



**Njenga v Mwangi & 3 others (Environment and Land Case E073 of 2022)
[2025] KEELC 6035 (KLR) (15 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6035 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E073 OF 2022
BM EBOSO, J
SEPTEMBER 15, 2025**

BETWEEN

MARGARET NJOKI NJENGA PLAINTIFF

AND

PETER KARIUKI MWANGI 1ST RESPONDENT

UOKOAJI HOUSING COOPERATIVE SOCIETY 2ND RESPONDENT

LAND REGISTRAR, KIAMBU COUNTY 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

Introduction

1. The dispute in this suit revolves around two questions: (i) legality of the transfer of land parcel number Nguirubi/Ndiuni/307 [the suit land] from Margaret Njoki Njenga [the plaintiff] to Peter Kariuki Mwangi [the 1st defendant] in October 2015; and (ii) the validity of the subsequent transfer of the suit land by the 1st defendant to Uokoaji Housing Co-operative Society [the 2nd defendant] in July, 2018. The legality and validity of the two successive transfers is challenged in this suit. Before I analyse and dispose all the issues that fall for determination, I will outline, in summary, the parties' respective cases, evidence and submissions.

Plaintiff's Case and Evidence

2. The plaintiff initiated the suit through a plaint dated 30/6/2022. Her case was that, in 1988, the County Council of Kiambu allocated to her the suit land, which at the time, was identified as Plot No. 149, Ndeiya Karai Settlement Scheme. The suit land was subsequently surveyed as land parcel number Nguirubi/Ndiuni/307 measuring 2.00 hectares. A title deed was subsequently issued to her on 15/2/1991. She enjoyed quiet and peaceful possession of the land until September, 2021 when



- she applied for an official search and discovered that the land had been fraudulently and unlawfully registered in the name of the 1st defendant who subsequently transferred it to the 2nd defendant.
3. The plaintiff averred that the two successive transfers were fraudulent and illegal. She itemized various particulars of fraud and illegality. She contended that on discovering the fraud and the illegality, she reported the matter to the Directorate of Criminal Investigations.
 4. The plaintiff sought the following reliefs from this court: (i) a declaration that she was the bonafede owner of the suit land; (ii) a declaration that the transfer of the suit land from her name to the name of the 1st defendant and the subsequent transfer of the land by the 1st defendant to the 2nd defendant were fraudulent; (iii) a permanent injunction restraining the defendants and their agents against trespassing onto, cultivating, destroying, damaging, entering into, constructing on, remaining on, selling, advertising for sale, sub dividing, transferring, charging, disposing off the suit land and/or interfering with the suit land in any other manner; (iv) an order decreeing the Land Registrar to cancel the impugned transfers; and (v) an order awarding her costs of the suit.
 5. During trial, the plaintiff testified as PW1 and closed her case. She adopted her written witness statement dated 30/6/2022. She produced the following exhibits: (i) title deed relating to the suit land; (ii) an extract of her complaint to the DCI dated 29/9/2021; (iii) ballot card relating to plot number 149; (iv) receipt dated 5/12/1990; (vi) allotment letter dated 1/12/1988; (Vii) provisional allocation card; official search dated 29/9/2021; (ix) card/certificate issued by the County Council of Kiambu relating to the suit land; and (x) certified extract of the land register relating to the suit land.
 6. In summary, the plaintiff's evidence was that, she was allocated the suit land by the County Council of Kiambu in 1988. She paid the requisite sum of Kshs. 2000 and she was subsequently registered as proprietor of the land and issued with a title deed on 15/2/1991. She had enjoyed quiet possession of the suit land since then. In September, 2021, on a routine check, she applied for an official search and she was shocked to learn that the suit land had been registered in the name of the 1st defendant and subsequently transferred to the 2nd defendant.
 7. The plaintiff testified that she had neither sold nor transferred the suit land to the 1st defendant, adding that she never parted with her original title. She stated that she did not know the 1st defendant. She termed the two transfers as fraudulent and urged the court to grant her the relief sought in the plaint. She had her original title at the time of testifying.

Undefended Case against the 1st defendant

8. The plaintiff obtained leave to serve summons on the 1st defendant through a notice in a daily newspaper. A notice was subsequently published in the Daily Nation edition of 8/8/2022 and an affidavit of service sworn on 25/8/2022 by Mumbi Muritu was subsequently filed. The 1st defendant neither entered appearance nor filed a defence. Consequently, the claim against the 1st defendant was uncontested.

Case and Evidence of 2nd Defendant

9. The 2nd defendant contested the suit through a statement of defence dated 5/10/2022. They averred that they were strangers to the allegations that the suit land was allocated to and registered in the name of the plaintiff who enjoyed quiet possession of the land. The 1st defendant contended that the allotment letter issued to the plaintiff was an offer, adding that the plaintiff having failed to accept the offer within 30 days, it lapsed. The 2nd defendant further averred that they acquired the suit land from the 1st defendant through a sale agreement dated 26/2/2018. They urged the court to reject the plaintiff's claim.



