



Ngari & 2 others v Mugo (Suing as the Administrator of the Estate of the Late Gaita alias Mugo s/o Gaita) (Environment and Land Appeal E009 of 2024) [2025] KEELC 5416 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5416 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL E009 OF 2024**

**JM KAMAU, J
JULY 10, 2025**

BETWEEN

**JOHN MBUTHIA NGARI 1ST APPELLANT
PAUL MACHARIA TAITI 2ND APPELLANT
OTHAYA MAHIGA CHINGA EX FACCO LTD 3RD APPELLANT**

AND

JANE WANGECHI MUGO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE GAITA ALIAS MUGO S/O GAITA) RESPONDENT

(An Appeal from the Judgment and Decree in Nyahururu Chief Magistrate's Court CMELC No.73 of 2019, Hon. E.H. Keago (CM) dated 27th March 2024)

JUDGMENT

1. In Nyahururu Chief Magistrate's Court Case No. ELC 73 of 2019 delivered by Honourable E.N. Keago, CM on 27.3.2024 was a case filed on 27.6.2019 by the Respondent herein in her capacity as the Administrator of the Estate of her Husband Gaita alias Mugo Son of Gaita. The said Gaita, as she said, was a member and shareholder of the 3rd Appellant, a Limited Liability Land Buying Company with registered office and principal place of business in Ngaragwa Sub-County, Nyandarua County.
2. The Respondent averred that the Deceased by virtue of being a shareholder of the 3rd Appellant was allocated Plot No.1920/2484, which after registration became LR No. Ndaragua/Uruku Block 2 (Uruku) 819 measuring 0.8625 Hectares.
3. After the Deceased's death on 11.09.1998 the Respondent took out Letters of Administration *vide* High Court Nyeri P & A Succession Cause No.869 of 2010 on 11.07.2016 and thereby became his personal representative for all intents and purposes.



4. Upon request for the Title Deed, the 3rd Appellant started taking her round in circles causing her to conduct a search at the Lands Office only to discover that the aforesaid suit land had been fraudulently registered in the joint names of the 1st and 2nd Appellants and on discovery she lodged a caution against the suit land forbidding the registration of disposition or any entries on the Register.

The Respondent consequently made the following prayers –

- a) A Declaration that the Plaintiff's Deceased husband was the only beneficiary of Plot No.1920/2484 now L.R No. Ngaragwa/Uruku Block 2(Uruku) 819 measuring approximately 0.8625Ha, should have been registered as the proprietor thereof and that the registration of the 1st and 2nd Defendants as proprietors thereof was fraudulent.
 - b) An order for cancellation of the title deed issued to the 1st and 2nd Defendants for L.R Ngaragwa/Ukuku Block 2(Uruku) 819 and having the same issued in the names of Simon Mugo Gaita Alias Gita S/o Mugo (now Deceased) to enable the Plaintiff complete administration of the Deceased's estate as ordered in Nyeri High Court Succession Cause No.869 of 2010.
 - c) An order of permanent injunction restraining/barring the 1st and 2nd Defendants either by themselves, agents, servants, employees and/or anybody or authority howsoever claiming through their names from selling and/or causing the registration of dispositions and making of entries into the register of L.R. No. Ngaragwa/Uruku Block 2(Uruku)819 measuring approximately 0.8625 Ha
 - d) Costs of this suit and interest thereon at court's rates.
5. In response thereto, the Appellants filed a joint Defence on 11.12.2019 in which they denied the Respondent's claim in total and in particular that they were jointly registered as the proprietors of L.R. No. Nyandarua/Ngaragwa Uruku Block 2/819 Uruku fraudulently and also denied the particulars of fraud attributed to them. They claimed to have brought the aforesaid parcel of land from James Ngura Thiong'o vide a Sale Agreement dated 31.10.2015 the said Thiong'o having bought the same from King'ori Kariuki by an agreement dated 21.10.2015, and that Kariuki was allotted the land by the 3rd Appellant and the 3rd Appellant did execute the necessary transfer in her offices. Therefore, the Respondent had no valid cause of action against the Appellants. They claimed that the case was untenable, bad in law and that the same lacked merit and should be dismissed with costs to them.
6. On her part, the 3rd Appellant filed a Defence on 20.5.2019 and claimed that according to her records, the 1st Appellant was the sole and absolute allottee of L.R. No. Nyandarua/Ngaragwa Uruku Block 21819 (Uruku) and that the registration of the suit property in his name was procedural and hence valid. She further said that Gaita alias Mugo S/O Gaita had not been allocated the suit land, and as such his Estate did not have any legal basis of claiming the property.
7. In the Reply to the 3rd Appellant's Statement of Defence, the Respondent repeated the entire averments of her Plaint which she respectively reiterated. The case then proceeded to hearing where the Respondent gave her testimony on the 17.3.2022 by adopting her undated Witness Statement. Her testimony tallied with her averments in the Plaint. She said that her husband was taken to the ground and using the company's map he was shown where his Plot No.1920/2484 was located which was then registered as L.R. Nyandarua/Ngaragwa Uruku Block 2(Uruku)819 measuring 0.8625 Hectares and after realizing that the property had been fraudulently registered in the name of the 1st and 2nd Appellants, the Respondent lodged a caution and sought the Court's intervention to have the land revert to her husband's Estate.



