



REPUBLIC OF KENYA



Kakamega County Assembly Service Board v Shah & another (Land Case E005 of 2023) [2025] KEELC 3864 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3864 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
LAND CASE E005 OF 2023
DO OHUNGO, J
MAY 15, 2025**

BETWEEN

KAKAMEGA COUNTY ASSEMBLY SERVICE BOARD PLAINTIFF

AND

RAJU PANACHAND SHAH 1ST DEFENDANT

LAND REGISTRAR, KAKAMEGA COUNTY 2ND DEFENDANT

JUDGMENT

1. The Plaintiff, a body corporate established pursuant to Section 12 of the *County Governments Act*, moved the Court through Plaint dated 10th August 2023 wherein it averred that the parcel of land known as Kakamega/Municipality Block 4/465 (hereinafter “the suit property”) is public land and that the First Defendant obtained title thereto through fraud and collusion. The Plaintiff therefore prayed for judgment against the Defendants for:
 - a. A declaration that parcel of land namely Kakamega Municipality Block 4/465 is the property of Kakamega County Assembly having been inherited by virtue of devolution, from the erstwhile Kakamega County Council.
 - b. A declaration that the acquisition of the parcel of land namely Kakamega Municipality Block 4/465 by the 1st Defendant was fraudulent hence his tittle over the said parcel of a land is unlawful, null and void.
 - c. An Order directing the 2nd Defendant, the County Land Registrar for the County Government of Kakamega to revoke the registration of the details of the 1st Defendant, or any other private person of entity over title number Kakamega Municipality Block 4/465 and instead to reinstate Kakamega County Council as the registered proprietor as Lessee over the said title.



- d. Any other or further appropriate relief(s) for purposes of correcting the irregularity in the acquisition by the 1st Defendant of title number Kakamega Municipality Block 4/465 and any such other and further consequential orders as may be deemed just and expedient in the circumstances herein.
2. The First Defendant neither entered appearance nor filed any defence despite evidence of service of summons upon him having been availed. On his part, the Second Defendant filed Statement of Defence dated 16th February 2024 through which it denied the allegations of fraud and collusion.
3. At the hearing, Donald Keya Manyala, the Clerk to the County Assembly of Kakamega, testified as the sole witness in respect of the Plaintiff's case. He adopted his witness statement dated 4th June 2024 and produced copies of the documents listed as item numbers 1 to 4 in the Plaintiff's List of Documents dated 10th August 2023 as Plaintiff's exhibits.
4. Mr Manyala stated in the witness statement that the suit property belonged to the defunct County Council of Kakamega which granted a 99 year lease in respect thereof to Kakamega County Council with effect from 1st December 1990. That Special Condition number 9 of the lease forbade Kakamega County Council from selling, transferring, subletting, charging or parting with possession of the suit property without written consent of County Council of Kakamega.
5. Mr Manyala further stated that the suit property had been earmarked for construction of county council offices as well as other public amenities and that with the advent of County Governments, the Kakamega County Assembly assumed proprietorship of the suit property pursuant to the [Transition to Devolved Government Act](#), 2012 and the [County Governments Act](#). That the Kakamega County Assembly embarked on preparing the suit property for construction of its modern assembly chambers but then realised that the suit property had been fraudulently transferred to the First Defendant. He added that the National Land Commission (NLC) carried out an investigation into how the First Defendant obtained title and that the investigation concluded that the County Council of Kakamega's title was supported by an approved Part Development Plan (PDP) number W16/88/27, but the First Defendant's title had no PDP. Further, that the First Defendant's title had no consent from the Transitional Authority, no National Land Approval for transfer or change of user and was in contravention of the moratorium on disposal of public assets during the transition period.
6. The Plaintiff's case was then closed. Since the Defendants had not attended Court despite evidence of service of hearing notice upon them being availed, their cases were closed upon an application to that effect being made by counsel for the Plaintiff.
7. Subsequently, directions were given that parties file and exchange written submissions. The Plaintiff filed submissions and list of authorities both dated 6th November 2024. The Defendants did not file any submissions.
8. I have considered the pleadings, evidence, submissions and the authorities. The issues that arise for determination are whether fraud has been established and whether the reliefs sought should be issued.
9. From the material on record, the defunct County Council of Kakamega as the registered proprietor of the suit property granted a lease in respect thereof to Kakamega County Council. The said lease was registered on 7th August 2009, and a Certificate of Lease was issued to Kakamega County Council on 10th August 2009. The lease had a term of 99 years with effect from 1st December 1990.
10. A perusal of the copy of the register in respect of the suit property shows that on 23rd November 2011, the leasehold interest was transferred to the First Defendant and a Certificate of Lease issued to him that very day. He remains the registered proprietor of the leasehold interest.



