



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Kaniu & another (Environment and Land Case
E207 of 2016) [2025] KEELC 5167 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5167 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E207 OF 2016**

**A OMBWAYO, J
JULY 10, 2025**

BETWEEN

VERONICAH WAMERE NJUGUNA PLAINTIFF

AND

REHAB NGENDO KANIU 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced the present suit vide an amended Plaint dated 8th March, 2022 against the Defendants seeking the following orders:
 - a. A Permanent injunction be issued restraining the Defendants by themselves, their agents or servants from transferring, trespassing or dealing in any way or manner with the suit property known as Kijabe/kijabe Block 1/3383.
 - b. An order that the title deed issued to the 3rd Defendant and subsequently the 1st Defendant in respect of the land parcel Kijabe/kijabe Block 1/3383 be revoked.
 - c. A declaration that the Plaintiff is the legal proprietor of land parcel Kijabe/kijabe Block 1/3383.
 - d. An order directing the Naivasha District Land Registrar to issue a proper title to the Plaintiff over the suit land Kijabe/kijabe Block 1/3383.
 - e. Costs of the suit plus interest thereof
 - f. Any other order the Honourable Court deems fit.
2. The 1st Defendant filed her Amended Statement of Defence dated 19th October, 2018 where she denied the allegations in the plaint.



3. The 3rd Defendant also filed her Statement of Defence dated 5th September, 2022 where she denied the allegations in the plaint.

Plaintiff's case

4. Rossors Ritho Mwangi, the Land Registrar, Naivasha testified as PW1. He testified that he had all the necessary documents which he produced as follows:
 1. Certified copy of a green card (PEX 1) Transfer of land document (PEX 2),
 2. Certified copy of the surveyor's report (PEX 3), and
 3. Copy of the certificate (PEX 4)
5. He testified that land parcel Kijabe/Kijabe Block 1/3333, was in the name of the Government of Kenya as at 26th April, 1988. It was his testimony that on 2nd March, 1989, the 3rd Defendant had been issued with a title. He further testified that there was a transfer of title from the government to Rahab Ngendo who was issued with a title on 18th July, 1989.
6. PW1 testified that the title belonged to the government and that Maimahiu Kijabe land buying company owned the land and allotted it to the Plaintiff.
7. He testified that the registrar's records showed the Plaintiff as the proprietor, but there was a cancellation, and David Thuo replaced the Plaintiff. He further testified that there was a transfer of land from the Government of Kenya to Florence Mugo. PW1 testified that he did not have any records from the company or any other documents apart from those produced.
8. Upon cross-examination by Mr. Ouma for the 1st and 2nd Defendants, PW1 stated that he was not serving in Naivasha at the time of the entries. He admitted that the registrar's copy was not complete and that it related to parcel 3383. He added that there was no double allocation. PW1 confirmed he had served for 3 years.
9. He stated that parcel 3383 was issued to the Plaintiff. He however admitted that her name was never registered at any time. He stated that the land was allocated to the 3rd Defendant.
10. PW1 listed the registrar's checklist for land buying companies before registering a person which entailed a ballot, payment receipts, and share certificate, which are submitted by the land buying company. He stated that the title document for Rahab Ngendo Kamau was issued on 13th July, 1989, and the caution was registered on 28th September, 1990. He confirmed that a caution could be removed by the Land Registrar.
11. PW1 stated he did not have the letter dated 5th March, 2016, which requested the Land Registrar to show cause why the caution should not be removed. He added that he was not aware of any response.
12. He stated that a complaint from a member from a land buying company made the first complaint to the company. He admitted that he did not have records of the Plaintiff having followed this procedure. He further stated that a caution may be placed where the complaint showed relevant documents.
13. He stated that the Land Registrar then follows the land buying register after which cancellation is supposed to be stamped by the liquidator.
14. Upon re-examination, PW1 stated that there was no stamp by the liquidator. He further stated that cancellation should be done in Kijabe. He stated that there was a transfer from the Plaintiff to Thuo. He added that the Plaintiff lodged a complaint that her name had been cancelled.