10. During trial, the 2nd defendant elected not to lead evidence. Their counsel, Mr. Mururu, stated that the 2nd defendant would rely on the evidence of the Land Registrar and would not lead evidence. Consequently, the case of the 2nd defendant was marked closed.

Case and Evidence of the 3rd and 4th Defendants

11. The 3rd and 4th defendants filed a joint statement of defence dated 9/9/2022 in which they contested the plaintiff's claim. They put the plaintiff to strict proof of the allegations made in the plaint. They denied the allegations of fraud and illegality and put the plaintiff to strict proof.
12. During trial, the 3rd and 4th defendants led evidence by Charles Mwendwa Mutua, a Land Registrar in the Ministry of Lands, Housing and Physical Planning who at the time of testifying was based at Kiambu Land Registry. He testified as DW1 after which the two defendants closed their case.
13. In summary, the evidence of Dw1 was that the suit land, measuring 2.00 hecstrars originally belonged to the County Council of Kiambu. The land was allocated to Margaret Njoki Njenga [the plaintiff] and was registered in her name on 15/2/1991. On 29/10/2015, the suit land was transferred to Peter Kariuki Mwangi [the 1st defendant]. On 18/7/2018, the suit land was transferred to Uokoaji Housing Co-operative Society Limited [the 2nd defendant]. At the time of the testimony of DW1, the suit land was still registered in the name of the 2nd defendant.
14. DW1 testified that the original parcel file relating to the suit land had not been traced in the Land Registry, adding that the temporary parcel file which the Land Registry opened after failing to trance the original parcel file did not have conveyance documents relating to the transfer of the suit land from the plaintiff to the 1st defendant.
15. DW1 produced the following documents: (i) certified copy of the green card (Land Register); (ii) consent relating to the transfer of the suit land from the 1st defendant to the 2nd defendant; (iii) cancelled title deed dated 29/10/2015 bearing the name of Peter Kariuki Mwangi; and (iv) an undated application for consent expressed as executed by the 1st and 2nd defendants.
16. In cross examination, DW1 reiterated that the plaintiff was allocated the suit land by the County Council of Kiambu. He added that he had the original green card and that what was missing was the original parcel file. DW1 further testified that he did not have conveyance documents relating to the transfer of the suit land from the plaintiff to the 1st defendant and those relating to the transfer of the suit land from the 1st defendant to the 2nd defendant.

Plaintiff's Submissions.

17. The plaintiff filed written submissions dated 17/12/2024 through Mumbi Muritu Advocates. Counsel for the plaintiff identified the following as the four issues that fell for determination in the suit: (i) Whether the plaintiff was the registered owner of Nguirubi/Ndiuni/307; (ii) Whether the defendants' title deeds were fraudulently acquired; (iii) Whether the plaintiff is entitled to the prayers sought; and (iv) Who is to bear costs of the suit.
18. On whether the plaintiff was the registered owner of Nguirubi/Ndiuni/307, counsel for the plaintiff submitted that the plaintiff was allocated plot number 149 by the County Council of Kiambu in Ndeiya Karai, measuring approximately 5 acres, adding that she was later issued with the title deed on 15/2/1991 and she became the registered owner of land parcel number Nguirubi/Ndiuni/307.
19. On whether the plaintiff proved fraud on part of the defendants, counsel submitted that the plaintiff never transferred the said parcel of land to anyone, adding that the plaintiff was still in possession of the



original title deed and had never surrendered her title to the Land Registrar for transfer to any other person. Counsel contended that according to the green card produced in court, it was alleged that the plaintiff transferred the suit land to the 1st defendant and the 1st defendant subsequently transferred the suit land to the 2nd defendant.

20. Counsel submitted that the Land Registrar confirmed that the transfer documents, original title deed and the conveyance documents relating to the transfer from the name of the plaintiff to the 1st defendant and subsequently to the 2nd defendant were not in the parcel file, adding that the Land Registrar also confirmed that the plaintiff filed a complaint with the Land Registry. Counsel emphasized that the plaintiff never transferred the suit land. Counsel contended that the transfer was done fraudulently because the plaintiff did not participate in the transfer. Counsel relied on the case of *David Wachira Kinuu v Betty Wambui Githu, Kiambu District Land Registrar (2019) eKLR*.
21. Counsel submitted that the 1st defendant was duly served, but elected not to file a defence to the plaintiff's claim. Counsel further submitted that the 2nd defendant filed a defence but never led evidence nor produced documents to support their claim. Counsel contended that the plaintiff brought sufficient evidence to prove the root of her title, adding that the plaintiff tendered the original title deed to demonstrate that she was the owner of the suit land, which was not controverted. Counsel relied on the case of *Kibiro Wagoro Makumi vs Francis Nduati Macharia & another (2018) eKLR*.
22. On whether the plaintiff was entitled to the reliefs sought, counsel submitted that the plaintiff had proved her claim. Counsel urged the court to grant her the prayers sought.
23. Despite being accorded the opportunity to file submissions, the 2nd defendant elected not to tender any submissions.