11. In his capacity as a registered proprietor of a leasehold interest in land, the First Defendant is entitled to rights and privileges clearly spelt out in the law. Foremost, Article 40 of the *Constitution* guarantees protection of his right to property. Additionally, Section 24 of the *Land Registration Act* makes specific provisions as follows:

Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

12. Pursuant to Section 26 of the *Land Registration Act*, the Court is obligated to accept a proprietor's certificate of title as prima facie evidence of proprietorship unless the provisos under Section 26 (1) (a) or (b) are established. Those provisos specify that the grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme. Thus, despite the fortified protection, title to property which is found to have been unlawfully acquired is open to impeachment.

13. The Plaintiff has sought to impeach the First Defendant's title on the ground that it was acquired fraudulently. Fraud, as has been consistently stated by the Courts, is a serious allegation. A party alleging fraud must plead it, particularise it, and strictly prove it to standard higher than the usual one in civil cases of proof on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR and *John Mbogua Getao v Simon Parkoyiet Mokare & 4 others* [2017] eKLR.

14. As the Court of Appeal stated in *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR:

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; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.

15. The particulars of fraud that the Plaintiff pleaded are that the registration in favour of the First Defendant was not authorised, that no letter of allotment was issued, that no consent for the transfer was issued and that the registration was unlawful.

16. A perusal of the lease issued in favour of the Kakamega County Council shows that Special Condition number 9 thereof forbade Kakamega County Council from selling, transferring, subletting, charging or parting with possession of the suit property without written consent of County Council of Kakamega. The Plaintiff has demonstrated that the transfer in favour of the First Defendant did not have any written consent of County Council of Kakamega.



17. On account of the lease in favour of the Kakamega County Council Special Condition number 5 of which supports the Plaintiff's contention that the suit property had been earmarked for construction of county council offices and other public amenities, the suit property was not available for alienation in favour of the First Defendant.
18. In view of the foregoing, I am persuaded that the Plaintiff has established fraud and that the First Defendant was party to the fraud. I find merit in the Plaintiff's case. The Plaintiff is entitled to the reliefs sought but only as against the First Defendant. I will however not award any costs since the Plaintiff did not pray for costs in its plaint.
19. In the end, I make the following orders:
 - a. A declaration is hereby issued that the parcel of land known as Kakamega Municipality Block 4/465 is the property of Kakamega County Assembly having been inherited by virtue of devolution, from the erstwhile Kakamega County Council.
 - b. A declaration is hereby issued that the acquisition of the parcel of land known as Kakamega Municipality Block 4/465 by the First Defendant was fraudulent hence his title over the said parcel is unlawful, null and void.
 - c. An order is hereby issued directing the Second Defendant to revoke the registration of the First Defendant as the proprietor of title number Kakamega Municipality Block 4/465 and to reinstate Kakamega County Council as the registered proprietor as lessee over the said title.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 15TH DAY OF MAY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Kubai for the Plaintiff

No appearance for the Defendants

Court Assistant: B Kerubo

