



**Simarch Kenya Limited v Bangal Trading Company & another (Environment & Land Case 534 of 2015) [2023] KEELC 20776 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20776 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 534 OF 2015  
LC KOMINGOI, J  
OCTOBER 12, 2023**

**BETWEEN**

**SIMARCH KENYA LIMITED ..... PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT**

**BANGAL TRADING COMPANY ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 16<sup>th</sup> June 2015 the plaintiff seeks for judgment against the Defendant for;
  - a. A permanent injunction restraining the Defendant, its servants, workmen and agents from entering on and or from erecting or causing to be erected thereon any structures, or from in any way interfering with the Plaintiffs use and quiet enjoyment of the suit property.
  - b. An order of eviction from the said premises.
  - c. Damages for trespass.
  - d. Interest on (3) above.
  - e. Costs of the suits.
2. It is the Plaintiff's case that it is the registered and rightful owner of LR No 21880 which was wrongfully trespassed upon by the 1<sup>st</sup> Defendant. This was done through damaging the perimeter wall, obstructing plaintiffs' workers and even posting armed gangs who harassed and intimidated the workers. The Plaintiff further asserts that the 1<sup>st</sup> Defendant delivered construction materials on the suit property and attempted to commence construction. As a result, the 1<sup>st</sup> Defendant actions has caused it distress and delayed it from implementing construction of a hotel on the property. It is the Plaintiff



case the 1<sup>st</sup> Defendant has not stopped those acts despite being issued with a demand notice and notice of intention to sue.

### **The 1<sup>st</sup> Defendant's case**

3. Through a statement of defence and counterclaim dated 27<sup>th</sup> July, 2015 filed on 12<sup>th</sup> August, 2015, the 1<sup>st</sup> Defendant states that it is the legal owner of the suit premises whose title was fraudulently procured by the Plaintiff. It contends that the Plaintiff knowingly misrepresented that it was issued with a letter of allotment on 10<sup>th</sup> June, 1994 and granted on 9<sup>th</sup> December, 1997. Further, it fraudulently obtained building approvals and an Environmental Impact Assessment License on 10<sup>th</sup> April, 2014, and 12<sup>th</sup> February, 2014 from Nairobi City County Planning Department and NEMA respectively.
4. According to the 1<sup>st</sup> Defendant, the suit property is part of LR No 209/12666 previously registered under Grant No I.R 105980 and its duly registered proprietor was Messrs Microtech Accessories Limited. LR No 209/12666 was subdivided into three portions LR No 209/19715, one of the resultant subdivision was sold to 1<sup>st</sup> Defendant. According to the 1<sup>st</sup> Defendant, M/S Microtech Accessories Limited title for LR No 209/12666 was validated through a ruling delivered on 16<sup>th</sup> February, 2011 in Nairobi High Court Civil Case No 215 of 2010, *Greyston Construction Company Limited v Microtech Accessories Limited*. Further, when the 1<sup>st</sup> Defendant acquired leasehold over the property in 4<sup>th</sup> May, 2010, the Plaintiff was not in possession of the property. The 1<sup>st</sup> Defendant alleges that the Plaintiff is claiming ownership of 0.1830 hectare which it hived from LR No 209/12666/3 measuring 3.994 hectare. The 1<sup>st</sup> Defendant maintains that given it has a valid and legitimate title over the suit property and it denies ever trespassing the property. It also claims that it was served with a demand and notice of intention to sue by the Plaintiff.
5. Through the counterclaim, the 1<sup>st</sup> Defendant reiterates its averments and further pleads that Diamond Trust Bank registered a charge for LR 209/19715 title in an instrument dated 8<sup>th</sup> July, 2010. It accuses the Plaintiff of trespassing on the suit property by erecting a perimeter fence and structures therein. The Plaintiff also interfered with 1<sup>st</sup> Defendant servants' daily activities by posting armed guards on the property. These actions have subjected the 1<sup>st</sup> Defendant to humiliation, great anguish and mental distress. It urges this court to dismiss the Plaintiff's case with costs and judgment entered against it for the following orders for causing loss and damages to the 1<sup>st</sup> Defendant.
  - a. A declaration that the suit property forms part of the property registered as Grant Number IR 124269 and known as LR No 209/19715.
  - b. A permanent injunction restraining the Plaintiff, its servants, employees, agents and workmen from entering on and or erecting or causing to be erected any structures or in any way whatsoever interfering with the Defendants possession, use and quiet enjoyment of the suit property.
  - c. An order of eviction evicting the Defendant from the suit property.
  - d. *Mesne* profits.
  - e. Punitive damages
  - f. Costs of the suit
  - g. Interest on (d), (e) and (f) above at the applicable rates.