Analysis and Determination

24. The court has considered the pleadings, evidence and submissions presented in this suit. The following are the key issues that fall for determination in the suit: (i) Whether registration of land parcel number Nguirubi/Ndiuni/307 in the name of Peter Kariuki Mwangi on 29/10/2015 was fraudulent and illegal; (ii) Whether the subsequent transfer of the suit land to Uokoaji Housing Co-operative Society Limited by the 1st defendant vested in them a valid title (iii) Whether the two successive registrations should be annulled; and (iv) What order should be made in relation to costs of this suit. I will be brief in my analysis and sequential disposal of the three issues.
25. It is trite law that any allegation of fraud must be specifically pleaded and strictly proved. The Court of Appeal in case of *Kuria Kiarie & 2 Others Vs. Sammy Mugeru [2018] eKLR*, outlined the relevant principle as follows:

“The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria Vs. Nansingh Madhusingh Darbar & Another [2000] eKLR*, where Tunoi, JA (as he then was) states as follows: “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”



26. As regards the standard of proof, the court in the case of *Kinyanjui Kamau Vs. George Kamau* [2015] eKLR expressed itself as follows: -

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo -vs- Ndolo* [2008] 1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in *Criminal Cases...*” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

27. Was the registration of the suit land in the name of the 1st defendant procured fraudulently and illegally? The plaintiff contended so. On his part, the 1st defendant elected not to step forward to explain how he procured the registration of the suit land in his name. The 2nd defendant contested the allegations of fraud and illegality but did not lead evidence to controvert the evidence presented by the plaintiff. The Land Registrar corroborated the plaintiff's case that the plaintiff was at all material times the registered proprietor of the suit land, having formally acquired the land from the County Council of Kiambu through a transfer registered on 15/2/1991. The Land Registrar also confirmed that on 29/10/2015, the suit land was registered in the name of the 1st defendant. He did not, however, produce any of the conveyance documents which the Land Registry acted on in transferring the suit land from the plaintiff to the 1st defendant. It was the evidence of the Land Registrar that the parcel file, which would ordinarily contain the conveyance documents, was untraceable in the Land Registry.
28. On her part, the plaintiff presented evidence demonstrating that the County Council of Kiambu allocated to her the suit land in 1988. The Council subsequently formally transferred the land to her in 1991 and she was registered as proprietor of the land and issued with a title deed on 15/2/1991. She further tendered evidence showing that she had neither sold nor transferred the suit land to the 1st defendant. She had her original title and tendered it for scrutiny during trial. She testified that she had not obtained any consent to transfer the suit land to the 1st defendant. Her evidence remains unchallenged because both the 1st and the 2nd defendants did not lead any evidence to demonstrate that she [the plaintiff] was privy to the transfer that divested the suit land from her.
29. Under Section 44 (i) of the *Land Registration Act* an instrument effecting a transfer, such as the impugned registration, must be executed by the transferor and the transferee. The plaintiff tendered evidence that she neither sold nor transferred the suit land to the 1st defendant. There was no evidence suggesting that the plaintiff was privy to any instrument of transfer nor any consent for transfer under the Land Control Board.
30. In the absence of evidence of sale and transfer of the suit land to the 1st defendant by the plaintiff the logical conclusion is that the 1st defendant procured the impugned registration fraudulently and illegally. That is the finding of the court on the first issue.
31. Did the subsequent transfer of the suit land to the 2nd defendant by the 1st defendant vest in the 2nd defendant a good title? The 2nd defendant did not present evidence that would make the court invoke the doctrine of innocent purchaser for value. They elected not to lead evidence in defence of their registration.
32. The evidentiary burden of the holder of an impeached title in proceedings where the claimant has discharged his burden of proof was reiterated by the Supreme Court of Kenya in *Dina Management*



Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021 (2023) KESC 30(KLR) as follows:

“ As held by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* Civil Appeal No. 239 of 2009 [2013] KLR, where the registered proprietor’s root of title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore, the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

33. The Supreme Court emphasized in the above case that an illegal title does not convey a valid interest in land. In *Arthi Highway Developers Limited v West End Butchery Limited & Others*, the Court of Appeal emphasized that a fraudulent registration does not extinguish the interest of the legitimate owner of land.
34. The totality of the evidence before court and the above jurisprudence is that, the 2nd defendant was conned by the 1st defendant and what they obtained from the 1st defendant was a fraudulent and illegal title, a fake. The fraudulent and illegal registration did not vest in the 2nd defendant a good and valid title. That is the finding of the court on the second issue.
35. . In light of the court’s findings on the above two issues, it follows that the two impugned registrations stand to be annulled on the ground that they were procured fraudulently by the 1st defendant. That is the finding of the court on the third issue.
36. On costs, from the uncontroverted evidence on record, the 1st defendant was the author of the fraud and the illegality that necessitated this suit. Consequently, he will bear costs of this suit.
37. For the above reasons, the plaintiff’s claim is allowed in the following terms: -
 - a. Judgement is entered in favour of the plaintiff in terms of prayers 1, 2, 3 and 4 of the plaint.
 - b. The 1st defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF SEPTEMBER, 2025

B M EBOSO [MR]

ELC JUDGE