15. PW1 confirmed that the Plaintiff was a member of the land buying company and was allocated parcel 33839. He stated that she was in active occupation and added that a caution could stay for a long time and could be renewed by the Land Registrar and by a court order.
16. He stated that the register had the name of David Thuo. He also stated that it was not clear how it was transferred to the 3rd Defendant, whose name did not feature.
17. Francis Njuguna Gitonyo, the Plaintiff's son testified as PW2. He testified that he possessed a special power of attorney dated 17th November, 2023. He produced his statement dated 5th February, 2024 which was adopted as his evidence in chief. He produced several documents as follows:
18. Power of Attorney (PEX5) Receipt dated 26/8/1985 (PEX 6) White card (PEX 7)
Share certificate (PEX 8)
Allocation certificate (PEX 9) WPS. DCI (PEX 10)
Receipt for Kshs. 700 issued on 11th October, 1983 (PEX 11)2
19. It was his testimony that the land belonged to the Plaintiff who currently resided on the land. He testified that they had been called by the Land Registrar, but the Defendant did not appear.
20. Upon cross-examination by Mr. Ouma, PW2 confirmed that there was a dispute between his mother and the 3rd Defendant in 2013, and the registrar had asked them to go to the Registrar, but his mother did not attend. He admitted that he did not have records of this issue or a letter from the Registrar allowing them to cultivate.
21. He confirmed that a caution was placed on 29th September, 1990 while he was still a student and that his mother was sick at the time. He was referred to PEX 4, where he stated that the statutory deduction was done by his mother and the same referred to land parcel 3388.
22. He stated that parcel 3383 was for "Veronica Wawere," and his mother was "Veronica Wamere Njuguna,". He admitted that he did not have any document that proved the two names referred to the same person.
23. He stated that he was currently in occupation of the land and that they used to till and even constructed but were evicted through clashes. He stated that no one was in occupation of the land. PW2 was referred to PEX 11, where he stated that his mother's name had not been properly given. He added that she paid in 1985 and approached authorities, and she was given the land in 1989.
24. He admitted that his mother was not part of the company in 1985. He also admitted that they never complained to the company or sued it.
25. Upon re-examination, PW2 reiterated that his mother was never given a title and that her name was cancelled. He stated that he was unaware of the company's current existence. He confirmed that his mother had pursued the matter from the chief up to the DCI, who then directed them to court.
26. He stated that he had not placed the caution, but his mother did so in 1990. He further stated that the transaction/document for parcel 3388 was not made by his mother. He added that his mother knew about the cancellation in 1985, as her name was crossed out. He confirmed that he had been using the land since 1992, and that his mother used to till before him.
27. He confirmed that there were clashes in 1990 and added that they never constructed on the land. He stated that the 3rd Defendant's name only appeared on the title in 1989.

