



**Otara v Mukuriah & 4 others (Environment and Land Case
E031 of 2022) [2025] KEELC 5001 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5001 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E031 OF 2022**

MAO ODENY, J

JULY 2, 2025

BETWEEN

AMOS M OTARA PLAINTIFF

AND

BONIFACE MUNYINYI MUKURIAH 1ST DEFENDANT

MINISTRY OF DEVOLUTION 2ND DEFENDANT

MINISTRY OF LANDS AND PHYSICAL PLANNING 3RD DEFENDANT

COUNTY GOVERNMENT OF NAKURU 4TH DEFENDANT

DISTRICT LAND REGISTRAR, NAKURU 5TH DEFENDANT

JUDGMENT

1. By a Plaint dated 25th May, 2022, the Plaintiff herein sued the Defendants seeking the following orders:
 - a. A declaration that the Plaintiff is the legal owner of that property known as Nakuru Municipality Block 20/112.
 - b. A declaration that the Plaintiff's rights to privacy, property and fair administrative action under articles 31, 40 and 47 of the *Constitution* have been violated by the 2nd-5th Defendants.
 - c. An order prohibiting the 2nd-5th Defendants either by themselves, their agents, servants, employees, or otherwise howsoever from entering, remaining upon, taking possession, changing the registration status, interfering with the plaintiff's quiet possession of all that parcel of land known as Nakuru Municipality Block 20/112 or dealing with the said property in any way whatsoever prejudicial to the interests of the Plaintiff.
 - d. General damages for violation of the rights in b) above with interest.



- e. In the alternative, an order that the 1st defendant refunds the full purchase price and all attendant costs of the purchase of the property in the sum of Kshs 17,440,911.10 plus interest to the plaintiff.
- f. Costs of the suit.
- g. Any other relief the court may deem fit to grant.

Plaintiff's Case

2. PW1 Amos Magembe Otara adopted his witness statement dated 25th May 2022 as part of his evidence and stated that he is a Medical doctor/gynecologist in Nakuru. He also stated that he filed a bundle of documents dated 25th May, 2022 which he produced as PExh No 1 to 16.
3. PW1 testified that sometime in the year 2013, he sought to purchase a property in the Milimani area in Nakuru Municipality and approached the 1st Defendant who had a property which he was disposing of. It was his evidence that upon viewing the property, they agreed on the purchase price of the property as Kshs 16,100,000/= and that the property had been charged to Chase Bank for Kshs 6,500,000/=.
4. It was PW1's testimony that he engaged the firm of Amingá Opiyo & Masese to help him with the transaction who confirmed that the title deed was with Chase Bank and they agreed that he would pay a deposit of Kshs. 10,853/ to the 1st Defendant upon execution of the agreement which he did.
5. According to PW1, he stated that he took over the outstanding loan at the bank and took possession of the property. PW1 further testified that after clearing with the Bank, the property was registered in his name in 2015 and that he has been in peaceful occupation of the property until 2020 when some people were seen taking photographs of the property. PW1 testified that on 18th March, 2022 another group of people came and forcibly gained access into the property on the pretext that it was government property.
6. Dr. Otara further testified that he later learnt that this was a team sent by the 2nd to 5th Defendants that prompted him to file this suit and urged the court to enter judgment in his favour as prayed in the Plaintiff.
7. Upon cross-examination by Mr. Gakinya, counsel for the 1st Defendant, PW1 stated that the property was sold to him by the 1st Defendant and he did his due diligence. He stated that the property was charged to Chase Bank and paid money to clear the balance. PW1 stated that on two occasions, a team came to the compound to carry out a valuation and that the property is still registered in his name.
8. Upon cross examination by Ms. Litunda, counsel for the 4th Defendant, PW1 stated that he did a search and confirmed that the property was in the 1st Defendant's name. He also testified that the search certificate attached indicated that at the time of the search, there was a restriction by the Government of Kenya at clause No 7.
9. It was PW1's testimony that he paid for the discharge of charge but did not have proof of payment of stamp duty however it was his lawyer who did the transaction. It was further PW1's evidence that there was a three-bedroomed house with a servants' quarter and that he was not given the original lease certificate. PW1 also stated that he has no idea whether the valuation was conducted and that he has not done a further search to confirm that the property is in his name.
10. Upon re-examination, PW1 testified that he purchased the property from the registered owner, the 1st Defendant and that he produced all the documents that the 1st Defendant gave him and that by the



time he was registering the property in his name, there was no restriction as the transfer could not have been done with the restrictions in place.

