



**Nyanumba v Nyaanga; Nyaanga (Counter Claimer); Nyanumba & 2 others (Defendant to the Counterclaim) (Environment and Land Case 176 of 2014) [2025] KEELC 5036 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5036 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 176 OF 2014**

**M SILA, J  
JULY 1, 2025**

**BETWEEN**

**PHILIP MACHUKI NYANUMBA ..... PLAINTIFF**

**AND**

**JOHN NYAANGA ..... DEFENDANT**

**AND**

**JOHN NYAANGA ..... COUNTER CLAIMER**

**AND**

**PHILIP MACHUKI NYANUMBA .... DEFENDANT TO THE COUNTERCLAIM**

**LAND REGISTRAR, KISII COUNTY .... DEFENDANT TO THE COUNTERCLAIM**

**ATTORNEY GENERAL ..... DEFENDANT TO THE COUNTERCLAIM**

**JUDGMENT**

(Plaintiff and defendant claiming title to the suit land; plaintiff exhibiting a title issued in his name upon purchase; plaintiff being the 3<sup>rd</sup> proprietor of the land; defendant on the other hand asserting that the suit land is under the National Housing Corporation, that he was allotted the land, that he has been paying the National Housing Corporation loan, and is awaiting issuance of title to himself on completion of the loan; defendant providing ample evidence to demonstrate that the root of title of the plaintiff is tainted; plaintiff's title anchored on a lease purportedly issued in 1985; suit land had not been surveyed in 1985; original lease purporting to have been issued by a person who was not then Commissioner of Lands; clear to court that there was no such lease issued and therefore the root of title of the plaintiff is blemished; ample evidence that the suit land was allotted to the



defendant under the National Housing Corporation Site & Service Scheme; judgment entered for the defendant; purported title of the plaintiff nullified)

1. This suit was commenced vide a plaint filed on 7 May 2024. In the plaint, the plaintiff pleaded to be the registered proprietor of the land parcel Kisii Municipality/Block I/492 (the suit land) . He averred that on 24 April 2014, the defendant forcefully entered the suit land, demolished the fence, and destroyed bags of cement, claiming that the land belongs to him. He pleaded that on subsequent days, the defendant tried to continuously interrupt the plaintiff's workers from constructing the premises. In the suit, the plaintiff seeks orders to permanently restrain the defendant from the suit property, general damages for trespass and costs.
2. The defendant filed defence and counterclaim. In the counterclaim, he sued the plaintiff, the Land Registrar, Kisii, and the Attorney General. He asserted that it is him who is the rightful owner of the suit property. He contended that the title of the plaintiff is tainted and that the plaintiff is abusing his office as a County Government worker to forcibly trespass into the suit land. He pleaded that he was allotted the suit property, as Site and Service Scheme Plot No. 58 in 1977 through a loan from the National Housing Corporation. He pleaded to have settled the loan due to the Corporation and has been in possession of the suit property until the plaintiff forcefully took it over and hurriedly commenced construction. In the counterclaim he seeks a declaration that he is the bona fide owner of the suit property, a permanent injunction against the plaintiff, an order compelling the Land Registrar to cancel the registration of the plaintiff as proprietor, an order to compel the plaintiff to demolish all structures erected on the suit property, and costs of the suit.
3. The plaintiff filed reply to defence and defence to counterclaim more or less joining issue with the defendant. He denied that the land parcel Kisii Municipality/Block I/492 is also known as Site & Service Scheme, Plot No. 58, Nyanchwa, or that the suit property was allocated to the defendant. He asked that the counterclaim be dismissed.
4. Hearing commenced with the defendant/counterclaimant being the first to avail his evidence. He is a retired teacher. He testified that he was allotted the suit property by the Kisii Town Council. He produced an allotment letter dated 23 March 1977. He testified that he was the recognized rate payer. He produced a newspaper advertisement placed in the Standard Newspaper of 17 March 2009 where an amount of Kshs. 88,030/= was being demanded from him for the land. He produced rates demands for the years 2008 and 2009. He subsequently continued paying rates including rates of Kshs.4,283/= for the year 2012. The demand for rates was for Plot No. 58 Site and Service Scheme. He had a letter dated 9 December 2013 from the Kisii Town Administrator to the National Housing Corporation inter alia asking for a Lease to be prepared in his name. On 4 April 2014, the Corporation wrote to the Commissioner of Lands asking him to issue a title to the defendant, being title to Kisii Municipality/Block I/492. He testified that in the same year, i.e 2014, the plaintiff invaded the suit property claiming to have title to the same land with his predecessors in title being Thomas Nyangau Matureti and William Nyabando Nyangau. He stated that he has never seen such persons on the plot since it was him in possession planting cabbages and napier grass. He complained to the Land Registrar who wrote a letter dated 7 April 2014, to the plaintiff, Thomas Nyangau, and William Nyabando, but they never honoured the letter and never appeared before the Land Registrar. He also complained to the National Land Commission who summoned the plaintiff through a letter dated 18 May 2016 but he did not appear.
5. Cross-examined, he affirmed that what he was allotted was the Plot No. 58 Site & Service Scheme. He is yet to be registered as proprietor of the title Kisii Municipality/Block I/492. He testified that he was in possession up to 2014 when the plaintiff came to the suit land. He testified that the plaintiff filed this suit hardly two days after coming to the land.