That marked the close of the Plaintiff's case. Defence case



27. Peter Wangu Kaniu, the 1st Defendant testified as DW1. It was his testimony that he was testifying on behalf of his deceased wife, Rahab Ngendo Kanui. He produced his statement dated 29th October, 2018 which was adopted as his evidence in chief. He produced documents filed on 30th October, 2018, marked as DEX1-DEX72.
28. DW1 testified that he never knew the Plaintiff or Francis. It was his testimony that the land was registered in the name of Rahab Ngendo Kanui. He further testified that his father bought the land from the 3rd Defendant.
29. He testified that the Plaintiff first claimed the land in 2016 where she reported to the CID, but no offense was found. He further testified that the land was still as it was with no development, no fence, and that it was fallow and full of shrubs.
30. He testified that the Plaintiff placed a caution on 28th September 1990, but that she never claimed the land after 1990 until she came back in 2015.
31. DW1 further testified that they were never called by Mai Mahiu company regarding the land. He prayed for the suit to be dismissed as the dispute had run for 30 years.
32. Upon cross-examination by Mr. Obwocha for the Plaintiff, DW1 confirmed that Rahab was his mother and he had the capacity to testify. He stated that he was present when his mother bought the land but added that he never participated in the transaction.
33. He stated that initially he never knew the person that owned the land but came to later learn that it was owned by the 3rd Defendant.
34. He stated that there was a sale agreement but admitted that he didn't have it in court. He added that most witnesses had died but confirmed that the seller was still alive.
36. He stated that they were shown the title deed, which they took to the Registrar of Lands. He further stated that they did not know that the ownership was disputed.
37. He stated that a caution was placed because the Plaintiff claimed that he owned the land.
38. DW1 denied having approached the company to remove the caution. He stated that before the 3rd Defendant's registration, the land belonged to Kijabe-Kitale company. He admitted that he never knew how the 3rd Defendant got the title but relied on the fact that the land was registered in her name. He stated that the caution was still in force.
39. Upon re-examination, DW1 confirmed he had applied for limited Letters of Administration ad litem in Case No. 8 of 2018. He stated that the 3rd Defendant was paid the purchase price. He further stated that the title deed existed with Entry No. 1 being Government of Kenya and Entry No. 2 being the 3rd Defendant.
40. He stated that the 3rd Defendant sold the land to the mother. He also stated that the Plaintiff never took any action after the caution.
41. Florence Wanjiku Mugo, the 3rd Defendant testified as DW2 where her statement dated 6th September, 2022 was adopted as her evidence in chief. She also had documents filed on 5th September, 2022 which were produced by the 1st Defendant.
42. It was her testimony that she did not know the Plaintiff but that she only knew Rahab, who purchased the land from her. She testified that she sold the suit land, Kijabe/Kijabe Block 1/3383, to Rahab in



- 1989 for Kshs. 35,000/=. She added that the land was 2.5 acres. She further testified that the land was vacant with no one in possession except herself.
43. She testified that the land belonged to Mai Mahiu company and that the records were received by the lands department. She added that she had an agreement but it was from a long time ago.
 44. She testified that the company which allocated her the land got wound up.
 45. Upon cross-examination by Mr. Kering for the Plaintiff, DW2 confirmed that her ID number was 6433544. She stated she bought the land from the Mai Mahiu company and that the whole land belonged to the company.
 46. She stated that any person with interest would go to the company, register, and apply for land. DW2 further stated that she had a certificate of membership and a vote card which she had left with the land office.
 47. She also stated that she bought the land for Kshs. 35,000/= but could not remember the amount she used to buy it. She stated that she collected the title at Naivasha lands. She further stated that she was informed that plot No. 3383 had been allocated to the Plaintiff. She admitted that her name was not in the register.
 48. She stated that she got the title from lands but was not asked for stamp duty. She stated that she sold the land immediately within two months, after she obtained the title. DW2 admitted that she had not been informed about cards. She denied ever utilizing the land.
 49. She confirmed that she had transferred the land to Ngendo (Rahab Ngendo Kanui).
 50. Upon re-examination, DW2 stated she was allocated plot no. 3383 but did not have the documents of allocation by the company, as she left all documents at the lands office.
 51. She confirmed that the name on the registration for 3383 was the Plaintiff but was cancelled, and then given to David N Thuo. She acknowledged that the Plaintiff was Veronica Wawere Njuguna. She confirmed that PEX 11 (a receipt for Kshs. 700 produced by PW2) did not have the name of the company. She also confirmed that the green card showed the land to the owner of the land and that
 52. she sold it after 2 months. She stated she had no issue with the vendor. That marked the close of the Defence case.