## **The 2<sup>nd</sup> Defendant's case**

6. On 1<sup>st</sup> March, 2018, the 2<sup>nd</sup> Defendant filed a statement of defence dated the same date praying that the Plaintiff case against it be dismissed with costs. It states that according to their records, LR No 209/12666, IR 105980 was subdivided into three portions being LR 209/19713, 209/19714 and 209/19715. On 4<sup>th</sup> May, 2010, LR 209/19715 was transferred to the 1<sup>st</sup> Defendant who charged it in favor of Diamond Trust Kenya Limited on 28<sup>th</sup> October, 2010. The charge was discharged on 9<sup>th</sup> May, 2017. The 1<sup>st</sup> Defendant further charged the property in favor of the First Community Bank on 9<sup>th</sup> May, 2017. On 28<sup>th</sup> May, 2010, grant No 105980/5 was registered in favor of Bangal Trading Limited as IR 124269. On 28<sup>th</sup> October, 2010, a deed of rectification was also registered to read Bangal Trading Company Limited on 28<sup>th</sup> October, 2010.
7. It is the 2<sup>nd</sup> Defendants case that the Plaintiff title is forged because they do not have it in their records neither do they have any records showing it was transferred from the 1<sup>st</sup> Defendant. There is also no nexus between the original title in favor of Microtech Accessories Limited and title issued after the subdivision. The 2<sup>nd</sup> Defendant contends that a cause of action on possession cannot be instituted against government for the reason that it has no knowledge of occupation of the suit property. The Plaintiff is also not entitled to any compensation, indemnity or damages against the 2<sup>nd</sup> Defendant because its claim over LR No 209/19715, IR 124269 and IR 92931 is premised on forgery.

## **Reply to defence and counterclaim**

8. On 26<sup>th</sup> August, 2015, the Plaintiff filed a reply to the Defendant Defence and Counterclaim stating that the Ruling in ELC 215 of 2010 did not address the validity of the suit title property as it was based on interlocutory application. In addition, it was not the final judgment of court. The Plaintiff maintains that it legally acquired 21880 and obtained approvals from Nairobi City County Planning Department to constriction a hotel service room. Consequently, judgment should be entered as prayed and 1<sup>st</sup> Defendant counterclaim dismissed because its fraudulently and illegally possesses the Plaintiff property.

## **Evidence of the Plaintiff.**

9. PW1- Simon Musyoka Kaingo, a director of the Plaintiff stated that he had the original title deed for the suit property. He produced payments receipts to prove land rents was paid to Nairobi County Government.
10. During cross-examination, it was his testimony that he was allocated LR No 21880, IR No 92931 (0.1830ha/ ½ acre) deed plan No 92931 through a letter of allotment dated 3/10/1997. Even though he indicated that the property was first allocated to the Plaintiff on 1994, and on 1997, he did not have any documents to prove such. The court was informed that on 24/10/1997 a premium of Kshs 155,282/= was paid after acceptance of the allotment offer letter. Payment of annual rent of Kshs 15,6000/= was also made. According to PW1, the suit property is a resultant subdivision of LR No 209/12666. However, as at 1997 when subdivision was undertaken, the Plaintiff title deed had already been issued. PW1 stated that the Plaintiff was not issued with a certificate of official search despite lodging an application of official search of the property. He explained that he was of the Directors of Simarch Kenya Limited alongside Stella, Mueni Kaingo, his wife and that they learned about the existence of their property through Mr. Wangila, who was a senior lands officer.
11. Despite testifying that the Plaintiff passed a resolution to purchase the suit property, he did not have any documentation to prove whether such resolution existed. It was PW1 evidence that he was only



given the allotment letter dated 3/10/1997 and not 10/6/1994. He did not know whether survey was conducted neither did he instructed G.K Layumba to undertake the survey. By his own admission, he stated that he fenced the suit property and constructed a site office therein. However, he did not apply for change of user nor were the building plans subjected to commissioner of lands as mandated by allotment letter.

12. When he was re-examined, he stated that he was issued the title deed and had receipts to prove he paid the requisite fees.

