties in ELC 1125 of 2016. However, the titles have not been issued because Embakasi Ranching has not honoured the decree. That ERC ltd told her there are no titles that had been issued in 2016 as there was a dispute within the company yet the Defendant's titles are dated 19th September 2016, around the same time the Plaintiff sued Embakasi Ranching.
21. On cross examination the plaintiff stated that she is not a member of Embakasi Ranching while as per the documents shown to her, the 2nd Defendant was a member of Embakasi Ranching from 1982.



- Further, that the Plaintiff had received a demand letter from the 2nd Defendant before filing ELC 1125/2016 but did not act on it because they did not address her or Embakasi Ranching Ltd.
22. The witness stated that the suit properties have not been developed but there is a fence around them. That after getting orders in 1125 of 2016, they visited the lands office and was told there are existing leases hence the vesting orders cannot be registered. She stated that before purchasing, they conducted due diligence and at the time only knew Mucheke who is deceased as the director.
 23. The 2nd Defendant, Eglah Wangari testified as DW1 in support of her case by adopting her written statement and further written statement dated 8/5/2023 and 11/6/2024 as evidence in chief. She also produced documents in the list dated 17/5/2023 as DExh 1-8 and the ones in the list dated 18/6/2024 as DEx 9-24. She stated that she became a member of Embakasi Ranching in 1970s having bought two shares and was allocated plots R50 and R51 in Utawala. Currently the two plots are described as Block 105/4990 and 105/4991 respectively as shown in Page 33 and 43 of her trial bundle. That the Company would give receipts with their stamp at the back, giving details of plots allocated.
 24. The 2nd Defendant testified that while the Plaintiff may have bought something, the suit properties had been allocated to her. She said that the properties were initially written under her husband's name but after his demise, she decided to pay for a site visit to be sure of their location.
 25. She confirmed that she knew there was an office of Embakasi Ranching along Ngong Road but not aware of who the directors and legal officer were because she never dealt with them. The witness stated that they started processing the title before 2016, probably around 2012 noting that the letters of consent to transfer produced by the Plaintiff are not dated. It is her evidence all payments were made to the Company and was issued with receipts.
 26. That when she paid for the site visit, she found the property fenced but there was no development and no crops or trees had been planted. Thus, she went to her Advocate to write a demand to the person on her property to vacate and remove the illegal structures. That at page 118 of her trial bundle shows that Susan Wanjiru who was working with Embakasi Ranching Ltd took her to view the suit property and page 55 shows the owner is Embakasi Ranching as at Dec 2012.
 27. She admitted that after she bought the suit property, she did not go to stay there until 2009 when she was re-establishing the beacons. She testified that her documents were verified by Embakasi Ranching before she was issued with the certificate of lease.

Submissions.

28. Both parties filed their written submissions. The Plaintiff submitted on four issues; i. whether she Purchased the Suit Properties from the Company;
 - ii. whether the plaintiff was a bonafide innocent purchaser for value without notice,
 - iii. who between the Plaintiff and the 2nd Defendant ranks in priority to the other and
 - iv. what orders should the court issue.
29. She stated that it is undisputed that Embakasi Ranching Co. Ltd was a land-buying company that purchased land in bulk, subdivided it, and sold it. That the plaintiff, along with her husband, purchased the suit properties in 2005, as demonstrated by a Sale Agreement dated 12th July, 2005, payment cheque, and plot ownership certificates issued to them by the company. They also rely on the judgment in ELC No. 1125 of 2016, which was not appealed or set aside, all supports her claim of having purchased the land from the company, which was the registered owner at the time.



