



Kandiro v Land Registrar, Laikipia County & 4 others (Environment and Land Appeal E014 of 2023) [2025] KEELC 5116 (KLR) (9 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5116 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E014 OF 2023**

**LN MBUGUA, J
JULY 9, 2025**

BETWEEN

SIMON NDUNGU KANDIRO APPELLANT

AND

LAND REGISTRAR, LAIKIPIA COUNTY 1ST RESPONDENT

JOSEPH MAINA KABUI 2ND RESPONDENT

MARY MUTHONI MAINA 3RD RESPONDENT

PETER NN KANGETHE 4TH RESPONDENT

JOSEPH MWANGI KAROKI 5TH RESPONDENT

*(Being an appeal from the judgement of Hon A Kitthinji (CM)
dated 11th day of October 2023 in Nanyuki CM ELC No. 68 2018)*

JUDGMENT

1. The appellant herein instituted proceedings before the trial court vide a plaint dated 4.12.2017 claiming that he bought land parcel Nanyuki /Marura Block 111/250 (Sweetwaters), the suit land from one Joseph Mwangi Karoki, the 5th defendant, culminating in the registration of the said land in his name (the plaintiff) on 13.11.2011. He contended that on 16.11.2013, the then 1st to 3rd defendants fraudulently and without notification cancelled plaintiff's title, and on the same date caused the land to be registered in the name of the then 2nd and 3rd defendants. In turn, the 2nd and 3rd defendants caused the land to be registered in the name of the then 4th defendant on 9.1.2014.



2. The plaintiff thus averred that the registration of the suit land in the name of the 4th defendant having flowed from the fraudulent registration was null and void. He therefore sought the following orders in his plaint;
 - “a) Rectification of the register relating to the suit land by re-instatement of entry numbers 6, 7, 8, 9, 10 and 11 and any subsequent entry that may be made thereon during the pendency of this suit.
 - b) Costs of this suit with interest at court rates.
Or against the 5th Defendant for;-
 - a) The sum of the value of the suit land as at the date of judgment
 - b) Costs of the suit”
3. The Land Registrar Laikipia county who was the 1st defendant (now the 1st respondent) filed a statement of defence dated 16.7.2018 denying the claim of the plaintiff adding that any cancellation in the title was done regularly, adding that the claim of the plaintiff was time barred.
4. The 4th defendant filed a defence and counterclaim dated 6.9.2018 and amended on 7.9.2018 where he averred that he is the duly registered owner of the suit property and that the plaintiff was a trespasser. The 4th defendant therefore sought judgment in the following terms;
 - “1) The dismissal of the plaintiff’s suit with costs.
 - 2) An order of eviction against the plaintiff from all the property known as Nanyuki/Marura Block III/250 (Sweetwaters).
 - 3) Costs of the suit and the counterclaim with interest.
 - 4) Any other or further relief this honourable court may deem fit to grant”
5. The 2nd, 3rd and 5th defendants did not enter appearance.
6. The matter proceeded to hearing culminating in the judgment delivered on 11.10.2023 in which the following orders were given;
 - “a) That the plaintiff’s suit by way of plaint dated 4th day of December, 2017 against the 1st, 2nd, 3rd and 4th defendants is hereby dismissed with costs.
 - b) That he plaintiff is at liberty to recover the current market value of the suit land from the 5th defendant.
 - c) That the 4th defendant’s Amended Counterclaim dated 7th day of September, 2018 succeeds with costs.
 - d) That an order of eviction is hereby issued against the plaintiff from all that property known as Nanyuki/Marura Block III/250 (Sweetwaters).
 - e) That the 4th defendant shall have the costs of the counterclaim together with interests to be paid by the plaintiff”
7. Aggrieved by the aforesaid decision, the appellant filed his memorandum of appeal dated 3.11.2023 raising 10 grounds which are summarized as follows; That the trial magistrate misdirected himself



in basing his judgment on the appellant's failure to make an objection to the gazette notice number 11667, making a finding that the appellant's documents had been dispensed with, relying on a vague and inconclusive shareholders register, disregarding the law which stipulates that the 1st respondent had no mandate to cancel a title, failing to find that the appellant was not accorded a fair hearing in the cancellation of his title, failing to find that the defence of the 4th defendant was not sustainable in absence of the defence of the 2nd and 3rd defendants and failing to consider that the circumstances of the case demanded that each party should bear their own costs, instead of him (the appellant) bearing the costs of the suit.

