



**Ruto v Kimani & 2 others (Environment & Land Case
211 of 2016) [2025] KEELC 3629 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3629 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 211 OF 2016**

MAO ODENY, J

MAY 8, 2025

BETWEEN

JOEL KIPKOECH RUTO PLAINTIFF

AND

SACKEY PETER KIMANI 1ST DEFENDANT

JOHN WACIRA CHIRI 2ND DEFENDANT

JOSEPH NGANGA KANG'ETHE 3RD DEFENDANT

JUDGMENT

1. By an amended Plaintiff dated 9th June, 2022, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. That a Permanent Injunction to restrain the Defendants together with their representatives, agents, servants, employees and/or anyone claiming through them from encroaching onto disposing, transferring and/or in any way adversely dealing in Land Parcels Number Miti-Mingi/Mbaruk Block 4/739 (Ingobor), Miti- Mingi/Mbaruk Block 4/740 (Ingobor), Miti-Mingi/Mbaruk Block 4/741 (Ingobor), Miti- Mingi/ Mbaruk Block 4/742 (Ingobor).
 - b. A declaration that the Plaintiff was the rightful owner of Land Reference Number Miti- Mingi/Mbaruk Block 4/332 (Ingobor) and the subsequent subdivisions measuring approximately 0.3938 hectares.
 - c. A declaration that the sub-division of L.R Number Miti- Mingi/Mbaruk Block 4/332 (Ingobor) into four portions namely Miti- Mingi/Mbaruk Block 4/739 (Ingobor), Miti-Mingi/Mbaruk Block 4/740 (Ingobor), Miti- Mingi/Mbaruk Block 4/741 (Ingobor), Miti-Mingi/Mbaruk Block 4/742 (Ingobor) is illegal, null and void.



- d. An order of cancellation of the sub-divisions and registration of the 2nd and 3rd defendants as the owners of the subdivisions.
- e. An order directing the Land Registrar to consolidate the four titles, to wit, Miti- Mingi/ Mbaruk Block 4/739 (Ingobor), Miti- Mingi/Mbaruk Block 4/740 (Ingobor), Miti- Mingi/ Mbaruk Block 4/741 (Ingobor), Miti- Mingi/Mbaruk Block 4/742 (Ingobor), into one or in the alternative an order directing the Land Registrar to register the Plaintiff as the proprietor of the four subdivisions namely Miti- Mingi/Mbaruk Block 4/739 (Ingobor), Miti- Mingi/ Mbaruk Block 4/740 (Ingobor), Miti- Mingi/Mbaruk Block 4/741 (Ingobor), Miti- Mingi/ Mbaruk Block 4/742 (Ingobor) in place of the Defendants.
- f. Costs of this suit.
- g. Any other relief that this Honourable Court deems fit.

Plaintiff's Case

2. PW1 Joel Kipkoech Ruto testified that he knows the Defendants who sold his land, Miti Mingi/ Mbaruk Block 4/332 (Ingobor) measuring one acre, without his consent. He stated that he gave the title to the 1st Defendant as security for damage caused by his son to the Defendant's Tuk Tuk vehicle's windscreen which was assessed at Kshs. 65,000/ . It was PW1's testimony that he entered into an agreement dated 25th July 2009 with the 1st defendant which indicated that he would hold the title as security as he looked for the money to repair the Tuk Tuk.
3. PW1 confirmed that he did not pay within the stipulated time that they agreed on but later deposited Kshs. 65,000/ with Advocate Ogeto for onward transmission to the 1st Defendant who demanded a further Kshs 35,000/. He stated that he deposited a total of Kshs. 100,000/ with the Advocate. PW1 also stated that the 1st Defendant did not pick up the money from the Advocate's office.
4. PW1 produced a letter dated 12th September, 2013, from Hari Gakinya Advocate, which confirmed that the agreed amount of Ksh 65,000/= and a letter dated 30th October 2015 from Ogeto Advocate to Hari Gakinya Advocate to advise the 1st Defendant to pick up the Ksh 100,000/= which he had demanded.
5. According to PW1, Ogeto Advocate also wrote a letter dated 1st March 2016 to Hari Gakinya Advocate stating that if the title was misplaced, the 1st Defendant should swear an affidavit of loss of title and take the Ksh 100,000/, but there was no response. It was PW1's evidence that he later discovered that his land had been sub-divided into four portions giving rise to: Miti- Mingi/Mbaruk Block 4/739 (Ingobor), Miti- Mingi/Mbaruk Block 4/740 (Ingobor), Miti- Mingi/Mbaruk Block 4/741 (Ingobor) and Miti- Mingi/ Mbaruk Block 4/742 (Ingobor).
6. He testified that these sub-divisions were registered in the names of the 2nd and 3rd Defendants in respect of parcels numbers 739,740 and 741 in 2nd defendant and the 3rd Defendant as parcel number 742 respectively.
7. It was PW1's testimony that when they signed the agreement with the 1st Defendant at the police station, he only went with his identity card and did not leave a copy. He stated that he neither left his photograph nor Personal Identification Number certificate and later after this discovery, he reported the matter to the Criminal Investigation Department who wrote him a letter dated 19th February, 2015. It was his evidence that he instructed advocate Ogeto who wrote a letter dated 7th August, 2013 to the