She then produced the following documents to support her case.

- a) Copy of Grant of Letters of Administration Intestate.
 - b) Copy of Share Certificate in favour of her Deceased husband.
 - c) Bundle of Receipts showing payments made to the 3rd Appellant by the Deceased.
 - d) Copy of the 3rd Appellant's Map.
 - e) Copy of Certificate of Allocation of Plot No.1920/2484 to the Deceased.
 - f) Copy of Extract of the R.I.M for L. R No. Ngaragwa/Uruku Block 2 (Uruku)819.
 - g) Copy of Certificate of Official Search for L.R No. Ngaragwa/Uruku Block 2 (Uruku)819.
 - h) Copy of Green Card for L. R No. Ngaragwa/Uruku Block 2 (Uruku) 819.
 - i) Copy of Respondent's Application for a Caution.
 - j) Copy of Demand Letter dated 10.04.2019
8. On cross-examination by the Appellant's Advocate Mr. Nderitu, the Respondent said that the land in dispute was under Chinga Company and that she did not know Charles Kariuki. She said she had the receipt for payment of the required payments although her husband's name was not in the Register. She also confirmed that no one was on the land.
9. On re-examination, the Respondent said she blamed the company (3rd Appellant) for having transferred the land illegally to the first 2 Appellants. Having closed her case, the Respondent paved way for the Appellants' case.
10. DW1, John Mbuthia Ngari produced the following documents to support his case and said that Paul (I suppose the 2nd Appellant was his friend and that they were joint owners: -
- a) Agreement for Sale dated 21.10.2015 and its translation.
 - b) Agreement for Sale dated 31.10.2015 and its translation.
 - c) Registers.
 - d) Receipts from Othaya Mahiga Chinga Exfacco Ltd and Ballot Card.
 - e) Share Certificate.
11. On cross-examination this witness said the 1st and 2nd Appellants bought the land together from James Ngura and that they did not have a Title Deed but that John King'ori had a Share Certificate. The Certificate was in the name of Charles Mwangi. He said that the documents shown to him were for Simon Mugo Gaitai. He also further said that the original owner of the land was Othaya Mahiga and that the name King'ori in the Register had been cancelled and replaced by Charles Mwangi and Paul Macharia while the instant owner was Charles Kariuki/King'ori Kariuki and that James King'ori showed them the plot which he had got from King'ori who showed them the agreement and receipts and ballots.
12. The only thing DW2 Paul Macharia said in his testimony was that he was the 2nd Defendant.
13. DW3 Mwangi Muchiri a Board Member of Othaya Mahiga Chinga Exfacco Ltd, the 3rd Defendant, said he was the Company's Treasurer. He adopted his witness statement dated 16.12.2020. He said that the 3rd Appellant was a Land Buying Company and that the suit land was under the management