6. DW – 2 was Joshua Odege Sanduk. He is a Land Surveyor working with the National Housing Corporation. He testified that the suit land falls under land set aside for a housing project in collaboration between the Municipal Council of Kisii and the Corporation. He testified that allocation of land was done through balloting. He testified that the identity of the suit property as the parcel Kisii Municipality/Block I/492, was after a survey was carried out by the Corporation on 25 November 1985. The suit land could not therefore have borne this number on 1 May 1984. He testified that according to their records, the suit property was Plot No. 58 allocated to the defendant in 1977. He testified that the Kisii County Government forwarded the last instalment due from the defendant to the National Housing Corporation, vide their letter of 9 December 2013.
7. DW – 3 was Ojwang Omollo Patroba, an Assistant Director, Land Administration in the Ministry of Lands. His evidence was that the Plot No. 58 Site & Service Scheme is now registered as Kisii Municipality/Block I/492. He testified at length on the veracity of the title of the plaintiff and formed the opinion that it was not a genuine title. I will go into the details of these in my analysis. In a nutshell, according to him, this land is owned by the defendant and not the plaintiff and there was never any lease issued to the plaintiff's predecessors in title.
8. On his part, the plaintiff testified as the sole witness to his own case. He is the Speaker of the County Assembly in Kisii. His evidence was that he purchased the suit property from one William Nyabando Nyangau who was the second proprietor after Thomas Nyan'gau Matureti. At that time he was working in Nyamira as Director Finance, Nyamira County. He wished to buy land, made inquiries and was directed to the said William Nyabando. He did a search in the Lands Office which showed that William was proprietor. He also did a rates search which showed William as the rate payer. On 7 March 2014 he entered into a land sale agreement. He went to take possession and found the land fenced. The seller told him that it was him who had fenced it. He started making a permanent fence and eventually built a four storey residential building which contains rental houses. He affirmed that the defendant came to confront him when he started fencing the land and had deposited building materials. He testified that he stopped construction but resumed after the defendant was stopped from interference through a court order. He testified that he used the title to the suit property as security and caused it to be charged to Barclays Bank Limited (now Absa Bank). The original title deed is therefore with this Bank. He availed the charge instrument dated 12 June 2019. According to him, the Plot 58 Site & Service Scheme is not Kisii Municipality/Block I/492. He denied that his registration is tainted with illegalities. Cross-examined, he testified that he never saw the original lease issued to the first owner of the suit land one Thomas Matureti. He was aware that the disputed land falls within Kisii Site & Service Scheme.
9. With the above evidence, the plaintiff closed his case.
10. I invited counsel to file submissions, and I have taken note of the submissions filed by Mr. Ochwangi, learned counsel for the plaintiff, and Mr. Omayio, learned counsel for the defendant alongside the authorities that they relied on.

This is another unfortunate case of two persons claiming title to the same land. It is trite that there can only be one genuine title holder. The task of this court is therefore to unravel who is the legal rightful proprietor of the suit land. This task inevitably entails an examination of the documentary evidence provided and I have carefully gone through the same.

11. Let me start with the case of the plaintiff. His case is that the suit land was originally allotted to Thomas Nyang'au Matureti, who transferred title to William Nyabando Nyang'au. He bought the land from the said William Nyabando Nyang'au in 2014. These documents relating to the title allegedly issued to Thomas Nyang'au Matureti were well analysed by DW-3, Mr. Patroba. He testified that he obtained



records in relation to this title. He got a letter of allotment dated 3 May 1984 and a lease purportedly registered on 6 December 1985 in the name of Thomas Nyang'au Maturiti.