30. On the averment of bonafide Innocent Purchaser for Value Without Notice, the plaintiff submitted that she paid for the property without notice of any fraud or third-party claims. The plaintiff stated that she dealt directly with the company's directors and secretary and was unaware of any internal irregularities or claims in respect of the suit property. In support of her argument, cited the case of Standard Chartered Bank of Kenya Limited v Al-Amin & 9 Others (2023)Eklr and East African Safari Air Limited v Anthony Ambaka Kegode & Another (2011)Eklr that held that, a purchaser dealing with a company and its officers such as secretary in good faith can assume internal compliance with their regulations thus do not need to inquire into the regularity of the internal proceedings.
31. She also relied in the Court of Appeal decision of Denis Noel Mukhulo Ochwada & another Vs Elizabeth Murungari Njoroge & another (2018)Eklr to submit that even though the 2nd Defendant pleaded in paragraph 26 of her defense and counter-claim that the Plaintiff's acquisition of the suit property was fraudulent, no evidence of fraud was adduced against the plaintiff. Indeed, she could not have won ELC No. 1125 of 2016 against EmbakasiRanching Co. Ltd, the vendor, if her claim was fraudulent and in support cited the case of Denis Noel Mukhulo Ochwada & Another Vs. Elizabeth Murungari Njoroge & Another (2018) eKLR.
32. On who between the Plaintiff and the 2nd Defendant ranks in priority, the plaintiff asserts priority, having been in possession of the suit property since 2005. She states that she took possession, ring-fenced, and developed the property, her occupation being corroborated by the 2nd Defendant's acknowledgment.
33. She relied on the case of Munyu Maina v Hiram Gathiha Maina (2013)Eklr where Court of Appeal reinforces the importance of possession in determining priority to argue that the 2nd Defendant, despite claiming to have acquired the property in the 1980s, did not take possession until much later, and did not take steps to assert her rights. In contrast, the plaintiff has developed the land and lived there for over 18 years.
34. The Plaintiff submit that the 2nd Defendant did not even know the actual location of the suit property until very recently and in her testimony, the 2nd Defendant stated that Embakasi ranching Co. Ltd allocated them four parcels of land, two of them being the suit property herein and two others that she referred to as bonus plots which when on cross-examination asked their location could not tell.
35. That further,at the time the 2nd Defendant's title was allegedly processed, no transaction could be registered on the entire Nairobi/Block 105 since a caveat had been registered against it since 2009 following internal wrangles in the company. That processing of titles started in the year 2018 following a presidential decree.
36. The Plaintiff submits that she has been in continuous possession of the suit property since 2005 and is deemed a bona fide purchaser for value, with no notice of any fraud or adverse claims thus ranks in priority over the 2nd Defendant, who, despite claiming earlier ownership, failed to assert her rights or take possession. In support that she ranks in priority, she also cited the rule from Dearle v Hall (1828) regarding priority between competing claims and Treatise on Suits in Chancery on the jurisprudence of Equity by HENRY R. GIBSON, A.M., LL.D.
37. The 2nd Defendant framed her issues for determination as below;
 - i. whether her counterclaim is undefended and the legal ramifications thereto,
 - ii. whether she is the rightful owner of the suit properties,



- iii. whether the Plaintiff's non-member plot ownership certificates are valid documents that would outweigh the 2nd Defendant's Share certificate issued by Embakasi Ranching Co Ltd and the registered certificates of lease,
 - iv. whether the 2nd Defendant is bound by the judgement in ELC CASE 1125/16 where she was not a party and whether the plaintiff has any lawful claim over the suit properties.
38. She stated that her counterclaim remains undefended with no opposition from the Plaintiff and in support cited the case of *Dancan K. Owino T/A Bio Path Healthcare v. Breeze Petroleum Station Limited (2024) Eklr* where the court held that a defendant's failure to participate in hearings after being properly served with notices resulted in the defense and counterclaim being disregarded, therefore the counterclaim should be allowed as unopposed.
 39. Regarding the ownership of the suit properties the 2nd Defendant submits that she has provided convincing evidence of her family's historical ownership of said plots since the late 1970s and 1980s, while the Plaintiff has not demonstrated any valid history of ownership. In support, she cited the case of *Dina Management Limited V County Government of Mombasa & 5 Others (Petition No. 8 (E010) Of 2021)* where the Supreme Court held that, to establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right from the first allotment.
 40. That the Plaintiff presented Non-Member Certificates of Plot Ownership but failed to link them to the suit properties, which had different plot numbers and lacked proper documentation to substantiate her claim. Furthermore, the Plaintiff's sale agreement was not signed by authorized directors of Embakasi Ranching Company, and the payment she made was not to the company but to an individual named Omar A. Shenga, whose legitimacy was questioned due to the lack of records linking him to the company.
 41. The 2nd Defendant submit that she has provided clear evidence, including receipts and share certificates from Embakasi Ranching Company, proving her late husband's payment for shares and subsequent plot allocations, which evidence the Plaintiff could not counter. She relied on the case of *Kiniu v. Ann Wairimu Ndung'u (2022) Eklr* to submit that a non-member certificate holder cannot challenge the ownership of a bona fide shareholder in a land-selling company like Embakasi Ranching.
 42. The 2nd Defendant submitted that the Plaintiff's non-member plot ownership certificates are invalid in establishing ownership of the suit properties, while her share certificate from Embakasi Ranching Co Ltd and registered Certificates of Lease are valid documents that demonstrate her rightful ownership.
 43. That she is a bona fide shareholder of Embakasi Ranching, having acquired the properties through her late husband's shareholding and making the necessary payments for survey and title deed purposes and in support cited the case of *Lucia Wambui Kariuki & Another V Grace Wanjiru & Another [2022] Eklr*.
 44. The 2nd Defendant submitted that she cannot be bound by the judgment in ELC Case 1125/16, as she was not a party to the said case. She cited the case of *Kariuki V Ogoti (Civil Appeal 123 Of 2018) [2024] Kehc 1188 (Klr) (13 February 2024) (Ruling)* which reinforces that a person who is not a party to a suit cannot be affected by the judgment or proceedings in that suit because the court could not resolve all issues pertaining to the dispute. She asserted that the Plaintiff admitted knowledge of the 2nd Defendant's interest in the property, but chose not to join them as a party.
 45. The 2nd Defendant concluded by stating that she is the legitimate and registered owner of the suit properties and that Plaintiff has no lawful claim over the same but any entry by her is trespass. She urged the court to enter judgement in her favour as per the counter-claim.