Submissions

53. Counsel for the Plaintiff filed his submissions dated 28th May, 2025 where he gave a background of the case and identified five issues for determination. The first issue was whether the suit property Kijabe/ kijabe Block 1/3383 was originally owned by Maahi Mahiu Kijabe Longonot Company Limited if yes who was the legitimate allottee of plot number 3383? It was his submission that the suit property belonged to Maahi Mahiu Kijabe Longonot Company Limited as confirmed by PW1. He further submits that the same was sold to its members through balloting and subsequent allocation a fact confirmed by DW1 and DW2.
54. He further submits that PW2 testified that the Plaintiff was a member and that she purchased shares as evidenced by the Share Certificate PEX 8. He also produced the receipt, ballot card number PEX 12 and Certificate of Allocation PEX 7. It was counsel's submission that the Plaintiff demonstrated how she acquired the suit property. He relied on Section 107 of the *Evidence Act*.
55. He submits that PEX 11 had an error with regard to the Plaintiff's name which he submits that the same was a typographical error made by the maker of the document. He relied on Article 159 (2) (d)



- of the constitution which requires the court to administer justice without undue regard to procedural technicalities. He further submits that the 3rd Defendant did not produce any evidence to justify her allegations that she was a member of the company. He submits that the Plaintiff was a legitimate allottee of plot no. 3383.
56. The second issue was whether the purported cancellation of the Plaintiff's name from the Maahi Mahiu Kijabe Longonot Company Limited official register was legal or procedural. He submits in the negative and argues that PW1 confirmed this position from his evidence. He testified that there was no authorization from the Plaintiff on the same and that the laid down procedure was never followed.
 57. The third issue was whether the purported registration and or subsequent transfer of the suit property to the 3rd Defendant and later to the 1st Defendant was fraudulent, illegal and or unprocedural. He submits that PW1 testified that only members of the company that had bought shares, balloted and allocated parcels were upon verification issued with title deeds. He further submits that from the illegal cancellation of the Plaintiff's name from the official company register, it followed that every subsequent transaction stemming therefrom was null and void. He relied on Section 6 of the Registered Land Act (repealed). He submits that it was unlikely that any registration would have taken place without the 2nd Defendant's participation. He submits that the 1st Defendant does not have a good title since it was passed by the 3rd Defendant who had fraudulently obtained it. He relied on the case of Geoffrey Kiptarbei Rono V Johana Komen Rotich & Another (2021) eKLR and Section 26 of the Land Registration Act.
 58. The fourth issue was whether the Plaintiff established fraud on the part of the Defendants. He relied on the case of Kuria Kiarie & 2 Others V Sammy Magera [2018] eKLR and Kinyanjui Kamau V George Kamau [2015] eKLR. He submits that when the Plaintiff's name was cancelled from the register, it was replaced by that of David N. Thuo. He argues that if the cancellation was procedural, which is denied, the transfer and title deed ought to have been issued to David Thuo and not the 3rd Defendant. He also submits that there was variation on the entries on the Defendant's green card and title deed. He argues that the green card showed in entry 4 that the property was transferred to the 1st Defendant whereas the title deed showed the same transfer under entry number 2. He submits that the evidence by PW1 confirmed that entries on both the green card and title deed must be the same as they are a replica of each other. He argues that the timeline between the purported transfer of the suit property by the 3rd Defendant to Rahab Kaniu Ngendo being approximately 2 months was done in a rushed manner which can only be understood in the context of a fraudulent scheme.
 59. The final issue on whether the prayers sought in the Plaint are merited, counsel submits in the affirmative. He further submits that the suit falls within the exceptions provided for under section 26 of the Limitation of Actions Act.
 60. Counsel for the 1st and 3rd Defendants filed her submissions dated 30th April, 2025 where she gave a summary of the evidence and identified four issues for determination. The first issue was whether the Plaintiff has any legal claim over the suit property. Counsel submits in the negative and argues that there was inordinate delay in filing of the suit by the Plaintiff which she ought to have filed within 12 years. She relied on Section 7 of the Limitation of Actions Act and the Court of Appeal case in Mukuru Munge V Florence Shingi Mwawana & 2 Others [2016] eKLR. She submits that as evident from the Plaintiff's pleadings, there were no steps taken for close to 27 years after accrual of the right as claimed. She argues that the suit was an affront to the Defendants and prejudicial to them. She submits that there was need that PW2 obtains a power of attorney from the Plaintiff to testify.
 61. She further submits that the 1st Defendant was a bona fide purchaser for value since the suit land had been transferred by the 3rd Defendant to the 1st Defendant in 1989 since the caution was registered



