



REPUBLIC OF KENYA



**Kamau v Muita & 3 others (Environment and Land Case 753 of 2017)  
[2025] KEELC 6044 (KLR) (15 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6044 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 753 OF 2017  
BM EBOSO, J  
SEPTEMBER 15, 2025**

**BETWEEN**

**EUNICE NJOKI KAMAU ..... PLAINTIFF**

**AND**

**EVANS MUKUNGA MUTITA ..... 1<sup>ST</sup> DEFENDANT**

**ELIZABETH NJOKI KARIUKI, GEORGE MACHEHO MUNGAI AND  
ELIZABETH NJOKI MUNGA (SUED IN THEIR CAPACITY AS THE  
ADMINISTRATORS OF THE ESTATE OF STEPHEN MUNGAI S  
KAMAU) ..... 2<sup>ND</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KIAMBU ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, KIAMBU ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. The dispute in this suit revolves around the question of ownership of land parcel number Nguirubi/Thigio/1380 (hereinafter referred to as “the suit land”). The plaintiff claims to have been allocated the suit land by the County Council of Kiambu in 1990. The 1<sup>st</sup> defendant, similarly, claims that she was allocated the land by the County Council of Kiambu in 1993 and the Council caused a title to be issued to him in the same year. One of the key questions to be determined in this Judgment is whether the plaintiff has satisfied the criteria for impeaching a registered title under Section 26 of the [Land Registration Act](#).

**Plaintiff’s Case and Evidence**

2. The plaintiff initiated the suit through a Complaint dated 27/09/2017. The Complaint was subsequently amended on 21/12/2020. The Amended Complaint was further amended on 27/10/2022.



3. In summary, the case of the plaintiff is that the County Council of Kiambu allocated to her the suit land in 1990 through a letter of allocation dated 16/08/1990. She accepted the allocation of the land and the requisite sum of Kshs. 2,000/-. She was, however, not issued with a registered title. Whenever she made follow-ups on processing of the title, she would be told that titles were not ready. When she conducted a search on the suit land in 2016, she discovered that the suit land had been illegally and unlawfully allocated to the 1<sup>st</sup> defendant who had subsequently transferred the land to the late Stephen Mungai S Kamau unlawfully/illegally/fraudulently.
4. The Plaintiff termed the registration and the subsequent transfer as unlawful, illegal and fraudulent, and contended that the four Defendants had procured the said registration and transfer through fraudulent and illegal manipulations. The plaintiff prayed for the following reliefs: (i) a declaration that the plaintiff was entitled to land parcel number Ngwirubi/Thigio/1380 as its rightful owner; (ii) an order declaring transfer of the suit land from the 3<sup>rd</sup> defendant to the 1<sup>st</sup> defendant as null and void and cancelling the same; (iii) an order declaring transfer of the suit land from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant null and void and cancelling the same; (iv) an order of permanent injunction prohibiting the defendants from interfering with the suit land; (v) as an alternative relief, an order decreeing the 3<sup>rd</sup> and 4<sup>th</sup> defendants jointly and severally, to compensate him as per the valuation report together with interest at court rate from the date of Judgment; (vi) special damages and costs incurred; (vii) general damages; (viii) exemplary damages for loss of user; (ix) costs of the suit; and (x) interest on (v) above at court rate [sic].
5. During trial, the Plaintiff testified as PW1. She adopted her witness statement dated 21/12/2020 as part of her sworn evidence-in-chief. She produced the 13 documents contained in her list and bundle of trial documents dated 21/12/2020. In summary, her evidence was that, vide a letter dated 16/08/1990, she was allotted 5 acres in Ndeiya/Karai Settlement Scheme by the Kiambu County Council. On 21/08/1990, she paid to the Council a sum of Kshs. 2,000/- which was required as survey fees. The suit land was identified to her by the District Surveyor and she took possession. On 23/11/2016, she visited the Offices of the County Government of Kiambu for the purpose of verification and preparation of a lease agreement after she got a potential tenant. On perusing records at the County Government, she discovered that the suit land had been illegally registered in the name of Stephen Mungai S. Kamau. The records further showed that there had been manipulation, in that the name of Evans Mukunga Muita “had been overwritten” on her name. On demanding to be told why the records had been manipulated, her demands went unanswered.
6. The Plaintiff stated that he thereafter proceeded to the Land Registry to obtain a copy of the green card relating to the suit land. The green card revealed that the 1<sup>st</sup> Defendant was registered as proprietor of the suit land on 15/11/1993 and that the 1<sup>st</sup> Defendant subsequently transferred the suit land to the 2<sup>nd</sup> Defendant on 28/12/2001. She termed the registration and the subsequent transfer as fraudulent and illegal/unlawful.
7. The Plaintiff led evidence by a land valuer, Patrick M. Kabubi, who testified as PW2. He produced a valuation report dated 10/07/2023 together with the other three documents contained in the Plaintiff’s supplementary bundle dated 11/07/2023. PW2’s evidence was that on 03/07/2023, he received instructions from M/s Kimani Kagwiria & Co. Advocates to inspect and value land title number Ngwirubi/Thigio/1380. He inspected the suit land and assessed its market value at Kshs. 8,500,000/-.