1st Defendant's Case

11. DW1 Boniface Munyinyi adopted his witness statement dated 14th November, 2022 as part of his evidence in chief and stated that he is a businessman based in Nairobi.
12. Upon cross-examination by Ms. Litunda, counsel for the 4th Defendant, DW1 stated that he was the Regional Manager of Chase Bank Nakuru and wanted to buy a house which was financed by the Bank. He stated that the Bank appointed a valuer and a lawyer to carry out the transaction. DW1 informed the court that there was no restriction at the time of the purchase. He stated that he sold the house to the Plaintiff and he stayed in the house while in Nakuru.
13. Upon cross-examination by Mr. Ratemo, counsel for the Plaintiff, DW1 stated that he was not the first registered owner of the suit property as he had bought it from Gilbert Kitur whom they entered into a sale agreement. DW1 stated that the Plaintiff paid him the purchase price and he transferred the land to him and at the time of sale he had a valid title.

2nd, 3rd and 5th Defendants' Case

14. Ms. Wanjeri, counsel for the 2nd, 3rd and 5th Defendants informed the court that based on the white card that the Land Registrar has availed, indicating that the Plaintiff is the registered owner of the suit land, they would not be calling any evidence.

4th Defendant's Case

15. DW2, Christopher Auma adopted his witness statement dated 30th November 2022 and stated that he is a Veterinary Doctor working for the Nakuru County Government since 2009. He also produced a document in his list dated 30th November 2022 as DExh No 1.
16. It was DW2's testimony that the initial number of the suit property was residential Nakuru/HUO/MG/140 which is a reference to a government house and that before devolution, the house belonged to the National government specifically the Regional Veterinary Investigations Laboratories Nakuru. He testified that there were four houses in the Milimani area occupied by senior staff. He also stated that agriculture was devolved but the regional laboratories were never devolved hence they remained in the National government.
17. DW2 further testified that a report was to map out the houses or assets that belonged to the County Government and the National Government. He testified that the people who prepared the report did not know that the houses in respect of the Regional Laboratories were never devolved therefore the county does not have a role in the suit property.
18. Upon cross-examination by Ms. Wanjeri, counsel for the 2nd, 3rd and 5th Defendants, DW2 stated that entry number 7 on the white card shows a restriction issued by the Permanent Secretary Ministry of Lands. He stated that entry number eight is another restriction recorded by the Ministry of Lands.
19. Upon cross-examination by Mr. Ratemo, counsel for the Plaintiff, DW2 stated that all government houses were referenced and when one looks at the number, one realizes that the suit property belonged to the Regional Laboratories Investigations. He stated that he may not know about the title of the suit land and he is not aware of any case by the National Government claiming the title and the house.
20. Upon re-examination, DW2 testified that he does not know the people who did the report.



Plaintiff's Submissions

21. Counsel for the Plaintiff filed submissions dated 7th March, 2024 and submitted that the Plaintiff is the legal owner of the property known as Nakuru Municipality Block 20/112 and relied on Section 26 (1) of the [Land Registration Act](#) and the case of [Hortensia Wanjiku Chege v Samuel Kigotho Chege](#) [2019] eKLR.
22. Counsel submitted that Christopher Auma who testified as the 4th Defendant told the Court that the suit property does not belong to the 4th Defendant and that the 4th Defendant's officers who visited it were mistaken.
23. Counsel submitted that an award of Ksh 5,000,000/= will be fair compensation for general damages and relied on the cases of The [Commission on Administrative Justice v Kenya Vision 2030 Delivery Board & 2 Others](#) Civil Appeal No 141 of 2015, [Kenya Agricultural Research Institute v Peter Wambugu Kariuki & Others](#) Nakuru Civil Appeal No 315 of 2015, [Ol Pejeta Ranching Limited v David Wanjau Muboro](#) [2017] eKLR and [Multiple Hauliers East Africa Limited v Attorney General & 10 others](#) [2013] eKLR.
24. Counsel urged the court to award the Plaintiff costs as these proceedings were necessitated by the actions of the 2nd-5th Defendants and relied on the case of [Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others](#) [2014] eKLR.