- in 1990. She argues that the Kijabe Kijabe Longonot Company was not sued or was it a witness. She argues that it was better placed to ascertain the lawful owner of the suit property.
62. She relied on Section 107 and 109 of the *Evidence Act* and the Court of Appeal case of Palace Investments Limited V Geoffrey Kariuki Mwendia & Another [2015] eKLR. She also relied on the Supreme Court case in Gatiaru Peter Munya V Dickson Mwendia Kithinji & 3 Others [2014] eKLR. It was counsel's submission that PEX 3 did not bear the company's name to prove that she was a member. She added that the Plaintiff failed to explain how the name Veronica Wamere was cancelled and replaced with another name being that of David Thuo. She argues that the receipt dated 11th October, 1983 does not bear the company's name in whose favour the payment was done. She also argues that the Plaintiff's documents were at variance in as far as the name of the person written on them.
63. She submits that it could not be clearly ascertained whether the persons named Veronica Wamere and the Plaintiff Veronica Wamere Njuguna refer to one and the same person. She added that the green card also did not bear the Plaintiff's name. It was her submission that evidence by both parties confirmed that the 1st Defendant was on the suit property. She submits that the Plaintiff has no legal claim over the suit property.
64. The second issue was whether the transfer of the suit property to the 3rd Defendant and subsequently 1st Defendant was fraudulent. She submits in the negative and relied on a number of authorities including Mulati V Munyasa & Another (Environment & Land Case 210 of 2017) [2024] KEELC 6031 (KLR) and submits that the Plaintiff failed to prove fraud on the part of the Defendants since the 2nd Defendant never considered the Plaintiff as the original ballot owner of the suit property. She added that there was no evidence of balloting in favour of the Plaintiff and that the 2nd Defendant was not bound to register the Plaintiff as the owner of the suit property.
65. She also submits that the allegation that the issuance of transfer of the suit property to the 3rd Defendant and subsequently 1st Defendant was illegal was not substantiated. She argues that the green card showed that the suit parcel moved from the government to the 3rd Defendant then the 1st Defendant. She also argues that there was no proof of misrepresentation of any facts by the 1st Defendant prior to acquisition of the title. She added that the complaint lodged by the Plaintiff to the DCI did not bear any fruits as the investigations did not find the Defendants criminally liable.
66. The third issue was whether the reliefs sought by the Plaintiff are merited. Counsel submits in the negative and argues that the Plaintiff has not laid any sufficient ground to warrant grant of the prayers sought.
67. On the final issue of costs, she relied on Section 27 of the *Civil Procedure Act* and urges the court to order the Plaintiff to bear the costs of the suit.

Analysis and Determination

68. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Whether the 1st Defendant lawfully acquired the suit property.
 - b. Whether the 1st Defendant is a bona fide purchaser for value.
 - c. Whether the Plaintiff is entitled to the prayers sought.
 - d. Who should bear the costs of the suit.



69. Before delving into the first issue, it is important to interrogate the allegation by the Defendant on inordinate delay in filing of this suit by the Plaintiff. Section 7 of the *Limitation of Actions Act* provides that an action to recover land may not be brought after the end of 12 years from the date the right of action accrued to the Applicant.
69. Limitation of time in fraud under Section 26 of the *Limitation of Actions Act* does not start running until when the Plaintiff has discovered the fraud, or mistake with reasonable diligence. In the case of *Justus Tureti Obara V Peter Koipeitai* (2014) eKLR, the court held that; when the Plaintiff discovered the fraud was a matter of fact to be ascertained at the trial.
70. In the present case, PW2 claimed that the Plaintiff came to learn about the fraud, illegality on the charge of title in 2015 when she reported the matter to the DCI for investigations. The Plaintiff thereafter filed the present suit. It is this court's view that the same does not amount to inordinate delay as it was filed about a year upon discovery of fraud.