- 1st Defendant and also registered a restriction on his behalf. He testified that the Land Registrar advised him to lodge a formal objection within thirty days, which he did vide a letter dated 13th February, 2015.
8. It was PW1's further evidence that the CID went to the Land Office and confirmed that the land had been sub-divided into four parcels and subsequently filed this suit against the Defendants. He told the court that he is the one in occupation of the suit land and denied allowing the 1st defendant to sell the suit land
 9. PW1 also stated that he neither knows the 2nd and 3rd Defendants nor how they got the land registered in their names. PW1 testified that he has neither been to the Land Control Board nor signed a consent to transfer.
 10. Upon cross-examination by counsel for the 1st Defendant, PW1 stated that he is ready to pay the 1st Defendant his Ksh 100,000/=. Upon cross-examination by Counsel for the 2nd Defendant, PW1 referred to Exhibit P1 and confirmed that he entered into an agreement where the 1st defendant was to hold the title to secure the payment of Kshs. 65,000/= which was to be paid by 25th August, 2009 which was never paid by then. PW1 informed the court that he had lodged a caution after the subdivision and that the 1st Defendant did not tell him that he had sold the land.
 11. Upon re-examination, PW1 testified that between 2009 and 2013, he fell ill and was not able to take action. He testified that he could not find the 1st Defendant and after they wrote the agreement, he disappeared.

1st Defendant's Case

12. DW1 Sackey Peter Kimani testified that he knows the Plaintiff and on 23rd July, 2001, he bought two Tuk Tuks and at 10.00pm he was called by the police from Njoro Police Station who told him that his driver had been beaten and admitted to Rift Valley Provincial General Hospital. It was his evidence that some people took his driver to the forest and dismantled one of the Tuk Tuks.
13. DW1 testified that a lady was arrested and taken to the Police Station and he confirmed that the Plaintiff's sons are the ones who dismantled his vehicle. DW1 further stated that he told them to pay for the damage at Ksh 450,000/= but they later agreed that the Plaintiff pays Kshs 135,000/= but he was not able to raise the amount.
14. It was DW1's testimony that the Plaintiff brought him a title deed for Miti Mingi/Mbaruk Block 4/332 (Ingobur) as security to pay the debt but was never shown where the plot was. It was his evidence that he met the Plaintiff after three years (in 2013), at Barclays Bank Nakuru and he told him that he had given him the plot.
15. DW1 testified that he got sick and went with a title deed and a logbook to a shylock to get money from the 2nd Defendant whom he met at a hotel with an Advocate called Oumo and they gave him Kshs 50,000/= but he needed between Ksh 150,000/= to Ksh 200,000/=. He testified that the 2nd Defendant gave him a further Ksh 40,000/= and told him to bring the title so that he could refund the money but he did not pick up his calls.
16. DW1 testified that he further sent Ksh 50,000/= without speaking to him and later met him at Coffee House where he was told that the 2nd Defendant had subdivided the land and was selling it. DW1 testified that he had done a search and found out that he had sub-divided the land and transferred it into his name. DW1 testified that he went to Mr. Oumo, Advocate who had told him that he would give him the title deed and later reported the matter to the Law Society of Kenya but the Advocate never gave him back the title.