### **Evidence of the Defendants.**

13. DW1- Omar Shariff, a director of the 1<sup>st</sup> defendant testified on 3<sup>rd</sup> February 2022. He adopted his witness statement dated 27<sup>th</sup> July 2015. He told the court that LR No 209/12666 registered in the name of Microtech Accessories Limited was subdivided to create three new titles namely; LR No 209/19713, (Original LR No 12666/1, LR No 209/19714 (Original LR No 12666/2 and LR No 209/19715 (Original LR No 12666/3).

He further stated that by an instrument of transfer dated 4<sup>th</sup> May 2010, the 1<sup>st</sup> defendant, acquired by way of purchase, the suit property known as LR No 209/19715 (Original LR No 12666/3) registered as Grant Number IR 124269. On cross examination he stated was that the validity of the title to the suit property had not yet been determined. He did not have any documents to show that the Plaintiff had failed to adhere to a request to stop excavating the suit property nor was he certain if the Plaintiff responded to the said letters. Despite claiming that the deed file was missing, he did not have any letter from registrar of titles to prove such assertions. He also acknowledged that he never lodged a report before the Director of Criminal Investigations that the file was missing. According to his testimony, 1<sup>st</sup> Defendant was issued with its title on 2010 after a transfer effected on 28/05/2010 and further charged to Diamond Trust Bank to secure a loan. He also restated that the 1<sup>st</sup> Defendant title whose title is yet to be cancelled possessed the disputed property.

14. When he was re-examined he stated that LR No 209/19715 (Original LR No 12666/3) belonged to the 1<sup>st</sup> Defendant and not the Plaintiff. That the 1<sup>st</sup> defendant was in possession.
15. DW2, Charles Kipkurui, Deputy Chief Land Registrar told the court that the Chief Land Registrar does not allocate land but only registers interest on land. On cross examination, he stated that they discovered that the Plaintiff's title for LR No 21880, (IR No 92931) was forged and was not issued by the Chief Land Registrar. In addition that, the deed plan dated 14/11/1996 attached to the Plaintiff's title deed was not verified. According to his testimony, 1<sup>st</sup> Defendant's title for LR No 209/19715 was genuine and has never been cancelled. The court was further informed that once a Part Development Plan is prepared, it is forwarded to Director for Physical Planning for approval after which a deed Plan is issued after a survey is done.
16. DW3, Robert Juma Simiyu, Assistant Director Land Administration, stated that the Plaintiff's allotment letter and title deed dated 3/10/1997 were not genuine documents they did not form part of their records. This is because the signatures attested on the said documents did not belong to the said persons. When he was cross examined, he stated that the suit property belonged to Bangal Trading Limited whose title is valid as it has not been revoked.
17. At the close of the oral testimonies parties tendered final written submissions.