12. Mr. Patroba mentioned that this purported lease of Mr. Maturiti is alleged to have been executed by Wilson Gacanja on 2 December 1985. Mr. Patroba pointed out that this could not be possible since Mr. Gacanja became appointed as Commissioner of Lands vide Gazette Notice No. 233 of 18 January 1989 and was not therefore Commissioner of Lands in the year 1985. He elaborated that in the year 1985, it was James Raymond Njenga who served as Commissioner of Lands. He further stated that this lease indicates the size of land as 0.066 Ha but the Certificates of Lease issued, including that now held by the plaintiff, shows 0.0266 Ha as the acreage, whereas the correct size of the land according to the survey plan is 0.0265 Ha. He went further to unravel that the Survey Plan for the suit land, which is F/R 185/34, was approved on 18 January 1994, and therefore it is not possible for there to have been a lease issued on 2 December 1985, which is 9 years before the parcel No. 492 was created.
13. Mr. Patroba was also categorical that the suit land falls within Kisii Site & Service Scheme which was under the National Housing Corporation (NHC). He explained that for these parcels of land, one first needed to clear his loan with the NHC; the NHC would then write to the Commissioner of Lands recommending issuance of title to the allottee, and this letter would inter alia outline the parcel number. There would then be valuation for stand premium and land rent which would be put in a letter of allotment to the purchaser. The allottee would then pay this money, and the Commissioner of Lands would call for the registry index map so as to include this parcel of land. The lease would be prepared then forwarded to the District Land Registrar, Kisii for execution by the lessee and registration. He was categorical, that so far, no lease has been prepared for Kisii Municipality/Block 1/492 and that the lease in name of Thomas Nyang'au Maturiti is not authentic and never emanated from the office of the Commissioner of Lands.
14. Now, there was not really much that the plaintiff provided to dispel this evidence of Mr. Patroba or the evidence of Mr. Sanduk. He did not deny that the root of his title is this alleged lease of Mr. Maturiti. Indeed, this purported lease of Mr. Maturiti is one that indicates the size of the land as 0.066 Ha which is not the correct size of the land. But I think what is most significant is the fact that it was purportedly executed by Wilson Gacanja on 2 December 1985. Wilson Gacanja had not been appointed Commissioner of Lands in 1985 and it is impossible that he could have executed this lease on behalf of the Government of Kenya. That by itself is sufficient to demonstrate that there was never any lease issued to Mr. Maturiti in respect of the suit land.
15. There was not even any parcel of land known as Kisii Municipality/Block I/462 in 1985 that could be allocated, for this description for the suit land came about in 1994, after the Site & Service Scheme was surveyed. This is confirmed by Mr. Patroba and Mr. Sanduk. Both affirmed that this land falls under the Kisii Site & Service Scheme and the survey therein is captured in survey plan F/R No. 185/34. Mr. Sanduk verified that this survey was authenticated on 18 January 1994 and that is when the suit parcel was created. It cannot therefore be said that this title existed in 1985 so that it could be allocated. In fact, the registry index map has never been amended to include this parcel of land as the process of titling as outlined by Mr. Patroba is not yet complete.
16. In his evidence, the plaintiff did confirm that the suit land does fall within the Site & Service Scheme. He however claimed not to know that it was previously a Plot No. 58 under the NHC. I also see that in his submissions, Mr. Ochwangi, learned counsel for the plaintiff, ventured to submit that this land parcel Kisii Municipality/Block I/462 is not the same as Plot No. 58 Site & Service Scheme. The evidence is in fact overwhelming that the suit land i.e Kisii Municipality/Block I/462 is the same as Plot No. 58 Site & Service Scheme. This is clear from the evidence of Mr. Sanduk and the documents from NHC. Among them is the letter dated 4 April 2014 which indicates that John Nyaanga (the



defendant) has cleared payment for the Plot No. 58 Site & Service Scheme, and it is recommended that he be issued with title to Kisii Municipality/Block I/492. The NHC have knowledge of which plot is tied to which parcel of land and their evidence must be taken seriously.

17. The evidence is also overwhelming that this Plot No. 58 was allotted to John Nyaanga, the defendant. Mr. Sanduk in his evidence provided the list of allottees and it is the name of the defendant that is indicated as the one allotted the suit plot. His name was even published in the newspaper as one of the allottees who had fallen into arrears for clearing the NHC loan. He gathered himself together and provided the last instalment of Kshs. 65,280/= which was forwarded to NHC by the County Government of Kisii vide the letter dated 9 December 2013. The NHC wrote to the Commissioner of Lands through the letter dated 4 April 2014 recommending issue of title to him. It would appear that it is just around this time that the plaintiff obtained a Certificate of Lease in his name, for he obtained one dated 20 March 2014.
18. It is clear to me that this purported title of the plaintiff i.e that of Philip Machuki Nyanumba, is a fraudulent title. There was never any genuine title issued to either Thomas Matureti or William Nyabando, his alleged predecessors in title, and they could not be able to transfer any title to the plaintiff. This purported title of the plaintiff is one that is subject to nullification pursuant to Section 26 of the [Land Registration Act](#), which provides as follows :

26.

- (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.
  - c) A certified copy of any 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.