8. The appellant therefore prays for judgment in the following terms;
 - “ 1. This appeal be allowed and the orders of the Learned Trial Magistrate be set aside and in place thereof be made the following orders:
 - a) The appellant's/plaintiff's suit in the court below is allowed.
 - b) Rectification of the register of Land Title Number Nanyuki/Marura Block III/250 (Sweetwaters) by re-instatement of entry numbers 2, 3, 4 and 5 thereon and cancellation of entry numbers 6, 7, 8, 9, 10 and 11 and any subsequent entry that may have been made thereon during the pendency of Nanyuki Chief Magistrate's Court ELC *Case No. 68 of 2018*.
 - c) The 1st, 2nd and 3rd defendants pay the plaintiff's costs of Nanyuki Chief Magistrate's Court ELC *Case No. 68 of 2018*.
 2. The appellant shall have costs of this appeal as against the 1st, 2nd and 3rd respondents”.
9. On 19.11.2024, the court gave directions for the appeal to be canvassed through written submissions, of which the submissions of the appellant are dated 28.3.2025, while those of the 4th respondent are dated 13.5.2025.
10. In his submissions, the appellant has rehashed the grounds of appeal averring that the Land Registrar had no powers to cancel his title, hence the gazette notice was illegal, adding that he was not accorded a fair administrative action in the cancellation of his title. He therefore terms the actions of the Land Registrar as unlawful.
11. The appellant also submitted at length as to why the trial magistrate should not have relied on the shareholder register as there was no proof of its origin.
12. On his part, the 4th respondent submitted that the gazette notice leading to the cancellation of the appellant's title was proper in terms of Section 79 (2) of the *land Registration Act* 2012. Adding that the registration of Joseph Mwangi Karoki as the owner of the land was found to be fraudulent since he was not a shareholder of the Weruini land company,

Analysis and Determination

13. The duty of the 1st appellate court was explained in the case of *Selle and Another Versus Associated Motor Boat Company Ltd & Others* [1968] EA 123, where it was observed thus:-

“ An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this



court must reconsider the evidence, evaluate it itself and draw its own conclusion. Though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial Judges findings of fact if it appears either that he has clearly failed in some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence on the case generally.”

14. At the trial before the magistrate’s court, the appellant was the sole witness for his case, testifying as PW1. He adopted his witness statement dated 4.12.2017 as his evidence. He also produced the documents in his list as exhibits 1-6, noting that the 1st document which was in vernacular language was not produced as an exhibit.
15. His evidence was that he purchased the suit land from one Joseph Mwangi Karoki who was the 5th defendant before the trial court. The appellant was then registered as the owner of the suit land on 13.11.2011, That in the month of February (year not mentioned in the witness statement), he wanted to transfer the land to his son, but on 11.4.2016, he learnt that he could not effect the transfer as he was not the registered owner of that land.
16. That investigations through his lawyer revealed that his title had been cancelled pursuant to a gazette notice no. 11667 of 16.8.2013, which intimated that he had obtained the land fraudulently. He also established that the land had been registered in the names of Joseph Maina Kabui and Mary Muthoni Maina, then Peter N.N. Kangethe. He contends that the Land Registrar had no mandate to cancel his title.
17. In cross-examination, the appellant stated that he had the gazette notice, but he did not protest the same. He avers that he had been on the suit land since year 2011. He does not live on the land, but his home is near the suit land. He had no transfer document.
18. The case of the 1st respondent (1st defendant before the trial court) was advanced by one Pamela Muthoni Mutegi, a Land Registrar in charge of Nanyuki lands registry. She adopted her witness statement dated 13.10.2020 as her evidence and she produced the documents in her list dated 15.10.2020 as exhibits 1-3.
19. She gave a historical account of the registration of the suit land, that the same was first registered to the Government of Kenya on 26.9.1988, the land was then transferred to Joseph Mwangi Karoki (5th defendant) on 2.12.2009, then to the appellant on 15.11.2011. That on 6.11.2013, the two previous registration were cancelled vide gazette notice no. 11667 on 16.8.2013 where Joseph Maina Kabui was registered as the owner of the suit land as a member of Weruini Lands (Holdings) Ltd. And on the same date, a transfer was effected in favour of Mary Muthoni Maina and a title deed was issued to her. Then on 9.1.2014, the land was transferred to Peter Kangethe, the 4th defendant.
20. DW1 contended that the registration of the 5th defendant as the owner of the land was not procedural as he was not a member of Weruini lands Holding, thus the appellant did not acquire a good title. Thus after the expiry of the 30 days notice, the Land Registrar proceeded to cancel the title. Adding that the plaintiff was fully aware as he had been summoned but he ignored the said summons.
21. On cross-examination by counsel for the appellant, DW1 stated that she is not the one who registered Karoki as the owner of the suit land in year 2009. She averred that the list of shareholders was presented to them by the Weruini lands Holdings ltd, but the sub division map to the current plots was not in court. She also stated that the cancellation of the title was traced to fraudulent registration of Joseph Mwangi Karoki.



