



**Iria-Ini Tea Factory Ltd v Muthanga & 3 others; David Kamau Mwangi Naomi Wanjugu
Githui T/K. Kamau Githui & Company & another (Third party) (Environment and
Land Case 108 of 2013) [2025] KEELC 6083 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6083 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE 108 OF 2013
JO OLOLA, J
SEPTEMBER 19, 2025**

BETWEEN

IRIA-INI TEA FACTORY LTD PLAINTIFF

AND

JOHNSTONE MUCHAI MUTHANGA 1ST DEFENDANT

LEAH WANJIRU MURUGI 2ND DEFENDANT

MUCHASTONE LIMITED 3RD DEFENDANT

FREDRICK MUNYUA WAIYAKI 4TH DEFENDANT

AND

**DAVID KAMAU MWANGI NAOMI WANJUGU GITHUI T/K. KAMAU GITHUI
& COMPANY THIRD PARTY**

**JOSHUA MACHARIA KIHARA (T/A KIHARA & ASSOCIATES) THIRD
PARTY**

JUDGMENT

Background

1. By a Plaint dated 3rd June, 2013, Iriani Tea Factory Limited (the Plaintiff) prays for judgment against the four (4) Defendants as follows:
 - a. Judgment against the 1st, 2nd and 3rd Defendants jointly and severally for a sum of Kshs. 31,570,000/= together with interest thereon at the rate of 22% from August, 2012 until payment in full;



- b. Alternatively, an order for the eviction of the 4th Defendant from L.R. No. Nyandarua/Gilgil West/18 and mesne profits at the rate of Kshs. 5,000,000/= per annum from August, 2012 until vacant possession is granted;
 - c. An order of the removal of the caution and restriction lodged against title to L.R. No. Nyandarua/Gilgil West/18;
 - d. Costs of the suit and interest; and
 - e. Any further or better relief that the Honorable Court may deem fit to grant.
2. The basis for those prayers was the Plaintiff's contention that in July 2012, the 1st and 2nd Defendants as directors of the 3rd Defendant offered the said L.R. No. Nyandarua/Gilgil West/18 for sale to the Plaintiff at a consideration of Kshs. 31,570,000/= upon which the Plaintiff executed a sale agreement with the 3rd Defendant on 7th August, 2012.
 3. The Plaintiff avers that despite full payment of the purchase price it was not given vacant possession of the said parcel of land after the 4th Defendant lodged a caution thereon in his capacity as the Administrator of the Estate of one Naomi Wanjiku Waiyaki.
 4. Johnstone Muchai Muthanga and Muchastone Limited (the 1st and 3rd Defendants respectively) are opposed to the suit. In their joint Statement of Defence dated 15th August, 2013, the 1st and 3rd Defendants deny that there was any fraud in the transaction between themselves and the Plaintiff. It is the said Defendants' case that they did grant the Plaintiff vacant possession of the suit premises even though the Plaintiff had only paid part of the consideration.
 5. The 1st and 3rd Defendants further aver that the suit is an afterthought meant to cover up for the non-payment of the balance of the purchase price of Kshs. 11,770,000/- in a fraudulent attempt to deny the 3rd Defendant of the same.
 6. Leah Wanjiru Murugi (the 2nd Defendant) is equally opposed to the Plaintiff's claim. In her Statement of Defence dated 28th August, 2013, the 2nd Defendant avers that the Plaintiff does not disclose any cause of action against herself as the dispute is between the Plaintiff and the 3rd Defendant.
 7. Fredrick Munyua Waiyaki (the 4th Defendant) is similarly opposed to the Plaintiff's claim. In his Amended Statement of Defence and Counterclaim dated 5th May, 2016, the 4th Defendant asserts that the suit as filed herein is inept, ambiguous, devoid of merit and that it does not disclose any valid or viable cause of action against the 4th Defendant.
 8. The 4th Defendant avers that together with his family, they have been in peaceful and uninterrupted possession of L.R. No. Nyandarua/Gilgil West/18 since the year 1993 when the land was purchased by his wife Naomi Wanjiku Waiyaki (now deceased). It is his case that he did lawfully lodge a caution after he realized that the original title had been stolen.
 9. By way of his Counterclaim, the 4th Defendant asserts that he is the lawful proprietor of the suit property and prays for orders as follows:
 - a. An order directing the District Land Registrar to cancel the title issued to the Plaintiff in respect of L.R. No. Nyandarua/Gilgil West/18;
 - b. An order directing the District Land Registrar to rectify the register in respect of L.R. No. Nyandarua/Gilgil West/18 and to delete any entries thereon in respect of the Plaintiff or any



other third party and to restore thereon the name of Naomi Wanjiku Waiyaki as the lawful registered owner of the Suitland;