### **1<sup>st</sup> Defendant's Case and Evidence**

8. The 1<sup>st</sup> Defendant filed a statement of defence dated 20/02/2018. He contested the Plaintiff's claim. His case was that the allotment letter and the receipts which the Plaintiff was waving and relying on related to an allocation of 5 acres located in Ndeiya/Karai as opposed to Nguirubi/Thigio. He averred that he was allocated the suit land in 1993 and he was subsequently issued with a title deed in the same year. He took possession of the suit land and remained in possession until 2001 when he sold and transferred the suit land to the late Stephen Mungai S. Kamau.
9. During trial, the 1<sup>st</sup> Defendant testified as DW2. He adopted the contents of his witness statement dated 20/02/2018 as part of his sworn evidence-in-chief. He reiterated his case as summarized above and emphasized that the letter of allotment and the documents which the Plaintiff was relying on related to land in Ndeiya/Karai and not Nguirubi/Thigio. He urged the court to dismiss the Plaintiff's claim. It was his evidence that after he got title in 1993 and disposed the suit land in 2001, he did not see the need to retain the allocation documents.

### **2<sup>nd</sup> Defendant's Case and Evidence**

10. Stephen Mungai S. Kamau (2<sup>nd</sup> Defendant) died during the pendency of the case. He was substituted by the three administrators of his estate. The estate filed a defence and counterclaim dated 24/06/2021. It contested the Plaintiff's claim. Its case was that the deceased was the lawful owner of the suit land. The estate contended that the deceased purchased the suit land from the 1<sup>st</sup> Defendant in 2001 for valuable consideration and the 1<sup>st</sup> Defendant caused the suit land to be transferred to the deceased.
11. By way of counterclaim, the estate of the 2<sup>nd</sup> Defendant prayed for: (i) a declaration that the deceased was lawfully registered as proprietor of the suit land; (ii) a declaration that the restriction registered against the suitland pursuant to a letter from the Deputy County Commissioner's letter dated 09/11/2016 is unjustified; and (iii) an order lifting the restriction.
12. At trial, the estate of the 2<sup>nd</sup> Defendant led evidence by one of the three administrators, George Mucheho Mungai, who testified as DW3. He adopted his filed witness statement. In summary, his evidence was that, the deceased purchased the suit land from the 1<sup>st</sup> Defendant in 2001. The 1<sup>st</sup> Defendant was the registered proprietor of the suit land at the time. Upon purchase, the suit land was registered in the name of the deceased. He stated that the deceased was a purchaser for value, adding that the deceased did not engage in any fraudulent or illegal activities in the acquisition of the title.

### **3<sup>rd</sup> Defendant's Case**

13. The County Government of Kiambu was sued as the 3<sup>rd</sup> Defendant. They filed a statement of defence dated 27/02/2018 in which they contested the Plaintiff's claim and denied the allegations made in the plaint. They specifically denied the altered allegation that they manipulated and altered records relating to the suit land. Further, the 3<sup>rd</sup> Defendant emphasized that the process of allocation of land by the Council required approval by the Full Council. They added that the letter which the Plaintiff was relying on was a letter of intent and not a letter of allotment. They urged the court to dismiss the Plaintiff's claim. The 3<sup>rd</sup> Defendant did not lead evidence during trial.