22. On cross-examination by counsel for the 4th respondent, DW1 stated that once a gazette notice is issued, it is presumed that the person being addressed is aware and ought to raise an objection. He contends that the process of acquiring a title in respect of a land buying company entails the presentation of a list of beneficiaries, and that the list of share holders availed by her was authentic.
23. The the 4th respondent advanced his own case before the trial court, testifying as DW2. He adopted his witness statement dated 24.4.2019 as his evidence. He also produced 9 documents in his list as his exhibits. His evidence is that he is the registered owner of the suit land, the same having been transferred to him by Mary Muthoni Maina, adding that he was not aware of any fraud. He avers that the land is vacant, but he has a counter claim for the eviction of the appellant.
24. On cross-examination by the plaintiff, the 4th respondent averred that he had not looked at the green card as at the time of sale, and he was not aware of a cancellation of the title.
25. From the pleadings, the evidence on record and the submissions of the parties, I find that the gravamen of the dispute revolves around the cancellation of the title of the appellant, and whether the registration of the suit land in favour of the 4th respondent should be sustained.
26. To this this end, the first point of call is a scrutiny of the pleadings, so as to establish whether the evidence adduced supported the aforementioned pleadings.
27. In the case of *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR, the court cited the case of *Raila Amolo Odinga & Another v IEBC & 2 others* (2017) eKLR where it was held that;

“...Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....”
28. Further in *Independent Electoral and Boundaries Commission v Stephen Mutinda Mule & 3 others* (2014) eKLR, it was stated that;

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rule of pleadings.....for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings.”
29. The appellants claim as set out in his pleadings was that his title to the suit property had fraudulently been cancelled without his knowledge and he wanted the register to be rectified accordingly. The response by the 1st defendant was that they (the Land registrar) had discovered fraud that is why they cancelled the title. While the 4th respondents claim was that he was the duly registered owner of the land.
30. What emerged during the evidence is that indeed the appellant was the registered owner of the land before the entry on cancellation of the title, having acquired the land from Karoki who in turn got the land from the government of Kenya. The person who imputed fraud on the acquisition of the title by the appellant was the Land Registrar and she therefore bore the burden of proving those allegations.



A perusal of the judgment however reveals that the trial court shifted this burden upon the appellant when the court delved into the manner in which the appellant acquired the suit land from the 5th defendant (Karoki). In essence, the trial court failed to deal with specific issues raised in the pleadings of the parties.

31. Another point for consideration relates to the mandate of the Land Registrar in the cancellation of the title. A copy of the green card availed by the appellant and the 1st respondent indicates that the cancellation of the title as against the appellant was done on 6.6.2013. Thus the law applicable was the Land Registration Act of 2012. The provisions of Section 26 of the aforementioned statute stipulate 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”.

See Elijah Makeri Nyangwara v Stephen Mungai Njuguna & another [2013] eKLR.