Analysis and Determination:

46. Having considered and analysed the pleadings, the evidence tendered and submissions rendered; I frame the following questions for answering in determination of the present dispute;
- a. Whether the plaintiff is the legal owner of the suit properties or
 - b. Is the 2nd defendant the rightful owner by virtue of the documents presented and in particular, the certificates of leases issued to them
 - c. Whether the suit properties were vacant or if the plaintiff is in possession
 - d. Whether orders of eviction orders should issue against the plaintiff in the original suit.
 - e. Who bears the costs of the suit?
47. The plaintiff is laying claim to the ownership of land titles Nairobi Block 105/4990, 4991, 4998, and 4999 on the basis that she and her late husband purchased all of them from Embakasi Ranching Company Ltd in 2007. She averred that they immediately took possession of all the four (4) plots by putting up a permanent residential house and farming the remainder portion. Of the four plots purchased, the plots in contest are NBI Block 105/4990 and 4991.
48. The Defendant contested this claim and even filed counter-claim. According to the 2nd Defendant, she is legally registered as the owner of L.R 4990 & 4991. She displayed copies of the certificates of leases issued to her before she sold and transferred the titles to the 1st Defendant. She accuses the plaintiff of fraud and even filing ELC 1125 of 2016 without joining her thus misleading the court to obtain the *ex parte* judgment.
49. Against this background, I will proceed to compare and contrast the documents relied upon by both parties to establish the truth of the matter. The plaintiff produced the following documents in support of her claim.
- i. Sale agreement executed on 12th July, 2005
 - ii. Non-member share certificate for plot numbers given as 4050 – 4053 issued in 2005.
 - iii. A copy of personal cheque they issued to Omar Shenga for the sum of Kshs.600,000
 - iv. Letters from ERC Ltd addressed to the Commissioner of Lands seeking for consent to transfer
 - v. Copies of undated executed transfer of lease for the suit properties in favor of the plaintiff.
50. The plaintiff averred that they sued Embakasi Ranching Co. Ltd in 2016 after they failed to complete the title process in their favour in the case number ELC 1125/16. The present case was filed after the Defendants herein threatened the Plaintiff with eviction after which she learnt of the existence of the certificate of leases.
51. On the other hand, the 2nd Defendant produced the following documents in support of her claim;
- a. Copies of certificate of leases for the two properties issued on 19th September, 2016 in her name.
 - b. Copies of official searches confirming she is the registered owner.
 - c. Share certificate No. 4049 dated 30/11/1982 and ballot paper or “allocated” plot No. R50 & R51 dated 19th February, 1992.
 - d. Receipts dated 20/12/1994 for Kshs.12,000