- of the 3rd Appellant. He said that in the records of the company, the suit land was initially allocated to King'ori Kariuki. King'ori then sold his share to James Ngara Thiong'o and the transfer was formalized at the offices of the company. Later, the 3rd Appellant issued the 2nd and 3rd Appellants with Clearance Certificates for purposes of obtaining a Title Deed. He concluded his statement by saying that Gaita alias Mugo S/O Gaita has never been allotted the suit land and therefore his Estate did not have any cause of action against them. He further said that the suit land was balloted for by the 2nd Appellant.
14. After the land, plot number 1890, was sold to the 1st Appellant, the company made changes to its Register. He also added that the 1st and 2nd Appellants were issued with receipts for office maintenance – Kshs.6,000= and Kshs.6,000= for “farm transfer”. He added that the Register was with the Land Registrar and that the suit land belongs to the 1st Appellant. The witness also confirmed that Gaita alias Mugo is known in their records and that the receipts produced by his widow originated from the 3rd Appellant.
 15. On cross-examination by Mr. Mathea for the Respondent, the witness said that several receipts for 3,000= for Plot No.2484, Kshs.750= for Plot No.2484 and also one for 50= dated 13.3.2019, 3.11.1994 and 31.5.1992 respectively had been issued to Simon Mugo Gaita for Plot No.2484. There was also a receipt for Survey Fees of Kshs.150= issued to Simon Mugo Gaita, the husband to the Respondent on 6.12.1993. He further admitted the Ballot Card was issued to Simon Mugo Gaita and that the Card Number and Title Deed are not the same. Plot Numbers are the same as Card Numbers. He added that there were no cancelations or alterations on the Register. That the Ballot Card for Simon showed 1920 and the No.2484 was super imposed. 1920 was the Plot No.
 16. The witness finally said that Simon Gaita would get his land and that 2484 did not belong to Patrick and that once Simon Mugo availed the Ballot Card he would be shown his land but that he never went to the office to claim his land.
 17. That ended the Appellant's case and paved way for judgment after written submissions were filed by the respective parties. The court then pronounced its judgment on 27.3.2024 in favour of the Respondent as follows –
 - a) A declaration be and is hereby issued that the Plaintiff's Deceased husband was the only beneficiary of Plot No.1920/2484 now L.R. Ndaraga Uruku Block 2 (Uruku) 819 measuring 0.8625 HA, who should have been registered as the proprietor thereof and that the registration of the 1st and 2nd Defendants as proprietors thereof was fraudulent.
 - b) An order of cancellation of the Title Deed be and is hereby issued in respect to the registration of the 1st and 2nd Defendants for LR Ngaragwa/Uruku Block 2 (Uruku)819 and having the same issued in the name of Simon Mugo Gaita Alias Gita S/o Mugo (now Deceased) to enable the Plaintiff complete the administration of the Deceased's estate as ordered in Nyeri High Court Succession Cause No.869 of 2010.
 - c) An order of permanent injunction be and is hereby issued restraining/barring the 1st and 2nd Defendants either by themselves, agents' servants' employees and/or anybody or authority howsoever claiming through their names from selling and/or causing the registration or disposition and making entries into the Register of LR NO.Ngaragwa/ Uruku Block 2(Uruku)819 measuring approximately 0.8625 Ha.
 - d) The Plaintiff is awarded costs of the suit and interest.
 18. The Appellants having been dissatisfied with the Decree they appealed to this court asking this court to reverse the judgment of 27.3.2024 in its entirety on the following grounds –