32. Thus the above provisions of law applied in respect of the appellant before the cancellation of his title on 6.6.2013.
33. On the other hand, the provisions of Section 79 of the Land Registration Act empower the Land Registrar to rectify registration of land in the following terms;

- “(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—
 - (a) In formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
 - (b) In any case and at any time with the consent of all affected parties;
 - (c) If upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
 - (d) For purposes of updating the register; or
 - (e) For purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.
- (2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor’s consent unless—



- (a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
- (b) it would for any other reason be unjust for the alteration not to be made”

34. The arguments of the Land Registrar in support of the cancellation of the appellant’s title appear to be based on Section 79 (2) (a) of the *Land Registration Act*. However, no evidence was proffered on how the inquiry leading to a finding of fraud was conducted by the Land Registrar.

35. In her witness statement, DW1, the Land Registrar contended that the appellant had been summoned but he ignored the same. Further, the gazette notice availed by the Land Registrar indicated that;

“where us sufficient evidence adduced proves that that the said land title was fraudulently acquired...”.

What resonates from the above pieces of evidence is that there was a complaint based on fraud and that some kind of proceedings were conducted by the Land Registrar culminating in the gazette notice. Thus the gazette notice was certainly not the basis of cancellation of the title. It was simply an end product of the investigations. So just how were those investigations conducted. Simply put; who and when was the complaint lodged and where are the proceedings of the inquiry? Those are questions which were certainly not answered by the Land Registrar.

36. Still on the gazette notice, I find that the same was issued on 16.8.2013 and it was giving the appellant 30 days to lodge an objection. However by then, the cancellation of the appellants title had already taken place on 6.6.2013!. What more, the land was registered in the name of the 2nd respondent a day after on 7.6.2013 and to the 3rd respondent the subsequent date of 8.6.2013. It follows that the averments of the Land Registrar as set out at paragraph 9 and 10 of her witness statement that the gazette notice no 11667 of 16.8.2013 was giving the appellant sufficient notice of the intended cancellation of his title was nothing but a fallacy!

37. Further, the speed of the aforementioned events in which 3 different registrations took place in a record 3 days were a tell tale sign that all was not well. There is no rocket science needed to discern that the entire process of cancellation of the appellant’s title is the one which was fraudulent.

38. What more, there is no evidence as to how the entity known as Weruini Land Holdings came to be connected with the suit land. After all, the title to the suit land was registered in the name of the Government of Kenya in 1988 and the next registration was in favour of Karoki, the one who transferred the land to the appellant.

39. In the case of *Munyu Maina v Hiram Gathiba Maina*, Civil Appeal No.233 of 2009, the Court held that:

“Courts have stated that when a registered proprietor’s certificate of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is challenged and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title”.

40. This is not even a case where the appellant had an opportunity to dangle the instrument of his title, simply because the challenge to the said title doesn’t appear to have existed at all.



41. In that regard, I find that the trial magistrate erred in making a finding that Karoki Mwangi (5th defendant) acquired his title through fraud, when such allegations of fraud as advanced by the Land Registrar were out rightly invalid.
42. I come to the conclusion that there was no basis for cancellation of the appellants title, hence the current title held by the 4th respondent should not stand. This far, I need not interrogate the judgment of the trial court further, save to state that the trial magistrate erred in dismissing the claim of the appellant while upholding that of the 4th respondent.
43. I therefore enter judgment for the appellant against the respondents in the following terms;
- “ 1. This appeal is allowed in which the judgment delivered on 11.10.2023 before the Trial Magistrate is hereby set aside and in place thereof, i give the following orders:
- a) The appellant’s/plaintiff’s suit in the court below is allowed.
- b) An order is hereby issued for the rectification of the register of Land Title Number Nanyuki/Marura Block III/250 (Sweetwaters) by re-instatement of entry numbers 2, 3, 4 and 5 thereon and cancellation of entry numbers 6, 7, 8, 9, 10 and 11 and any subsequent entry that may have been made thereon during the pendency of Nanyuki Chief Magistrate’s Court ELC *Case No. 68 of 2018*.
2. The appellant shall have costs of this appeal as well as costs before the trial court against the respondents/defendants”.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 9TH DAY OF JULY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Mwangi Kariuki for the Appellant