### **4<sup>th</sup> Defendant's Case**

14. The Land Registrar was sued as the 4<sup>th</sup> Defendant. He led evidence by Roseline Wanjiru Macharia, Land Registrar Number 347 stationed at Kiambu Land Registry. She testified as DW1. She adopted



- her witness statement dated 17/01/2024. She produced the three documents contained in the 4<sup>th</sup> Defendant's list and bundle of documents dated 17/01/2024.
15. The evidence of DW1 was that the allocating body in relation to Ndeiya Settlement Scheme was the County Council of Kiambu. The register relating to the suitland was opened on 25/11/1993 in the name of the County Council of Kiambu. The land was subsequently transferred to the 1<sup>st</sup> Defendant. On 28/12/2001, the land was transferred and registered in the name of Stephen Mungai S. Kamau who was subsequently issued with a title deed. On 09/11/2016, a restriction was registered against the title pursuant to a letter dated 09/11/2016 from the Deputy County Commissioner.
  16. DW1 testified that she had examined the Plaintiff's documents, adding that, Karai and Thigio are different registration sections within Ndeiya Settlement Scheme. During cross-examination, she testified that there was a typographical error relating to the date of the second entry in the proprietorship section of the register. She observed that the land register having been opened on 25/11/1993 and the transfer having been received by the Land Registry on 25/11/1993, the date of registration of the transfer in favour of the 1<sup>st</sup> Defendant should read 25/11/1993 and not 15/11/1993.
  17. DW1 testified that she was familiar with the Ndeiya Settlement Scheme and stated that the Scheme has the following Sections: (i) Karai/Karai; (ii) Ndeiya/Makutano; (iii) Ndeiya/Ndeiya; (iv) Ngumbi/Thigio; (v) Nguirubi/Ndiuni. It was her evidence that the suit land falls within Nguirubi/Thigio Section. Shown the Plaintiff's letter of allotment, she testified that the allotment letter lacked the parcel number and therefore it was not possible to tell if the land existed on the ground.

### **Plaintiff's Submissions**

18. The Plaintiff filed written submissions dated 09/12/2024 through M/s Kimani Kagwima & Company Advocates. Counsel for the Plaintiff identified the following as the five issues that fell for determination in the suit: (i) Whether the Plaintiff has any entitlement over the suit land; (ii) Whether the transfer by the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant ought to be declared void and cancelled; (iii) Whether the court should declare the title by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant null and void and cancel the title; (iv) Whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendant should be compelled to alternatively compensate the Plaintiff for the value of the suit land as per the valuation report from the date of Judgment; and (v) Whether the court should award judgment as prayed.
19. Counsel submitted that the Plaintiff had established that she was allotted the suit land and that she met the terms of the allotment. Counsel added that the 1<sup>st</sup> Defendant did not tender any evidence of allotment, adding that the 2<sup>nd</sup> Defendant failed to adduce evidence of purchase. Counsel urged the court to find that the Plaintiff had proved entitlement to the suitland.
20. On whether the transfer by the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> Defendant should be annulled, counsel submitted that the Plaintiff having been allotted the suitland in 1990, the subsequent allotment of the land to the 1<sup>st</sup> Defendant was fraudulent and irregular. Counsel added that there were discrepancies in the land register, pointing out that whereas the 1<sup>st</sup> Defendant allegedly executed the transfer on 18/11/1993, the land register shows that the transfer was registered on 15/11/1993.
21. On whether the transfer by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant should be annulled, counsel reiterated that the Plaintiff was the lawful allottee of the suit land and added that the 1<sup>st</sup> Defendant had nothing to transfer to the 2<sup>nd</sup> Defendant. Citing the principle of *nemo dat quod non habet* and placing reliance on the Court of Appeal decision in *Arthi Highway Developer Limited -Vs- West End Butchery Limited & 6 Others* [2015] eKLR, counsel submitted that the title held by the 2<sup>nd</sup> Defendant was fraudulently and illegally acquired and did not vest any interest in the defendants.



22. On whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendants should be compelled to compensate the Plaintiff, counsel submitted that the Plaintiff established that land that had been allotted to her was fraudulently transferred to the 1<sup>st</sup> Defendant who in turn fraudulently transferred the land to the 2<sup>nd</sup> Defendant.