- e. Site visit fee receipt dated 6th February, 2019 for Kshs.20,000
 - f. Beacon Receipt dated 29th May, 2009 paying for beacon re-establishment for plot R50 and 51 share certificate 4049 and 105/4990-4991.
 - g. Stamp Duty paying-in slip dated 18th June, 2015 for the suit plots.
 - h. A copy of receipt dated 17th August, 2010 paid by ERC Ltd for registration & subdivision of the suit plots.
 - i. Duly executed transfer of leases in favour of 2nd defendant registered on 19th September, 2016.
52. Besides the transaction documents produced by the Defendants, they also included pleadings in NRB HCCC No. 1133 of 2006 where the present plaintiffs had sued Daniel Kimani and Susan Wanjiru. The copies of the Chamber Summons application provided indicate that the plaintiff had sought temporary orders of injunction to restrain the named persons from destroying any fence and or constructing on plot Nos 105/4998, 4999, 4991 and 4990. In these pleadings, the plaintiffs had accused these people of trespassing into the suit property and destroying their fence. During cross-examination, PW 1 said the previous case filed was to safeguard the suit property and it was dismissed for want of prosecution.
53. The documentary evidence produced demonstrate that both parties derive their rights over the two suit plots following their transactions with Embakasi Ranching company Ltd. Hence the dispute of whether the two plots allocated to the 2nd Defendant is the same that was subsequently sold to the Plaintiff. If the plots are the same, then the transaction with the 2nd Defendant going by dates on her documents was the first in time.
54. Consequently, for this court to find in favour of the plaintiff, she must prove that the 2nd Defendant's documents including her certificate of title is a forgery and or was irregularly obtained. This is the law as stated in section 26 of the [Land Registration Act](#) which provides thus;
- “(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.”
55. At page 74 of the Defendants' bundle is a provisional letter of allocation dated 28th November, 1982 showing on its face the share certificate number 4049 and plot number as 2416 – 2417 which are crossed and in front entered numbers R50 & 51. The receipt number on this letter is also crossed from 1026 and replaced with 7142. The offer letter was received on 29th May, 1990 presumably by the 2nd Defendant's deceased husband.
56. The share certificate at page 73 bears a number 4049 and on the place of signature for Director and secretary is entered Nos R50 - 105/4991 and R51 – 105/4990. It is not discernable on the face of the



- document when these entries were made. In the ballot paper at page 33 of the Defendants' trial bundle, the plot R50 and R51 was allocated on 19th February, 1992. A payment of Kshs.1000 vide receipt No. 7142 was made on 30th November, 1992. This payment probably explains the date of crossing on the provisional letter of allotment dated 28th November, 1982 as the receipt number is also entered on that document. The receipt No. 4135 issued on 20th December, 1994 for share certificate No. 4049 also referred to the plot allocated as R50 and 51. This far, the 2nd Defendant has demonstrated by way of documentary evidence that indeed E.R.C Ltd allocated two plots to her deceased husband.
57. The main question then is whether there is evidence placing the 2nd Defendants allocated plots R50 and R51 on the same ground position as the suit plots Nairobi Block 105/4990 and 4991. The burden of proof laid on the shoulders of both the Plaintiff claiming ownership and the 2nd Defendant who wants the court to find that the registration of the same was regular and legal. For the Plaintiff, she avers that the suit plots were sold to her and she took possession immediately. That the 2nd Defendant went behind her back to process titles illegally as the said plots did not belong to them. In her evidence, the 2nd Defendant said R50 and R51 were plots in Utawala which became Block 105/4990 & 4991. That everything was written in her husband's name and so she decided to pay for a site visit to be sure of their locations.
 58. From the documents presented, the plots allocated to the 2nd Defendant was to be curved from the mother title number 10904/2. In the letter dated 27th August 2007 produced by the Plaintiff at page 69 of her trial bundle, referenced subdivision scheme approval for Nairobi block 105/4990, 4991, 5343 and 4998, it recorded that what was approved was subdivision of L.R. no 10904/2.
 59. This letter (of 27.8.2007) addressed to the Plaintiff by Mang'erere J & Co Advocates brings out two issues, first that the plots claimed by both the Plaintiff and the 2nd Defendant was being curved out of L.R. no 10904/2 hence the assertion by the Plaintiff of lack of evidence that the 2nd Defendant's land was in Utawala is unfounded. Secondly, the letter confirms the Plaintiff's evidence that the process of acquiring titles in her name had began as far back as 2007 and not with the filing of the suit against the Embakasi Ranching in 2016.
 60. In linking R50 & R51 to the suit plots, the 2nd Defendant said the receipt dated 29th May, 2009 at page 43 of her trial bundle explains the conversion to Block 105/4990 & 4991 and which receipt was issued for beacon re-establishment. She also referred the court to the beacon certificate at page 35 where Geoffrey Kamau (her deceased husband) confirm that he had visually seen the beacons and location of plot R50 & 51 –B on 20th April, 1995. However, this document at page 35 of the trial bundle does not mention plot numbers 4990 and 4991.
 61. The conversion from plots R50 - 51 to Block 105/4990 and 4991 is a bit hanging from the documents being relied upon by the 2nd Defendant. This is taking into consideration the fact that by the time the 2nd Defendant was paying for the beacon re-establishment on 29th May, 2009, it was the evidence of the plaintiff that she was already in occupation and which evidence is corroborated by the pleadings in the suit filed against Daniel Kimani and Susan Wanjiru (found at pages 118 – 121 of Defendant's trial bundle) filed on 30th October, 2006. No evidence was led that the 2nd Defendant or her deceased husband took possession of the suit plots at any given time.
 62. On the other hand, the plaintiff's documents of acquisitions including the sale agreement executed on 12th July, 2005 specifically listed the properties that were being sold as L.R No. 105/4998, 4999, 4990 and 4991. There are several other documents mentioned hereinabove issued to the Plaintiff by Embakasi Ranching Co Ltd expressing intent to transfer the suit property to the Plaintiff. The 2nd Defendant challenged the validity of the sale on account that there was no proof of payment as the