17. DW1 testified that he reported the matter to the DCIO and was given an Occurrence Book number and the Police told him that the 2nd Defendant had been assisted by the Land Registrar to transfer the land illegally. He testified that the Plaintiff did not give him his identity card, PIN Certificate and any transfer form.
18. DW1 further testified that the Plaintiff was not selling the land to him and never signed any transfer forms at the shylock hence the land was transferred illegally by the 2nd Defendant.
19. Upon cross-examination by counsel for the Plaintiff, DW1 stated that the title deed was given to him as security and not for sale, further that the Plaintiff neither gave him his Identity card, PIN Certificate nor transfer form. It was his evidence that he came to realize that the 2nd Defendant had subdivided the land into four plots and transferred illegally to his name.
20. The 2nd and 3rd Defendants did not tender any evidence therefore their defences were closed.

Plaintiff's Submissions

21. Counsel for the Plaintiff filed submissions dated 4th December, 2024 and identified the issues for determination as:
 - a. Whether the subdivision of the Plaintiff's title number: Miti- Mingi/Mbaruk Block 4/332 (Ingobor) into four portions was procured fraudulently and if so, whether the same is liable to cancellation?
 - b. Who should bear the costs?
22. Counsel submitted that the Plaintiff was at all material times the registered proprietor of land parcel number Miti- Mingi/Mbaruk Block 4/332 (Ingobor) and relied on Sections 24 & 26 of the [Land Registration Act](#), 2012 and the case of MWK vs SKK & 5 Others [2018] eKLR.
23. Mr. Akango submitted that the Plaintiff has given a detailed account of what happened leading to his title being sub-divided and transferred to the 2nd and 3rd Defendants which account has been corroborated by the 1st Defendant who initially received the original title from the Plaintiff and it is clear that the land was subdivided and transferred to the 2nd and 3rd Defendants fraudulently without his knowledge.
24. Counsel submitted that the 2nd and 3rd Defendants filed no defense and offered no evidence in the case and that the sub-division and transfer was illegal, unprocedural, fraudulent, null and void. Counsel relied on the cases of R.G. Patel vs Lalji Makanji [1957] EA 314, Athi Highway Developers Limited vs West End Butchery Limited & 6 others, Civil Appeal No 246 of 2013 [2015] eKLR, Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another, Eldoret ELC Case No 609B of 2012 and Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others [2015] eKLR.
25. On the second issue, counsel prayed that the costs be awarded to the Plaintiff against the Defendants and judgment be entered as per the prayers in the plaint against the defendants.

1st Defendant's Submissions

26. Counsel for the 1st Defendant filed submissions dated 4th December, 2024 and urged the court to rely on the pleadings and the evidence on record.



Analysis And Determination

27. The issues for determination are as to whether the Plaintiff is the rightful owner of the suit parcel of land Miti- Mingi/Mbaruk Block 4/332 (Ingobor) together with the resultant subdivisions; whether the subdivision and transfer of the four parcels of land was procured fraudulently and illegally, who is to bear the costs of this suit.
28. As earlier stated, the 2nd and 3rd Defendants neither filed defences, witness statements nor tendered any evidence to counter the Plaintiff's case. It follows that only the 1st Defendant defended the case. I note that counsel for the 1st Defendant filed a one-liner submission urging the court to rely on the pleadings and the evidence on record. However, counsel for the 2nd and 3rd Defendants filed submissions dated 13th January, 2025 which are effectively not hinged on any pleadings or evidence by the defendants. The submissions do not serve any purpose in this case; hence, I will not consider them at all.
29. It is the Plaintiff's case that on or about 25th July, 2009, he offered his land Reference Number Miti-Mingi/Mbaruk Block 4/332 (Ingobor) to the 1st Defendant measuring approximately 0.3938 hectares as a security for repayment of a sum of Kshs 65,000/=. The Plaintiff averred that the 1st Defendant subsequently disappeared despite all efforts to trace him so that he could pay the outstanding sum of Ksh 65,000/=.
30. The Plaintiff pleaded fraud against the Defendants for fraudulently and illegally transferring the suit land to themselves without his knowledge and consent. The Plaintiff gave a detailed account of what transpired between him and the 1st defendant in respect of the suit parcels of land which was to be held as security for the payment of repairs of the 1st defendant's Tuk tuk which was damaged by the Plaintiff's son.
31. The evidence on record shows that the title given to the 1st defendant was not for sale but was rather to be held as security to repay a debt. The 1st Defendant also corroborated the Plaintiff's evidence that he was to hold the title as security as it was not sold to him. The 1st defendant also confirmed that the 2nd and 3rd Defendants fraudulently subdivided the suit parcel of land and sold without his knowledge.
32. This is a case of pure fraud where shylocks sell peoples' land without consent or authority. The Plaintiff and the 1st Defendant confirmed that they neither gave their documents like ID, PIN Certificate, nor Photographs to the 2nd and 3rd Defendants. The question is, where did they get the documents? Did they manufacture them for fraudulent purposes?
33. Fraud in land dealings has become prevalent in Kenya and is a worrying trend, which does not inspire confidence in the doctrine of sanctity of title. Fraud must be specifically pleaded and proved by a party who alleges as was held in the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, 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”
34. The Plaintiff specifically pleaded and led evidence to prove that the defendants acted fraudulently in the subdivisions and transfer of the suit parcels of land. The 1st Defendant told the court that he was authorized to sell the suit land however, there is no transfer to that effect and his evidence was contradictory as at one point he supported the Plaintiff's assertion that the 2nd and 3rd Defendants fraudulently and illegally transferred the suit parcel of land.