- a) That the Learned Trial Magistrate fell into grave error of law by failing to uphold the sanctity of Title No.Ngaragwa Uruku Block 2 (Uruku)819 registered in the names of the 1st and 2nd Appellants and without any foundation in law or at all ordering for its cancellation and registration thereof in the name of the Respondent.
 - b) That the Learned Trial Magistrate misdirected himself in law and misapprehended the same by determining that the Respondent had established any grounds of fraud on acquisition of Title No. Ngaragwa/Uruku Block 2 (Uruku)819 by the 1st and 2nd Appellants to warrants cancellation of the same.
 - c) That the Learned Trial magistrate fell into grave error of the law and occasioned the Appellants grave miscarriage of justice by disregarding their oral evidence in court and the unimpeachable documents on their ownership of the suit property.
 - d) That the Learned Trial Magistrate erred in fact and occasioned grave miscarriage of justice by failing to appreciate that the suit land which is lawfully owned by the 1st and 2nd Appellants was separate and distinct from that claimed by the Respondent.
19. The Record of Appeal having been filed, I invited the respective parties to file their written submissions and upon going through them I retired to write my judgment as follows –
20. Cancellation of a Title is a very draconian and punitive thing that disentitles a Kenyan citizen his interest in land contrary to Article 40 of the *Constitution* of Kenya, 2010. It cannot be done so casually. The Court must be very sure of the fact that the same is in the wrong hands.
21. Section 107 of the *Evidence Act* (cap 80 Laws of Kenya on Burden of proof 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.
- Section 109 provides further that:
- The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- Section 112 states that:
- In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.
22. The law is clear in as far as possession of a Title Deed is concerned. It is however trite law that when ownership of property is disputed, it is not enough for the Title holder to dangle an instrument of Title and expect the Court to down its tools. One must establish the root of the Title that the same was acquired legally and validly since whereas Title is conclusive evidence of proprietorship, the same can be challenged on the basis of fraud, illegality, or acquisition of the said Title through a corrupt scheme. See the case of *Munyu Maina v Hiram Gathiba Maina*, Civil Appeal number 239 of 2009 held that: -
- “where a party’s certificate of title is under challenge, it is not enough to wave the instrument of title as proof of ownership but prove the legality of how he acquired the title”.



23. Section 26(1)(a) &(b) of the Land Registration Act, 2012 guides me on the need to protect the sanctity of a Title Deed but limits me where there is darkness: -

“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.

24. Article 40 of the Constitution of Kenya, 2010 provides that:

- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
 - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5)
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

25. Section 80 of the Land Registration Act, 2012 provides as follows: -



- (1) 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.

Subsection (2) of the Act provides,

“(2)) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default”

26. This proviso cannot also protect the Appellants. The suit land had already been paid for on behalf of the Respondent who they want to dispossess. The Appellants were aware that the Respondent was the owner of the suit land. And finally the Appellants cannot claim that they were not active participants in these maneuvers and intrigues of fraud.
27. Finally, the evil and corrupt practice demonstrated above by the Appellants is not an isolated case in land buying companies and must be nipped in the bud otherwise innocent Kenyans who have no access to the documents at the company offices will always be dispossessed by some hawk-eyed officials working in the said companies who are able to tell who has not gone to pick his Title Deed.
28. The upshot of the above is that this Appeal fails and for the avoidance of doubt, the suit property i.e. Plot No.1920/2484 now L.R No. Ngaragwa/Uruku Block 2(Uruku) 819 measuring approximately 0.8625Ha,belongs to the Estate of the late Gaita Alias Mugo S/o Gaita the Respondent’s husband and should be registered in the name of the Administrator(s) of the said Estate to be held in trust for the beneficiaries of the late Gaita Alias Mugo S/O Gaita and I hereby order the Land Registrar, Nyandarua to so rectify the Register to read so.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 10TH DAY OF JULY, 2025.

MUGO KAMAU

JUDGE

In the presence of:

C/ASamson.

Mr. Mugo..... for the Appellants.

N/A..... for the Respondent.