Whether the 1st Defendants lawfully acquired the suit property.

71. PW2 testified on behalf of his mother the Plaintiff. He produced a special power of attorney as proof (PEX5). It was his testimony that he bought the suit property Kijabe/Kijabe Block 1/3383 from a land buying company, one Maai Mahiu Kijabe Longonot Company Limited. He testified that the Plaintiff was a member of the said company where she held a share certificate (PEX8). He also produced receipts of the registration fee for the land (PEX6) and certificate of allocation for plot number 3383 (PEX9). He testified that the Plaintiff was informed that her name in the company had been cancelled and replaced with David Thuo and a title deed issued in the 3rd Defendant's name and thereafter in the 1st Defendant's. He testified that the Plaintiff then placed a caution.
72. Upon cross examination, he stated that the delay in prosecution of the case was as a result of the investigations by the DCI. He also stated that the difference of the plot number in the caution placed was a typographical error.
73. PW1, the land registrar confirmed that the 3rd Defendant was issued with the title on 2nd May, 1989. He further confirmed that Rahab Ngendo (deceased) was then issued with the title on 17th July, 1989. He confirmed that the suit land was originally owned by the Government, and the Maimahiu Kijabe land buying company owned it and allotted it to members. He further confirmed that the Registrar's records showed that the land was allotted to the Plaintiff. He produced a certified copy of the green card (PEX1), copy of the company's register (PEX3). He confirmed that the suit property had not been allocated to the 3rd Defendant and added that there was no double allocation. He also confirmed that the Plaintiff's name was replaced with that of David Thuo through a cancellation. He however confirmed that David Thuo featured nowhere in the register. He stated that cancellation of a name was supposed to be stamped by the liquidator, after which the Land Registrar followed the land buying company register. He admitted that the same was not done in the instant suit.
74. DW1 on the other hand claimed that his deceased mother Rahab Ngendo Kaniu purchased the suit land from the 3rd Defendant. He however admitted that he did not know how the 3rd Defendant acquired the title. He also admitted that he was not involved in the initial purchase transaction. DW2 testified that she was allocated plot No. 3383. She admitted that she did not have the original allocation documents from the company, since she had left them at the lands office. She confirmed that the registrar's record for 3383 initially showed Veronica Wawere, which was then cancelled to David N Thuo. DW2 admitted that the Plaintiff was Veronica Wamere Njuguna. She also admitted that she could not remember the amount she used to buy the land from the company, but that she sold it for Kshs 35,000.



Section 107 of the *Evidence Act*, Cap 80, states:

“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.”

Further, Section 108 of the Act states:

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

75. It is this court’s view that the Plaintiff alleges fraud on the part of the Defendants in acquiring the suit property. The onus is therefore on the Plaintiff to prove the same.

76. The Court of Appeal in Mombasa, Civil Appeal No. 312 of 2012- Emfil Limited Vs Registrar of Titles Mombasa & 2 others [2014] eKLR held as follows:

“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities”.

77. Further, the Court of Appeal in Arthi Highway Developers Limited V West End Butchery Limited & 6 Others [2015] eKLR held as follows:

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427: ‘Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged ...’ Section 24(a) of the *Land Registration Act* provides that:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 26(1) of the *Land Registration Act* further provides that:

“...the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

78.

a. on the ground of fraud or misrepresentation to which the person is proved to be a party

79.