### **2<sup>nd</sup> Defendant's Submissions**

23. The 2<sup>nd</sup> Defendant filed written submissions dated 29/01/2025 through Anthony Burugu & Co Advocates. Counsel for the 2<sup>nd</sup> Defendant identified the following as the four issues that fell for determination: (i) Who between the Plaintiff and the 2<sup>nd</sup> Defendant is entitled to the property known as title Number Nguirubi/Thigio/1380; (ii) If the answer to (a) above is in favor of the Plaintiff, is she entitled to the orders sought in the Further Amended Plaintiff; (iii) If the answer to (a) above is in favor of the 2<sup>nd</sup> Defendant, is he entitled to the orders sought in the counterclaim; and (iv) Who shall bear the costs of this suit.
24. Counsel for the 2<sup>nd</sup> Defendant submitted that on the evidence before the court, the 2<sup>nd</sup> defendant proved his case on a balance of probabilities and that judgment should be entered in his favor as prayed in the counterclaim. Counsel submitted that the letter of allotment and all the receipts relied on by the plaintiff related to an allocation of a property in Ndeiya/Karai and not the suit property. Counsel argued that it was only in the undated provisional allocation card and the undated card that parcel Nguirubi/Thigio/1380 was mentioned.
25. Counsel submitted that the authenticity of the two documents was questionable because the provisional allocation card was unstamped and undated. Counsel argued that the ballot card was similarly unstamped. Counsel submitted that the plaintiff had the two documents made for her by fraudsters to enable her claim the suit property. Counsel further argued that during cross-examination, the Plaintiff was not able to explain how her allocation in Ndeiya/Karai changed to become Nguirubi/Thigio/1380.
26. Counsel submitted that the letter of allotment issued by the defunct County Council of Kiambu could not sustain the Plaintiff's claim to the suit property which was already registered in favour of Stephen Mungai S. Mungai. Counsel relied on the case of Marion Muthamia Kiara (Suing on behalf of the estate of Muthamia Kiara (deceased) Vs Ben Mutungi Muthiora (2016) eKLR. Counsel further submitted that the Plaintiff's letter of allotment related to an allocation of 5 acres of unsurveyed land in Ndeiya/Karai. Counsel contended that the land comprised in the letter of allotment held by the plaintiff was unknown because the land was unsurveyed. Counsel added that the plaintiff's letter of allotment had no nexus to the suit property.
27. Counsel submitted that the 2<sup>nd</sup> Defendant produced copy of the title and an official search confirming Stephen Mungai S. Kamau was the registered proprietor, having purchased the suit property from the 1<sup>st</sup> Defendant. Counsel further submitted that by dint of the registration of the deceased as proprietor, his title was indefeasible and could only be challenged as provided in the Act. Counsel argued that there were no valid grounds to invalidate the title issued to the deceased proprietor.

### **Analysis and Determination**

28. The court has considered the pleadings, evidence and submissions tendered. The following are the issues that fall for determination in the suit: (i) Whether the Plaintiff is the legitimate allottee and owner of land parcel number Nguirubi/Thigio/1380; (ii) Whether registration of the said land in the name of the 1<sup>st</sup> Defendant and the subsequent transfer of the land to the late Stephen Mungai S. Kamau were procured fraudulently and/or illegally; (iii) Whether the Plaintiff is entitled to the reliefs sought in the Further Amended plaintiff; (iv) Whether the estate of the late Stephen Mungai S. Kamau is entitled to



the reliefs sought in the counterclaim; and (v) What order should be made in relation to costs of the primary suit and the counterclaim? I will analyse and dispose the five issues sequentially in the above order. Before I do that, I will briefly outline the general principles that guide the court whenever it is invited to invalidate a registered title.

29. First, under Sections 107 and 109 of the Evidence Act, he who alleges bears the burden of proof. For avoidance of doubt, the two Sections provide 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.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

30. Secondly, a party inviting the court to invalidate a registered title is obligated to satisfy the criteria set out in Section 26 of the Land Registration Act which provides as follows:

Certificate of title to be held as conclusive evidence of proprietorship

- (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.
- (2) 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.

31. Thirdly, where a party alleges fraud or illegality, that party is required to plead the particulars of fraud or illegality and prove them. The standard of proof in relation to an allegation of fraud is higher than proof on a balance of probabilities but lower than proof beyond reasonable doubt [See *Wambui v Mwangi & 3 Others* [2021] KECA 144]. I now turn to the identified issues.