### **The Plaintiff's submissions**

18. The following issues were raised in Plaintiff's submissions dated 19<sup>th</sup> September, 2022



- a. Whether the Plaintiff is the rightful owner of the suit property?
  - b. Whether the 1<sup>st</sup> Defendant has trespassed on the Plaintiffs property and should thus be evicted?
  - c. Whether a permanent injunction should issue restraining the 1<sup>st</sup> Defendant, its servants, workmen and agents from entering and/ or from erecting or causing to be erected thereon structures, or from in any way interfering with the Plaintiff use and quiet enjoyment of the suit property?
  - d. Whether the Plaintiff is entitled to damages?
  - e. Who should bear costs of the suit?
19. On whether the Plaintiff is the rightful owner of the suit property, Section 26(1) of the [Land Registration Act](#) is quoted to argue that the Plaintiff is the rightful owner of the suit property and its title is indefeasible. This is because the 1<sup>st</sup> Defendant failed to prove on a balance of probabilities the title was acquired through fraud, forgery or misrepresentation. The authorities of [Kamua James Njendu v Serab Wanjiru & another](#) (2018) eKLR, [Hubert I. Martin & 2 others v Margaret J. Kamar & 5 others](#) (2016) eKLR, [Gitwany Investment Ltd v Tajmal Ltd & 3 others](#) (2006) eKLR and [Caroline Awinja Ochieng and another v Jane Anne Mbithe Gitau and 2 others](#) (2015) eKLR are cited to guide the court when making a determination of who is a rightful owner of property where two titles exist. It is submitted that considering that the Plaintiff's allotment letter and title was issued on 3<sup>rd</sup> October, 1997 while that of the 1<sup>st</sup> Defendant's title was issued on 1<sup>st</sup> February, 1999, then the Plaintiff's title prevails. The Plaintiff maintains that the Plaintiff filed sufficient documents to demonstrate how it legally acquired the suit property. The documents include a copy of title deed for LR No 2188, Reference Map, deed plan, EIA license, local authority integrated financial operations management system Bill, Nairobi City Council plan for the suit property, request to pay rates, payment slips for rent and bank transaction receipts. It is also argued that the Defendants never filed any documents to demonstrate whether the 1<sup>st</sup> Defendant applied to be allocated land and whether the land was available for allocation. There were also no documents to prove payment of requisite fee or survey report or deed plan for the suit property.
20. On whether the 1<sup>st</sup> Defendant has trespassed on the Plaintiffs property and should be evicted, Section 3(1) of the [Trespass Act](#), Definition of "trespass" as outlined in [Clerk & Lindsell on Torts](#) 18<sup>th</sup> Edition and court decision of [Maina Kabuchwa v Gachuma Gacheru](#) (2016) eKLR are put forward to argue that the 1<sup>st</sup> Defendant should be evicted from the suit property because the Plaintiff has proven that the 1<sup>st</sup> Defendant trespassed on it. This happened when the 1<sup>st</sup> Defendant damaged the perimeter fence, posted armed gangs, attempted to obstruct the Plaintiff workers during construction and also attempted to erect structure therein without the Plaintiff's consent.
21. Regarding the third issue, it is reasoned that the Plaintiff has proved prima facie case that they own the suit property and should be granted permanent injunction as was held in [Ngurumani Limited v Jan Nielsen and 2 others](#) (2014) eKLR and [Mrao Ltd v First America Bank of Kenya Ltd & 2 others](#) (2003) eKLR 125. It must therefore be allowed to enjoy quiet possession of the property. Further, the 1<sup>st</sup> Defendant's actions delayed it from executing its programs thereby suffering irreparable harm.
22. According to the Plaintiffs' counsel, the Plaintiff is entitled to award of damages because it has proven the 1<sup>st</sup> Defendant trespassed on the suit property, intimidated and harassed its workers and even proceeded to occupy the property without its consent. This deprived the Plaintiffs use and quiet enjoyment of its property. It is also maintained that the Defendants must bear the cost of the suit.



## The 1<sup>st</sup> Defendant's submissions

23. Counsel for the 1<sup>st</sup> Defendant filed submissions dated 26<sup>th</sup> October 2022 raising the following issues for determination;
- a. Who is the lawful proprietor of the suit property and whether the Plaintiff has any legitimate claim over the suit property?
  - b. Whether the orders sought in the Plaint dated 16<sup>th</sup> June, 2015 should be dismissed?
  - c. Whether the 1<sup>st</sup> Defendant counterclaim is merited?
  - d. Whether the remedies sought in the counterclaim ought to be awarded?
24. On the first issue, it is submitted that DW2 and DW3 admitted in their testimony that they do not have the Plaintiff title in their records. This clearly demonstrated that the Plaintiff title was illegally and fraudulently procured because it was no-existent. Bearing in mind the title was obtained through fraud, misrepresentation and corrupt means, it follows that is impeachable and cannot be allowed to stand. It is also argued that the Plaintiff does not deserve the orders sought because it has not demonstrated a prima facie case capable of being granted a permanent injunction as was outlined in *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No 77 of 2022 (2014) eKLR and *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (2003) eKLR 125. The 1<sup>st</sup> Defendant maintains that it is the registered owner of the suit property which the Plaintiff has trespassed upon. Unlike, the Plaintiff, it has tabled evidentiary documentary showing how it acquired the said property. The 1<sup>st</sup> Defendant beseeches the court to grant it the orders it is seeking because its evidence has not been uncontroverted.
25. Counsel further submitted that the 1<sup>st</sup> Defendant being the registered owner of the suit property could trespass on it's own land. He has put forward the cases of *Tom L. Wanambisi v Dickson W. Babandege & 20 others* (2021) eKLR; *John Kiplel Kipchumba v Catherine Kabon & 3 others* (2019) eKLR
26. It is also submitted that the 1<sup>st</sup> Defendant has particularised the fraud by the plaintiff with sufficient details. That the plaintiff has not adduced any evidence to impugn the 1<sup>st</sup> defendant's title. He has put forward the cases of *Gichinga Kibutha v Caroline Nduku* (2018) eKLR; *Milka Nyakio Kanyari v Esther Nyambura Richu & another* (2020) eKLR
27. Counsel further submitted that DW1 explained how the suit property was acquired. That the same was purchased for value from M/S Mircrotech Accessories Limited and the same effect through a transfer dated 4<sup>th</sup> May 2010. His evidence was corroborated by that of DW2 and DW3. He has put forward the cases of *Munyu Maina v Hiram Gathiba Maina* (2013) eKLR; *Daudi Kiptugen v Commissioner of Lands & 4 others* (2015) eKLR
28. It is further submitted that the plaintiff has on various dates trespassed upon the 1<sup>st</sup> defendant's property, unlawfully by erecting a fence and structures thereon with an attempt to disposes the 1<sup>st</sup> defendant of it's property. He has put forward the cases of *Adrian Gilbert Muteshi v William Samoei Ruto & 4 others* (2013) eKLR ; *Silvester K. Kaitany v Nyayo Tea Zones Development Corporation & another; National Land Commition & another (Interested Parties)*.
29. It is also submitted that as per Section 27 of the *Civil Procedure Act* costs follow the event. That costs of the suit should be to the 1<sup>st</sup> Defendant.