- c. A declaration that the late Naomi Wanjiku Waiyaki is the rightful owner of LR No. Nyandarua/Gilgil West/18 and that the said right has devolved to her estate;
 - d. An order granting the 4th Defendant the costs of the Counterclaim; and
 - e. Any other relief that this court may deem just and fit to grant.
10. By a Chamber Summons application dated 20th June 2016, the 3rd Defendant sought to be granted leave to issue and serve a Third Party Notice upon Kamau Githui and Company Advocates and their partners David Kamau Mwangi and Naomi Wanjiku Githui. They were subsequently enjoined as the 1st Third Party herein. The 1st Third Party thereafter issued another Third Party Notice to Joshua Macharia Kihara T/A Kihara & Associates. The said Joshua Macharia Kihara was similarly enjoined as the 2nd Third Party in these proceedings.
11. At the trial, the Plaintiff called a total of three (3) witnesses in support of its case. The 1st, 2nd and 3rd Defendants called two (2) witnesses at the trial while the 4th Defendant and the 1st Third Party each called one (1) witness. The 2nd Third Party did not testify at the trial.

Analysis and Determination

12. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
13. The Plaintiff instituted this suit against the four (4) Defendants in the year 2013. In its prayers the Plaintiff sought for the sum of Kshs. 31,570,000/- against the 1st, 2nd and 3rd Defendants together with interest thereon at 22% per annum from August, 2012 until payments in full. In the alternative, the Plaintiff sought for an order of eviction to issue against the 4th Defendant from all that parcel of land known as LR. No. Nyandarua/Gilgil West/18 (the suit property). In addition, the Plaintiff prayed for an order of mesne profits to issue against the 4th Defendant at the rate of Kshs. 500,000/= per annum from August, 2012 until the grant of the vacant possession of the suit property.
14. It was the Plaintiff's case that sometime in July 2012, the directors of the 3rd Defendant company, offered the suit property for sale to the Plaintiff at a consideration of Kshs. 31,570,000/-. The Plaintiff told the court that it did accept the offer and that subsequently on 7th August, 2012, the parties executed a sale agreement for the suit property which was shown to be registered in the name of the 3rd Defendant.
15. The Plaintiff avers that she has met all her contractual obligations under the said sale agreement but to-date, she has not been able to obtain vacant possession of the suit property after the 4th Defendant disputed the validity of the title registered in the name of the 3rd Defendant.
16. The 1st, 2nd and 3rd Defendants do not deny having sold the suit property to the Plaintiff. According to the 1st Defendant, he had initially purchased the property in his own name in the year 1998 from one Naomi Wanjiku Waiyaki. The 1st Defendant asserted that he did later on transfer the property to the 3rd Defendant which is their family company before they sold the land to the Plaintiff.
17. As it turned out, the said Naomi Wanjiku Waiyaki was the wife of Fredrick Munyua Waiyaki who was the original 4th Defendant herein. Before he passed away on 25th April 2017, the 4th Defendant had, as the administrator of the estate of at the said Naomi Wanjiku Waiyaki, filed a Statement of Defence



and Counterclaim wherein he asserted that his wife passed away on 18th February 2008 leaving the suit property in her name. It is the 4th Defendant's case that the title deed in the name of Naomi had been stolen after her death and hence the 3rd Defendant had no valid title which it could pass to the Plaintiff.