2nd, 3rd and 5th Defendant's Submissions

25. Counsel for the 2nd, 3rd and 5th Defendants filed submissions dated 30th April, 2025 and identified the following issues for determination:
 - a. Whether the suit property is private or public/Government property?
 - b. Whether the Plaintiff acquired good title to the suit property?
 - c. Whether the Plaintiff is entitled to the reliefs sought?
26. On the first issue, counsel submitted that the 1st Defendant did not produce documents to show how he acquired the suit property. Counsel further submitted that the suit property was not at all available for acquisition/purchase as private property.
27. Mr. Ratemo submitted that the suit property was illegally acquired and that the same has always been public property belonging to the Ministry of Agriculture, Department of Veterinary Services with the houses therein still reflecting in the building register to date and relied on the case of [James Joram Nyaga 7 Another v Attorney-General & Another](#), Nairobi HC Misc Civil Application No 1732 of 2004.
28. On the second issue, counsel submitted that the suit property known as Nakuru Municipality Block 20/111 was not available for alienation to private individuals and relied on Article 62 of the [Constitution](#), Section 26 of the [Land Registration Act](#) and Section 2 of the [Government Lands Act](#) (repealed).
29. Counsel also relied on the cases of [Kenya Anti-Corruption Commission v Onyango & 4 others](#) (ELC 58 of 2009), [Dina Management Limited v County Government of Mombasa & 5 others](#) (Petition 8 (E010) of 2021 [2023] KESC 30 (KLR), [Arthi Highway Developers Limited v West End Butchery Limited & 6 others](#) [2015] eKLR and [Daniel Kiprugut Maiywa v Rebecca Chepkurgat Maim](#) [2019] eKLR.



30. On the third issue, counsel submitted that the court should find that the suit has no merit and consequently deny the Plaintiff the prayers sought as against the 2nd, 3rd and 5th Defendants.

4th Defendant's Submissions

31. Counsel for the 4th Defendant filed submissions dated 4th May, 2024 and identified the following issues for determination:
- Whether the Plaintiff is the legal owner of the said property?
 - Whether an order of prohibition should issue?
 - Whether the Plaintiff is entitled to damages for alleged violation of his rights?
 - Who should bear the costs of the suit?
32. On the first issue, counsel submitted that the said parcel of land does not belong to the Plaintiff since the property is under the Regional Veterinary Investigation Laboratory which is a National Government Institution and the house on the suit property is expected to be occupied by the staff of the Regional Veterinary Investigation Laboratory.
33. Ms. Wanjeri further submitted that the Plaintiff illegally processed the title in his name with the intention to defraud the government and relied on the cases of *James Muigai Thingu v County Government of Trans Nzoia & 2 others* (2022) eKLR and *Timothy Ingosi & 87 others v Kenya Forestry Services & 2 others* [2015] eKLR.
34. On the second issue, counsel submitted that the Plaintiff is undeserving of the prohibition order as the title issued over the suit land is tainted with illegality and thus any interest cannot be allowed to pass and relied on the case of *John Njue Nyaga v Nicholas Njiru Nyaga & Another* (2013).
35. On the third issue, counsel submitted that the 4th Defendant was only acting in its legal and rightful capacity and there is no harm that has been occasioned to the Plaintiff in breach of his fundamental rights.
36. Ms. Litunda submitted that the Plaintiff is not entitled to damages since he has not adduced evidence to that effect and relied on the case of *MWK & Another v Attorney General & 4 others: Independent Medical Lega Unit (IMLU) (Interested Party): The Redress Trust (Amicus Curiae)* (Constitutional Petition 347 of 2015) [2017] KEHC 1496 (KLR).
37. On the fourth issue, counsel asked the court not to condemn the 4th Defendant to pay costs for a matter that it has so ably discharged its mandate as stipulated by the Constitution and relied on Section 27 (1) of the *Civil Procedure Act* (Cap 21) and the case of *Cecilia Karugu Ngayu v Barclays Bank of Kenya & Another* (2016) eKLR.

Analysis and Determination

38. The issue for determination are as follows:
- Whether the suit land was reserved for Ministry of Livestock and Fisheries Development Veterinary Department.
 - Whether the suit land was available for alienation, and whether the land was acquired legally by the 1st Defendant.
 - Whether the 1st Defendant could pass a good title to the Plaintiff.