30. He urges that the court do find that the plaintiff's title was fraudulently acquired and its case ought to be dismissed.
31. The 2<sup>nd</sup> Defendants did not file any submission in support of its defence despite being directed to do so by the court.
32. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. The issues for determination are;
- i. Who is the lawful proprietor of the suit property?
  - ii. Is the plaintiff entitled to the reliefs sought?
  - iii. Is the 1<sup>st</sup> Defendant entitled to the prayers on the counterclaim.
  - iv. Who should bear costs of this suit?
33. The Plaintiff's claim is premised on grounds that it is the absolute proprietor of LR 21880. It faults the 1<sup>st</sup> Defendant for interfering with its proprietors' rights by harassing its workers when they were constructing its hotel. It produced an EIA license granted on 13<sup>th</sup> February, 2014 showing that construction of the hotel on the disputed property was allowed. It maintains that its building plans were approved by the Nairobi City Council. Documents filed in support of the Plaintiffs claim include, a 99-lease granted on 9<sup>th</sup> December, 1997 whose commencement date is 3<sup>rd</sup> October, 1997. It also filed an allotment letter dated 3<sup>rd</sup> October, 1997 showing that it was given a 99-year lease. The 1<sup>st</sup> Defendant maintains that title to LR 21880 in which the Plaintiff claims ownership is a forgery and was fraudulently and/or illegally obtained. It faults the Plaintiff of illegally having 0.1830 hectare from LR No 209/12666/3.
34. Before delving and determining whether the Plaintiff legally and procedurally procured its title, it is important to bring forth some key issues based on documents filed before this court. On 1/02/1999, Microtech Accessories Limited was granted a 99-year lease for LR 209/12666 (7.636 ha) delineated for land survey plan No 274629. Microtech Accessories Limited, Commissioner of Lands, Registrar of titles, Attorney General and City Council of Nairobi were sued as the 1<sup>st</sup> to 5<sup>th</sup> Defendants by Greyston Construction Company Limited in Nairobi High Court ELC No 215 of 2010. Greyston Construction Company Limited had claimed the 1<sup>st</sup> Defendant illegally and unlawfully obtained title to its LR No 209/12666. According to a ruling delivered on 16<sup>th</sup> February, 2011 by A. Mboghli Msagha J., it was held that LR No 209/12666 registered as I.R 105980 (7.636 Ha) was registered in the name of Microtech Accessories Limited name. This decision was made based from the Commissioner of lands letter dated 12<sup>th</sup> March, 2009 which confirmed that Microtech Accessories was the owner of LR No 209/12666.
35. Microtech Accessories Limited sold LR No 209/19715 Nairobi (originally LR No 209/12666/3 to Bangal Trading Limited at Kshs 50,000,000/= through a duly executed sale agreement dated 14<sup>th</sup> May, 2010. On 14<sup>th</sup> May, 2010, a duly executed transfer instrument was drawn authorizing transfer of Bangal Trading Limited. Subsequently, Bangal Trading Limited was granted a certificate of title on 28<sup>th</sup> May, 2010 for LR 19715 (3.994 ha), a resultant subdivision of LR 209/12666/3 delineated on land survey plan No 307450. When Bangal Trading Limited sought to change its name to Bangal Trading Company Limited through a deed of rectification dated 27<sup>th</sup> September, 2010 on grounds that it was wrongfully described, its request was approved.
36. The Letter LR 209/12666/3 was used as collateral for a loan facility of Kshs 340,000,000/= from Diamond Trust Bank Kenya Limited. The loan was obtained by Bangal Trading Company



Limited and Monali Investments Limited. Afterwards, a duly executed charge instrument dated 24<sup>th</sup> September, 2010 was drawn. According to the documents placed before this court, Bangal Trading Company Limited seemed to have obtained a subsequent mortgage facility. This is because the Register of Companies issued it with a certificate of registration of mortgage on 17<sup>th</sup> August, 2010 indicating that a charge of Kshs 10,000,000/= was duly registered in accordance with Section 96 of the [Companies Act](#).