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



80. It is this court's view that the root of the title emanates from allocation by a land buying company, Maai Mahiu Kijabe Longonot Company Limited and that in order to establish its root, this court will need to begin with the company's register as the foundational document. I have perused the register (PEX3) and it is not in dispute that plot 3383 the suit property was in the Plaintiff's name and later cancelled to the name David N. Thuo. The Plaintiff called PW1, the Land Registrar whose evidence confirmed that the Plaintiff was indeed allocated the land and a caution placed in 1990. He also
81. confirmed that the cancellation of the Plaintiff's name to that of David N. Thuo was not proper since it was never stamped by the company's liquidator. It was also PW1's evidence that the number entries in the green card ought to be similar with that in the title which was not the case in the present matter DW2 on the other hand could not explain the said cancellation and in as much as she claimed that she was allotted the suit land, she failed to produce any allocation documents in support. She alleged that she purchased the suit property from David Thuo but also failed to produce any evidence of sale agreement, proof of payment or transfer forms. Further, DW1's evidence did not assist the Defendant's case at all since he admitted that he did not know how the 3rd Defendant acquired the suit property as he was not present. He also admitted that they were aware of the caution placed by the Plaintiff but did not take steps to remove it.
82. It is not in dispute that DW2 admitted that the Plaintiff's name was Veronica Wamere Njuguna. Notably, DW2 also challenged the receipt of land payment PEX11 stating that was not in the Plaintiff's name by virtue of the difference in the first letter "F" instead of "V". This court has taken the liberty to verify the Plaintiff's name as evidenced from her Identification card to be Veronica Wamere Njuguna. The difference in the first letter is not that fatal since the other subsequent names refer to the Plaintiff.
83. It is this court's view that the changes in transfer of ownership from the 3rd Defendant to the 1st Defendant was illegal as they did not tally.
84. In the case of Dina Management Limited V County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) cited the case of Munyu Maina V Hiram Gathiha Maina [2013] KECA, where the court held as follows:
- "We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register."
85. It is therefore this court's view that the Plaintiff discharged the burden to the required standard in proving that the Defendants fraudulently acquired the suit property. I therefore find that the Plaintiff has proved her case on a balance of probabilities.
86. In view of the above, this court finds that the 1st and 3rd Defendants failed to establish the root of their title and thus the same was unlawfully issued.
- Whether the 1st Defendant is a bona fide purchaser for value.
87. In the case of Samuel Kamere V Lands Registrar, Kajiado [2015] KECA 644 (KLR) the court held as follows:
- "...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to



determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

88. DW1 failed to produce a sale agreement having purchased the suit property from the 3rd Defendant. He also admitted that he did not know how the 3rd Defendant acquired the suit parcel prior to the alleged purchase. It is this court’s view that the 1st Defendant failed to fulfil the requirements of a bona fide purchaser. This court therefore finds that the 1st Defendant is not bona fide purchaser for value.

Whether the Plaintiff is entitled to the prayers sought.

89. Having established that the Plaintiff proved her case on a balance of probabilities, she is therefore entitled to the prayers sought.

Consequently, the Plaintiff’s plaint is hereby allowed as prayed.

90. I therefore enter judgment in favour of the Plaintiff in the following terms:

- a. A declaration that the Plaintiff is the legal proprietor of land parcel Kijabe/kijabe Block 1/3383.
- b. A Permanent injunction be and is hereby issued restraining the Defendants by themselves, their agents or servants from transferring, trespassing or dealing in any way or manner with the suit property known as Kijabe/kijabe Block 1/3383.
- c. An order be and is hereby issued to the Land Registrar Naivasha to cancel the title deed issued to the 3rd Defendant and subsequently the 1st Defendant in respect of the land parcel Kijabe/kijabe Block 1/3383.
- d. An order is hereby issued directing the Naivasha District Land Registrar to issue a proper title to the Plaintiff over the suit land Kijabe/kijabe Block 1/3383.
- e. The Defendants shall bear the costs of the suit. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT**

DATE: 2025-07-10 16:03:49