- d. Whether the Plaintiff is the legal owner of the suit property,
39. The background of this case is as stated in the evidence of the parties. It is the Plaintiff's case that in 2013, he got interested in the suit property (Nakuru Municipality Block 20/112) which was being offered for sale at a consideration of Kshs 16,100,000/=. It is his case that sometime in December 2013, the 1st Defendant offered the property for sale to the Plaintiff and after conducting due diligence which included obtaining Certificates of Official search from the 5th Defendant, the Plaintiff agreed to purchase the property for Kshs 16,100,000/=.
40. On the first issue as to whether the suit land was reserved for Ministry of Livestock and Fisheries Development Veterinary Department, it is the 2nd, 3rd and 5th Defendants' case that the suit property was illegally acquired by the 1st Defendant as the same has always been public property belonging to the Ministry of Agriculture, Department of Veterinary Services with the houses therein still reflecting in the building register to date.
41. The 4th Defendant's witness also testified and produced a report on the identification, verification and validation of Assets and Liabilities of the Devolved functions under Schedule four of the 2010 *Constitution* as at 27th March 2013 dated 27th March 2020 whereby the suit property known as Nakuru Municipality Block 20/112 was identified that it belonged to the Ministry of Livestock and Fisheries Development Veterinary Department under the national government.
42. DW2 also stated that the suit parcel of land is part of the several parcels of land within the area encompassing Nakuru Municipality Block 20 that had been reserved for the Ministry for development of houses to be occupied by Senior Veterinary Officers.
43. According to DW2, the house Residential –NAK/HOU/MG/140 was constructed on the suit land in 1973 which appeared in the Ministry of Works Register and upon completion they were rented to Senior Veterinary officers whereby the Regional Veterinary Investigation Laboratory used to submit quarterly reports to the Permanent Secretary Ministry of Livestock and Fisheries over the occupancy of the houses which reports were produced.
44. It is further on record that in 2007 the Officer in Charge of Regional Investigation Laboratory wrote a letter to the District Land Surveyor requesting for the title numbers of the houses that had been grabbed and that the suit property was among those listed.
45. There is no evidence to show how the suit property was allocated to the 1st defendant or the person who purportedly sold to him. There was also no evidence that these houses, the Plaintiff's included were listed for disposal by the government as it was stated that the institutional houses were considered strategic to the Ministry's functions.
46. The Court of Appeal, in the case of *Munyu Maina v Hiram Gathiba Maina* 2013 eKLR held:
“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 would not be noted in the register”.
47. The gist of the above case is that when the root of a title is being challenged, a registered proprietor must go beyond the instrument of title and prove the legality of how he acquired the property. From the title document produced in court, it shows that the Plaintiff is the registered owner of the suit property but



indefeasibility of title only protects property whose acquisition was legal, proper and regular. The court cannot sanitize or sanction an illegality if it is proven that the title was procured irregularly.

48. It is not disputed that the Plaintiff bought the suit property from the 1st Defendant. This was confirmed by the 1st Defendant himself together with the agreement that they entered into. What is in dispute is whether the 1st Defendant acquired the suit property regularly, whether the 1st Defendant could pass a good title to the Plaintiff, whether the property was government land and whether it was available for alienation. If the questions are answered in the affirmative then the Plaintiff is entitled to the orders sought in the Plaint. However, if it is in the negative, it follows that the plaintiff is not entitled to the land.
49. In the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) the court held that in establishing a bona fide purchaser, the court must go to the root of the title, right from the first allotment. The Lessor was the Government of Kenya and later at entry No. 7 dated 10th November 2013, there was a restriction claiming the property as a government house. This is the same period the Plaintiff states that he got interested in the purchase of the suit property. Why was there a restriction by the Ministry claiming that the house was a government house?
50. In the case of The 4th Defendant cited the Ugandan case of *Katende v Haridar & Company Limited* [2008] 2 EA 173 where it was held:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

- a. he holds a certificate of title;
- b. he purchased the property in good faith;
- c. he had no knowledge of the fraud;
- d. he purchased for valuable consideration;
- e. the vendors had apparent valid title;
- f. he purchased without notice of any fraud;
- g. He was not party to any fraud.”