35. The 1st Defendant also confirmed that the Plaintiff did not give him his identity card, PIN Certificate and any transfer form. The registered proprietor of Miti- Mingi/Mbaruk Block 4/332 (Ingobor) is the Plaintiff and the procedural steps for the 1st Defendant to claim interest in the property were not followed. It therefore follows that the 2nd and 3rd Defendants could not have acquired an interest in the suit property. This court finds that the 1st Defendant was not a party to the fraud however, the 2nd and 3rd Defendants are complicit.
36. Section 26 of the [Land Registration Act](#) states as follows:
- (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.
 - (2) A certified copy of registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”
37. This case falls under the category where a title was fraudulently procured and therefore cannot be protected by the indefeasibility of title doctrine. This was pure fraud.
38. I have considered the pleadings, the evidence on record and the relevant judicial authorities and find that the Plaintiff has established his case against the Defendants and grants the following specific orders:
- a. A Permanent Injunction is hereby issued restraining the Defendants together with their representatives, agents, servants, employees and/or anyone claiming through them from encroaching into disposing, transferring and/or in any way adversely dealing in Land Parcels Number Miti- Mingi/Mbaruk Block 4/739 (Ingobor), Miti- Mingi/Mbaruk Block 4/740 (Ingobor), Miti- Mingi/Mbaruk Block 4/741 (Ingobor), Miti- Mingi/ Mbaruk Block 4/742 (Ingobor).
 - b. The Plaintiff is hereby declared as the rightful owner of Land Reference Number Miti- Mingi/ Mbaruk Block 4/332 (Ingobor) and the subsequent subdivisions measuring approximately 0.3938 hectares.
 - c. A declaration is hereby issued that the sub-division of L.R Number Miti- Mingi/Mbaruk Block 4/332 (Ingobor) into four portions namely Miti- Mingi/Mbaruk Block 4/739 (Ingobor), Miti- Mingi/Mbaruk Block 4/740 (Ingobor), Miti- Mingi/Mbaruk Block 4/741 (Ingobor), Miti- Mingi/Mbaruk Block 4/742 (Ingobor) is illegal, null and void.
 - d. The sub-divisions and registration of the 2nd and 3rd defendants as the owners of the subdivisions is hereby cancelled.
 - e. An order is hereby issued directing the Land Registrar to consolidate the four titles, to wit, Miti- Mingi/Mbaruk Block 4/739 (Ingobor), Miti- Mingi/Mbaruk Block 4/740 (Ingobor), Miti- Mingi/Mbaruk Block 4/741 (Ingobor) and Miti- Mingi/Mbaruk Block 4/742 (Ingobor) into one and register in the name of the Plaintiff.



f. Costs of this suit are awarded to the Plaintiff as against the 2nd and 3rd Defendants.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