18. The questions that then arise for consideration by this court is whether or not the 1st, 2nd and 3rd Defendants possessed a good title to the Suitland and whether the 4th Defendant has a legitimate claim to the same.
19. At the trial herein, the 1st Defendant, Johnstone Muchai Muthanga, testified as DW3 on his own behalf and on behalf of the 2nd and 3rd Defendants. DW3 testified that he purchased the suit property from Naomi Wanjiku Waiyaki in the year 1998.
20. DW3 asserted that he was introduced to Naomi by one Alexander Munyua Waiyaki and John Gichoki Waiyaki. He told the court that he was shown the parcel of land after which a sale agreement was drafted by one A.N. Ngunjiri Advocate. DW3 testified that he bought the 90 acre parcel of land at Kshs. 90,000/- per acre and that he made all payments through the said Advocate who he told the court had since died. It was his case that he had paid an initial deposit of Kshs. 2,300,000/- and upon payment of the balance, they executed the sale agreement with Naomi.
21. In addition, DW3 testified that upon payment of the full purchase price, he went to Olkalau and signed a land control board consent form before an advocate named Kamanga.
22. On cross-examination however, DW3 conceded that he had no corroborative evidence to support the assertions he had made. He did not produce evidence of the sale agreement he claims to have executed with Naomi. He did not produce proof of payment for the alleged deposit or the full purchase price of approximately Kshs. 8,100,000/= which he purported to have paid to Naomi. Neither were there land transfer forms to indicate that Naomi had transferred the suit property to himself.
23. From a perusal of the Green Card for the suit property, it was evident that the suit land was first registered in the name of the Settlement Fund Trustees on 27th October, 1973. The second entry in the card is the registration in favour of Naomi Wanjiku Waiyaki effected on 19th July 1993. The third entry indicated to be in favour of Muchastone Limited (the 3rd Defendant) was made on 26th April, 2012.
24. While the 1st Defendant claimed to have bought the suit property in 1998, he did not explain why it took him another 14 years before the property was transferred to the name of the 3rd Defendant. And while DW3 purported that Naomi had executed the transfer in the company's name, that was clearly an impossibility. From the material placed before the court, Naomi passed away in February 2008 while the CR12 forms for the 3rd Defendant Company indicates that the company was registered in March, 2012. The 3rd Defendant was therefore neither in existence in the year 1998 when the sale transaction was allegedly done nor in the year 2008 when the alleged seller and transferor passed on.
25. The principle that the burden of proof in civil cases is based on a balance of probabilities is undisputed. That is captured under section 107 of the *Evidence Act*, Cap 80 as follows:

“ 107. Burden of Proof

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.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”



26. In the circumstances, herein, the 1st, 2nd and 3rd Defendants have clearly failed to discharge the burden placed upon them by law. There was absolutely no evidence placed before the court to demonstrate that either the 1st or the 3rd Defendants had acquired the suit property from Naomi Wanjiku Waiyaki who until her death in February, 2008 remained the registered proprietor of the suit property.
27. That being the case, I was not persuaded that the 3rd Defendant had a valid title which it could have passed to the Plaintiff herein. From the material placed before the court, it was evident that the transaction involving the sale of the suit property was conducted hastily between the 1st Defendant and the Plaintiff's personnel who failed to conduct proper due diligence to establish the root of the 3rd Defendant's title.
28. There was no evidence in the form of a title deed indicating that the 1st Defendant who was the main player in the entire transaction was ever registered as a legal owner of the Suitland. In addition, and as already stated above, there was no valid transfer form executed by the 1st Defendant and/or Naomi Wanjiku Waiyaki to indicate a transfer of the Suitland to the 3rd Defendant.
29. Looking at the hasty manner in which the transaction was done, it was difficult not to come to the conclusion that some of the Plaintiff's personnel acted in connivance with the 1st and 3rd Defendant with the intent to defraud both the Plaintiff and the 4th Defendant. Some three years after the suit was instituted, the 3rd Defendant issued a Third Party notice to the partners and the Law Firm that acted for the parties in the transaction and they were subsequently enjoined herein as the 1st Third Party. In turn, the 1st Third Party issued another notice to the Plaintiff's transaction agents who were similarly enjoined as the 2nd Third Party.
30. Testifying during the hearing of the 1st Third Party's case, Ms. Naomi Wanjogu Githui told the court they were instructed by the 1st and 3rd Defendants through the 2nd Third Party. She told the court that they received the full payment of the purchase price from the Plaintiff through the Kenya Tea Development Authority (KTDA) which was financing the transaction. According to the witness, they did not retain any money and that the sum of Kshs. 11,770,000/- which the 1st Defendant had claimed was not paid was retained and passed to the 2nd Third Party as his commission.
31. The witness further told the court that her Law Firm, Kamau Githui & Company Advocates did not conduct any due diligence beyond the instructions provided by the 1st Defendant and the Plaintiff's agent to oversee the sale.
32. On cross-examination, Ms. Githui conceded that she was married to one David Kamau Mwangi who was her partner in the Law Firm and also doubling up as an employee of KTDA, the entity that financed the transaction on behalf of the Plaintiff. From a perusal of the Bank Statement exhibited by the Plaintiff, it was clear that the entire transaction was concluded within a period of 30 days.
33. Arising from the foregoing, one could not avoid the conclusion that the Plaintiff was the author of its own misfortune. The Plaintiff failed to verify the status and ownership of the land prior to her execution of the sale agreement. Dealing with a similar matter in *Dina Management Limited –vs- County Government of Mombasa & 5 Others* (petition 8(E010) of 2021 [2023] KESC 30, the court held as follows:

“The 1st registered owner did not acquire the title regularly, thus the ownership of the suit property by the appellant could not be protected under Article 40 of *the Constitution* and the appellant could therefore not benefit from the doctrine of bona fide purchaser.”



34. Going by the above decision, it was evident that a purchaser must act in good faith and confirm ownership before purchase for one to be recognized as a bona fide purchaser. The Plaintiff did not impress me as one such purchaser.
35. On the other hand, it was apparent that the 4th Defendant's claim to the suitland was anchored in the estate of Naomi Wanjiku Waiyaki who both sides acknowledge to be the original proprietor of the land. It was not contested that the original 4th Defendant was the husband of Naomi and that the current substituted 4th Defendants are their children. Tiras Barane (DW1) who testified on behalf of the estate produced a Death Certificate confirming that Naomi passed away on 18th February, 2008.
36. It was also evident that following Naomi's death, Letters of Administration for her estate were issued on 27th January 2011 in Nairobi High Court Succession Cause No. 1108 of 2010 indicating that the suit property devolved to her estate, with the original 4th Defendant as one of the administrators. DW1 testified that the administrators of the estate of Naomi Wanjiku Waiyaki have never disposed of the suit land and have consistently occupied and utilized it without interruption.
37. Evidence presented by both DW1 and DW2 confirm that at the time of Naomi's death, the suitland was duly registered in her name and there has been no verified sale transaction involving the suitland between Naomi or her estate's administrators and any other party including the parties in this suit.
38. In the premises I am satisfied that the 4th Defendant's counterclaim has merit and that the same has been proved on a balance of probabilities.
39. In the premises I hereby order and direct as follows:
 - a. A declaration is hereby issued that the late Naomi Wanjiku Waiyaki is the rightful owner of LR. No. Nyandarua/Gilgil West/18 and the same forms part of her estate.
 - b. The County Land Registrar is hereby directed to cancel the title issued to the Plaintiff in respect of LR. No. Nyandarua/Gilgil West/18.
 - c. An order is hereby issued directing the County Land Registrar to rectify the register in respect of LR. No. Nyandarua/Gilgil West/18 and to delete any entries thereon in respect of the Plaintiff or any third party and to restore thereon the name of Naomi Wanjiku Waiyaki as the lawful registered owner of LR No. Nyandarua/Gilgil West/18.
 - d. The 1st and 3rd Defendants jointly and severally are hereby directed to refund the sum of Kshs. 31,570,000/- to the Plaintiff with interest at court rates from August 2012 until payment in full.
 - e. The costs of this suit and the 4th Defendant's counterclaim shall be borne by the 1st and 3rd Defendants.
40. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA
JUDGE

In the presence of:



Ms. Firdaus Court Assistant.

Ms. Wangechi Advocate for the Plaintiffs

Mr. Njoroge Advocate holding brief Opondo Advocate for the 4th Defendants

Mr. Kipng'eno for the 1st Third Party

Mr. Wanjohi for the 1st Defendant