51. The Plaintiff stated that his lawyers handled the transaction and he did not have any evidence of payment of stamp duty although it was paid.
52. Similarly in the case of *Chemel Investments Limited v The Attorney General & Others* Nairobi Petition No. 94 of 2005 at para. 64 the court held that :

“the Constitution protects a higher value, that of integrity and the rule of law. These values cannot be side stepped by imposing legal blinders based on indefeasibility. I therefore adopt the sentiments of the court in the case of *Milan Kumar Shah & 2 Others v City Council of Nairobi & Another (supra)* where the Court stated as follows, “We hold that the registration of title to land is absolute and indefeasible to the extent, firstly, that the creation of such title was in accordance with the applicable law and secondly, where it is demonstrated to a degree higher than the balance of probability that such registration was procured through



persons or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law and the public interest.”

53. The evidence on record, including the documents produced show that the 1st Defendant did not have a good title to pass to the Plaintiff as this was public land which was not available for allocation/alienation. The property had a government house reserved for the use by Senior Veterinary Officers as per the quarterly reports to the Permanent Secretary, the inventory and the Ministry building register.

54. In the case of *Kenya Anti-Corruption Commission v Lima Limited & 2 Others* (2019) eKLR, the Court stated as follows:

“The land in dispute was already alienated for public utilities and was fully developed with a High Court Station, district hospital, fire station and Administration Police Camp and therefore it could not be deemed unalienated. The 2nd Defendant therefore had no authority in law to make the alienation and therefore no interest could be conferred upon the 1st Defendant.”

55. This is an unfortunate case where the Plaintiff’s remedy lies with the 1st Defendant who sold to him land that belonged to the government and was not available for allocation/alienation. I find that the land was reserved for housing for Senior Veterinary Officers and therefore was not available for allocation in the first instance.

56. In the case *Robert Mutiso Lelli v Kenya Medical Training College & 2 others* [2021] eKLR, the Court of Appeal stated:

“We have found that the allocation and issuance of titles to the subject plots to the appellant was irregular and unlawful. And though Article 40 guarantees the right of every person to acquire property, Article 40 (6) qualifies this right to exclude “...any property that has been found to be unlawfully acquired.”

57. Similarly in the case of *Dina Management Limited v County Government of Mombasa & 5 others* [2021] eKLR, the court held that :

“It is clear to us that the guarantee to protection under Article 40 of the *Constitution of Kenya 2010* also existed under section 75 of the repealed Constitution. It is correct to say that the appellant has a right to own property and that it is entitled to its property only to the extent that the said property was acquired and purchased in accordance with the correct procedure and within the framework of the law. In our view, where property is acquired through a procedure against the law, the title cannot qualify for indefeasibility. The land in question was reserved for public use or utility and the access road leading to the said land for entry, use and enjoyment of the original purpose for which the land was created or reserved. Any attempt to deviate or depart from the original purpose, no matter the persons involved and subsequent interests acquired, is defeasible to that extent. In essence, it was not possible or open to any person or entity to alienate it for private use. In our view, the moment a property is reserved for public use, it remains public utility land incapable of giving rise to a private proprietary interest capable of being protected by a court of law.”

58. The Plaintiff has sought an alternative prayer that the 1st defendant refunds the full purchase price and all attendant costs of the purchase of the property in the sum of Kshs 17,440,911.10 plus interest. This is the most appropriate remedy for the Plaintiff having found that the 1st Defendant did not pass a good title to the Plaintiff.



59. The court is empowered under Section 80 of the *Land Registration Act, 2012* to rectify or cancel titles which provides that:

“Section 80. Rectification by order of Court

- (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.
- (2) The register shall not be rectified to affect the title of a proprietor, 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.”

60. I have considered the pleadings, the evidence, and the submissions by counsel and find that the suit land does not belong to the Plaintiff but reserved for the Ministry more specifically to the Regional Veterinary Investigation Laboratory.

61. The court there finds that the Plaintiff is entitled to a refund of the full purchase price and all attendant costs of the suit property from the 1st Defendant. I therefore issue the following specific orders:

- a. The 1st Defendant is hereby ordered to refund the full purchase price and all attendant costs of the purchase of the property in the sum of Kshs 17,440,911.10 plus interest to the Plaintiff within 90 days.
- b. The 5th Defendant, the Land Registrar Nakuru County is hereby directed to cancel the Plaintiff's name as the registered owner of Nakuru Municipality Block 20/112.
- c. The suit land, Nakuru Municipality Block 20/112 to revert to the relevant Ministry.
- d. The 1st Defendant to pay costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 2ND DAY OF JULY 2025.

M. A. ODENY

JUDGE