32. Is the Plaintiff the legitimate allottee and owner of land parcel number Nguirubi/Thigio/1380? There was common ground that the subdivision scheme within which the suit land is located was owned by the County Council of Kiambu. The Plaintiff did not, however, tender evidence of minutes of a committee of the Council and minutes of the full Council containing relevant resolution authorizing allotment of the suit land to the Plaintiff. The County Government contested the Plaintiff's claim



- and contended that there was no allotment in favour of the Plaintiff. It was therefore the evidentiary burden of the Plaintiff to tender evidence demonstrating that the suit land was allotted to her. She did not tender relevant minutes of the Council.
33. The Plaintiff relied on a letter dated 16/08/1990, Ref KCC/6/1/2B/Vol. XVIII/29. The said letter indicated that an offer of 5 acres in Ndeiya/Karai was made to the Plaintiff. The said letter did not contain the parcel number in which the 5 acres were comprised. The allotment letter did not bear any part-development plan or any sub division plan. The case of the Defendants is that the suitland is located in Nguirubi/Thigio Section and has no relation with the 5 acres that the Plaintiff was offered in Ndeiya/Karai. The burden of establishing a nexus between the 5 acres that the Plaintiff was allegedly offered in Ndeiya/Karai and the suit land which is located in Nguirubi/Thigio Section was that of the Plaintiff. The Plaintiff had the duty to establish that the suit land is the 5 acres that she was offered in Ndeiya/Karai. She did not discharge that evidentiary burden.
  34. The Land Registrar gave evidence to the effect that Karai and Thigio are two different registration sections within Ndeiya Settlement Scheme. She stated that the suit land falls within Thigio Section. Lastly, she testified that in the absence of a parcel number in the letter containing the offer of allotment, it was impossible to tell if the land allegedly allotted to the Plaintiff existed on the ground.
  35. The undated card christened PROVISIONAL ALLOCATION CARD which the Plaintiff also relied on was at variance with the letter of allotment dated 16/08/1990 and the receipt dated 21/08/1990. The letter and the receipt related to 5 acres in Ndeiya /Karai while the subsequent card bore an ink insertion relating to Nguirubi/Thigio/1380. The Plaintiff did not bother to lead evidence by a witness from the owners of the scheme to explain the variance. Consequently, there is no conclusive evidence to suggest that the 5 acres which the Plaintiff was offered in Ndeiya/Karai is the suit land and that the said 5 acres were subsequently allocated to the 1<sup>st</sup> Defendant.
  36. For the above reasons, it is the finding of this court that the Plaintiff failed to establish that she was allocated land parcel number Nguirubi/Thigio/1380. It is also the finding of this court that the Plaintiff failed to prove that she is the legitimate owner of the said parcel.
  37. Were the registration of the suitland in the name of the 1<sup>st</sup> Defendant and the subsequent transfer of the land to the late Stephen Mungai S. Kamau procured fraudulently and/or illegally? First, the Plaintiff did not plead particulars of fraud or illegality. Secondly, the Plaintiff failed to prove that she was allotted the suit land, Nguirubi/Thigio/1380. Without the Plaintiff satisfying the above critical requirements, the court has no basis upon which to impeach the registration and the subsequent transfer. Consequently, it is the finding of the court that the Plaintiff failed to plead and prove fraud and/or illegality in the impugned registration and transfer.
  38. Consequently, it follows that the Plaintiff did not prove her case to the required standard. In light of the above findings, it follows that the Plaintiff is not entitled to any of the reliefs sought in the plaint.
  39. Is the estate of the late Stephen Mungai S. Kamau entitled to the reliefs sought in the counterclaim? The deceased is the registered proprietor of the suit land. The Plaintiff procured a restriction against the title on an allegation that she was allocated the suit land in 1990. The issue of ownership has been considered and it has been found that the Plaintiff has failed to prove ownership of the suit land. In the above circumstances, the court is satisfied that the 2<sup>nd</sup> Defendant, as the registered proprietor of the suit land, is entitled to the reliefs sought in the counterclaim.
  40. On costs, the general principle in Section 27 of the *Civil Procedure Act* is that costs follow the event. No special circumstances have been demonstrated to warrant a departure from the above principle. Consequently, the Plaintiff shall bear costs of the suit.



41. In the end, the plaintiff's suit and the counterclaim by the 2nd defendant are disposed as follows:
- a. The plaintiff suit is dismissed for lack of merit.
  - b. The counterclaim by the 2nd defendant is allowed in terms of prayers (a), (b) and (c).
  - c. The plaintiff shall bear costs of the primary suit and the counterclaim.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**B M EBOSO [MR]**

**ELC JUDGE**