cheque paying for the purchase price was written in the name of an individual and not Embakasi Ranching Company Ltd.

63. Indeed, the copy of the cheque produced show that it was issued in the name of Omar Shenga and the Plaintiff explained that the payment was done on advice from the directors of they dealt with during the transaction. On the face of the same cheque, there is a handwritten acknowledgement of the payment bearing stamp of the Embakasi, Ranching Company Ltd. The plaintiff also sued Embakasi Ranching Ltd in ELC case No. 1125 of 2016 where a judgment was delivered in her favour on 9th September, 2021. The court found that the plaintiff had proved a case against E.R.C Ltd regarding the sale of the four plots to her. There is no evidence presented to show that E.R.C Ltd have applied to set aside that judgment
64. Further, there was no evidence presented by the 2nd Defendant obtained either from E.R.C Ltd or the Registrar of Companies to corroborate her assertion that the persons in whose favor the cheque was issued and who executed the copies of transfer in favor of the plaintiff had no authority from Embakasi Ranching Co Ltd to do so. The 2nd Defendant purported to rely on the names of directors appearing on the letters from the company to prove directorship which evidence is not conclusive.
65. Just like a copy of search from the Ministry of Lands ascertain the ownership of land as per the official records, for companies CR-12 is what is used to ascertain directorship of a company and not a letter head. The Defendants also had an option to join Embakasi Ranching Co. Ltd as a party in their counter-claim or call a witness from that company to discredit the documents presented by the Plaintiff as evidencing sale but they chose not to. She was the one alleging that the sale to the Plaintiff was a fraud but I find the evidence adduced to prove the fraud as insufficient.
66. Hence, I find no basis to declare that the transaction undertaken by the plaintiff was in collusion with fraudsters and or that she applied illegal means to procure the non-member certificate of plot ownership aimed at grabbing the 2nd Defendant's plots. In addition, the plaintiff was put into possession of the purchased plots and if she did not pay for the plot as alleged by the 2nd Defendant or that the payment was made to at unauthorized person, why were no steps taken either by E.R.C Ltd or the 2nd Defendant from the year 2007 to 2022 to evict her not just from the two suit plots but also in respect to Nairobi Block 105/4998 & 4999 which the 2nd Defendant alludes to knowing their owners.
67. In conclusion and after comparing the sets of documents presented in evidence, it is my considered view and I hold that the 2nd Defendant is entitled to two plots from E.R.C Ltd through allocation and described as R50 & 51. However, I am not persuaded that these two plots are comprised in the plots in contest described as Block 105/4990 and 4991. I have reached this conclusion because as at the time the conversion was being done in 2009, the two numbers had been sold to the plaintiff and corroborated by the letter dated 27th August, 2007 confirming approval of the subdivision scheme.
68. Further, it is my finding that the averment that R50 & 51 was converted to Block 105/ 4990 and 4991 required corroborating evidence from the surveyor who visited the suit premises to re-establish the beacons. Therefore, the 2nd Defendant proceeding to process title in her name while aware of the presence of the Plaintiff on the land can only be taken that she was a party to the fraud being committed by either Embakasi Ranching Ltd and or its agents.
69. The 2nd Defendant pleaded particulars of fraud against the plaintiff which included procuring a non-member certificate of plot ownership. She also pleaded that they procured documents of transfer illegally. No evidence has been led to show that Embakasi Ranching Co. Ltd Regulations/by-laws did not provide for issuing the non-member share certificate nor that the certificate issued to the Plaintiff were forged.



70. In light of the foregoing analysis, I hold that the reliefs sought by the 2nd Defendant in the counter-claim do not lie as she acquired title to the suit plots irregularly. The same is dismissed.
71. On the hand, I find that the Plaintiff has proved her case on a balance of probabilities and so I enter judgement in terms of prayers (i) –(v) in the amended plaint with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2025

A. OMOLLO

JUDGE