19. When he testified, the plaintiff simply stated that he purchased the suit property from William Nyabando and the previous proprietor was Thomas Matureti. He did not bring any of these people to court. It is not even clear to me whether these persons exist. The plaintiff also never provided any proof of payment of the purchase price. It is not clear to me if any money exchanged hands. I find it difficult to believe that there was any genuine sale agreement and transaction between the plaintiff and this person called William Nyabando. It is highly probable that the plaintiff himself was the perpetrator of the fraud and/or misrepresentation that led to the creation of the documents that he is now displaying to court as being supportive of his title. He needed to do better to demonstrate that he is actually a bona fide purchaser for value and not the author of the fake documents that have been exhibited in this case. He has not absolved himself from being the originator of these documents. My view, is that the title of the plaintiff is thus subject to cancellation under Section 26 (1) (a) of the [Land Registration Act](#). But even assuming that he did not perpetrate any fraud, his title is still impeachable under Section 26 (1) (b), for it is a title that has a root that was illegal, unprocedural, or downright issued pursuant to



- a corrupt scheme. I do not see how it could be purported that there is a title issued to Mr. Maturati in 1985 by Wilson Gacanja if there is no involvement of fraud or a corrupt scheme. Any such title would inevitably be illegal and unprocedural and subject to cancellation.
20. I therefore proceed to cancel and nullify the purported title held by Philip Machuki Nyanumba in respect of the land parcel Kisii Municipality/Block I/492. I was not shown any extract of register for this purported leasehold title but if one exists in the Kisii District Land Registry, I hereby order the Kisii District Land Registrar to proceed and cancel such register and all entries therein are hereby declared null and void ab initio.
  21. It is regretful that despite knowing that his title was under scrutiny and challenge by the defendant, the plaintiff proceeded to charge such title. He charged it in 2019 while this case was still going on. That act of charging the title in my opinion was one done in bad faith. Whatever the case, the plaintiff had not title to charge and it follows that the purported charge created in favour of Barclays Bank of Kenya Limited, dated 12 June 2019, and purportedly registered on 26 June 2019, is null and void. This purported charge is hereby nullified. I direct the Deputy Registrar to ensure that a copy of this judgment is sent to Absa Bank Limited, the successor of Barclays Bank of Kenya Limited, so that they may be aware that they hold a worthless title document.
  22. There is really no case by the plaintiff for title to the suit land and his case is hereby dismissed with costs to the defendant.
  23. Let me now turn to the counterclaim of the defendant. He first wants a declaration that he is the bona fide owner of the land parcel Kisii Municipality/Block I/492. I have already analysed the evidence on this issue and I have no doubt in my mind that the plaintiff is the bona fide owner of the land parcel Kisii Municipality/Block I/492. His title was of course still under process. This process that was ongoing to proceed as required by law so that title is properly and procedurally issued to the defendant.
  24. The other prayer that the defendant seeks is cancellation of the registration of the plaintiff as proprietor of Kisii Municipality/Block I/492. I have already issued this order as noted above, for I have directed the Land Registrar to nullify any purported title issued to the plaintiff, and nullify any register upon which the title of the plaintiff is anchored.
  25. The defendant also seeks that the plaintiff be restrained by way of a permanent injunction and also for the plaintiff to demolish all structures he has erected on the suit land. Well, it turned out that the plaintiff developed the land and it is apparent that he developed the land at a time that this litigation was also alive. He knew that the defendant was challenging his title and he took upon himself the risk of proceeding with development. I will grant the defendant this order to have the plaintiff demolish all structures that he put up on the suit land and ensure that the land is devoid of any structures.
  26. I order the plaintiff to forthwith demolish all structures that he has put up on the suit land within the next 30 days. If he does not do so, the defendant may proceed and flatten these developments if he is inclined to do so, and pass over the cost to the plaintiff. The plaintiff also holds the option of not demolishing the suit property and taking over the suit property in the state that it is. Whatever the case, after 30 days, given above, the plaintiff must vacate the suit property and hand over vacant possession to the defendant. Thus, after 30 days from the date of this judgment, the plaintiff, Philip Machuki Nyanumba, and/or his servants/agents, are hereby barred by an order of permanent injunction from entering, being upon, utilizing, placing any tenants, collecting any rent, or in any other way interfere with John Nyaanga's quiet possession of the land parcel Kisii Municipality/Block I/492.
  27. The last issue is costs. The case of the plaintiff is dismissed with costs to the defendant. The counterclaim of the defendant succeeds and the costs thereof are to be paid jointly and/or severally by



the defendants to the counterclaim for reason that the plaintiff could not have obtained title without involvement of the Land Registry, Kisii.

28. Judgment accordingly.

**DATED AND DELIVERED THIS 1<sup>ST</sup> DAY OF JULY 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Ochwangi for the plaintiff

Mr. Omayio, Mr. Moronge, Mr. Wachira and Ms. Terer for the defendant/counterclaimant

N/A on part of the Attorney General for the 2<sup>nd</sup> & 3<sup>rd</sup> defendants in the counterclaim