37. The 2<sup>nd</sup> Defendant list of documents and statement seems to corroborate the 1<sup>st</sup> Defendant's documents. According to the 2<sup>nd</sup> Defendant, LR 209/12666 was originally allocated to M/s Microtech Accessories. This was done through a 99-year lease grant whose effective date was 1<sup>st</sup> February, 1999 as shown by an allotment letter Ref:5785/22 dated 31<sup>st</sup> January, 1999. It was also issued with a title deed on 23<sup>rd</sup> May, 2007. The 2<sup>nd</sup> Defendant explains that LR No 209/12666 was subdivided into LR No 209.19713, 209/19714 and 209/19715. It is the 2<sup>nd</sup> Defendant case that they have in their custody a duly executed transfer instrument dated 4<sup>th</sup> May, 2010 conveying LR No 209/19715 to Bangal Trading Limited as its registered owner. They also acknowledge that it took a loan from Diamond Trust Kenya Limited whose discharge was registered on 9<sup>th</sup> May, 2017. On 9<sup>th</sup> May, 2017, a charge in favour of First Community Bank was registered. It is on this basis that the 2<sup>nd</sup> Defendant concluded that the Plaintiff's title for LR No 218180 (I.R 92931) does not exist because it never emanated from the ministry of lands and physical planning.
38. DW2, Charles Kipkurui Ngetich, the deputy Chief Land Registrar told the court that the plaintiff's title is a forgery and that it did not exist in their records. He confirmed that the title held by the 1<sup>st</sup> defendant; LR No 209/19715 is genuine.
39. The same was confirmed by DW3 Robert Juma Simiyu an assistant director of land Administration. He told the court the letter of allotment purported to be issued by S.K Wangila was not genuine. He stated that he had worked with Mr. Wangila, who was his boss for a long time and confirmed the signature was not his. He also said the title in the plaintiff's name was not genuine and that the purported signatures of Catherin Kwigu and Wilson Gachanja were forgeries. He also confirmed that the 1<sup>st</sup> defendant's title was the genuine one.
40. The evidence of these two witnesses was not shaken by the plaintiff.

In the case of [Hubert L. Martine & 2 others v Margaret J. Kamar & 5 others](#) (2016) eKLR the court stated thus;

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their titles starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”



Similarly in *Munyu Maina v Gathiba Maina* (2013) eKLR the Court of Appeal thus;

“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 need not be noted on the register.”

41. From the foregoing, I find that the 1<sup>st</sup> defendant has demonstrated how it acquired its title unlike the plaintiff whose title has been disowned by the 2<sup>nd</sup> defendant. I find that the 1<sup>st</sup> defendant is the lawful proprietor of the suit property.
42. Having stated so I find that the plaintiff is not entitled to the reliefs sought in the plaint. The upshot of the matter is that the plaintiff’s suit is dismissed with costs.
43. The 1<sup>st</sup> Defendant on the other hand was able to prove the particulars of fraud against the plaintiff set out in paragraph 9 of the counter claim. It is the 1<sup>st</sup> defendant’s case that the plaintiff trespassed onto the suit property and attempted to erect a perimeter fence. This is not rebutted by the plaintiff. I find that that the 1<sup>st</sup> defendant is entitled to damages for trespass which are awarded at Kshs 300,000/=
44. It is the 1<sup>st</sup> defendant’s case that it is in possession of the suit property. I therefore decline to grant *Mesne* profits.
45. Accordingly Judgment is entered for the 1<sup>st</sup> defendant as against the plaintiff as follows:
  - a. That a declaration is hereby issued that the suit property (LR No 21880) forms part of the property registered as Grant No IR/24269 and known as LR No 209/19715.
  - b. That a permanent injunction is hereby issued restraining the plaintiff, its servants, employees, agents and workers from entering on and erecting or causing to be erected any structures or in any way interfering with the defendants possession use and quiet enjoyment of the suit property.
  - c. General damages for trespass Kshs 300,000/=
  - d. Cost of the suit and interest.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12<sup>TH</sup> DAY OF OCTOBER 2023.**

**L. KOMINGOI**  
**JUDGE.**

