



**Mwangi & another v Njoroge (Environment and Land Appeal
E018 of 2024) [2025] KEELC 3998 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3998 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

JM KAMAU, J

MAY 15, 2025

BETWEEN

STEPHEN NJENGA MWANGI 1ST APPELLANT

STEPHEN NJENGA NDINGURI 2ND APPELLANT

AND

HEZEKIAH MUHIA NJOROGE RESPONDENT

(Appeal from the judgment of Hon J N Nthuku Principal Magistrate Ol kalou delivered on the 25/9/2024 in Olkalou Principal Magistrate's Court E L C Case No. E004 of 2024)

JUDGMENT

Repossession of land by S.F.T:

1. This is an Appeal from the Judgment of the Honourable J. N. Nthuku, Principal Magistrate Ol kalou in PM ELC No. E004 of 2024. In the said Suit, the Respondent averred that he was the registered proprietor of the Parcel of Land known as L.R. No. Nyandarua/Kaimbaga/266 having had the same transferred to him by the Settlement Funds Board of Trustees. He was issued with a Title Deed but that the Appellants illegally encroached on his land by erecting a temporary structure therein thereby dispossessing him. He has therefore lost use of his property and economic gain. Being the Plaintiff in the lower Court, he prayed for: -
 - a. A declaration that the Plaintiff is the lawful registered proprietor of L.R. No. Nyandarua/Kaimbaga/266.
 - b. A declaration that the 1st and 2nd Defendants' continued threats, erection of structures and harassment of the Plaintiff are illegal and thus unlawful having no legitimate title to the sui property thereof:



- c. An order that the Plaintiff is entitled to vacant possession of L.R. No. Nyandarua/ Kaimbaga/266 and thus any and all structures erected on L.R. No. Nyandarua/Kaimbaga/266 be demolished within 30 days;
 - d. An order of permanent injunction restraining the 1st and 2nd Defendants whether by themselves or their servants, employees and/or agents from entering, remaining, tampering, erecting structures of any description and/or dealing in any way whatsoever with L.R. Nyandarua/ Kaimbaga /266.
 - e. An order that the officer commanding Ol Kalou Station do ensure compliance of any orders issued by the Court in regard to prayer (c) above;
 - f. Costs and interest of and incidental to this Suit, and
 - g. Any other or further relief that the Honourable Court may deem appropriate to award.
2. In their Defence, the Appellants denied such encroachment by claiming that the Suit property was not allocated to the Respondent by the Land Settlement Fund Board of Trustees, nor that he is the bona fide owner of the suit land. They claimed that the 1st Appellant's late father, Mwangi Thairu was the beneficial and legitimate owner of the property by way of transfer from Kuria Kinyanjui (also deceased). As from 4/12/1975 the latter was the initial allottee from Ol kalou Salient Settlement Fund Trustees. It was initially Plot No. 997, Unit No. 329/Kaimbaga in 1967.
 3. He paid the agreed purchase price and discharge fee. The property was then issued with a new number, Nyandarua /kaimbaga/266 by the District Surveyor in 2000. Unfortunately, Mwangi Thairu passed on on 1.11.2003 before the property was registered in his name. They therefore are the owners of the Suit property and they do not know how the Respondent acquired the requisite ownership documents. Consequently, the Appellants asked the Court to dismiss the Respondent's suit with costs and also prayed that the Respondent's Title be cancelled on grounds of fraud and that the suit land be registered in the name of Settlement Fund Trustees.
 4. The Respondent filed the issues for determination as follows:
 1. Whether or not the Respondent holds a legitimate Title to the suit property.
 2. Whether or not the Appellants' claim to the suit property is legitimate.
 3. Where or not the Respondent is entitled to the prayers sought for in the plaint.
 4. Who should bear the costs of the suit?
 5. The Respondent gave his sworn evidence on 30.5.2024. He said he is a Real Estate Agent. He relied on his recorded statement dated 30.1.2024 in which he repeated his averments in the Plaint. His case was that he is the registered owner of L.R. No. Nyandarua/Kaimbaga/266 the same having been transferred to him by the Land Settlement Fund Board of Trustees but on which the Appellants encroached. He produced a copy of Title Deed issued on 31.3.2023 in his name and ID. No. 22XXXX33, a blank Form L.R.A 84, a certificate of official search dated 6.12.2023 showing that the land is registered in his name, a Transfer form from the Land Settlement Fund Board of Trustees dated 22/3/2023 showing that the Respondent appeared before one Anthony David Mureithi of Nyandarua North on 30/3/2023 for certification and attestation, the Discharge of charge dated 22.3.2023 in favour of the Respondent. The Respondent also testified that he had fenced the suit land of which he was the lawful owner. There are also photos of the temporary structures, letter from the Directorate of Criminal Investigations dated 24.11.2023 requesting for documents from the Principal Secretary,



Lands and Physical Planning to investigate the fraud involving this land. Finally, there is also a letter from the Director, Land Adjudication and Settlement Department dated 14/6/2023 indicating the Suit land was initially allocated to the late Fred Nyamongo and Rose K. Momanyi and then re-allocated to the Respondent. He said he was given a letter of offer on 16.12.2022. He paid Kshs. 44,768/= as a condition to be shown the land and beacons. On cross-examination the Respondent said that he was working at Ardhi House. He said that the letter of cancellation was sent to the last known address of the allottee that he did not have a copy of the letter of cancellation to Nyamongo. It was unnecessary because Nyamongo did not take up the offer. He claimed that the Appellants were squatters on the ground. He said that he had been allocated Plot No. 719 but was relocated to Plot No. 266 and sought a refund of the money he had paid for the former.

6. PW2, Elias Kamau Muchiri, a Deputy Director in the directorate of Land Adjudication and Settlement appeared in Court on 30/5/2024 and gave evidence to the effect that Mwangi Thairu was given 60 Days' Notice to meet the conditions of fencing, cultivating the suit property and paying the arrears of the loan, failure to which the allocation would be cancelled. He also referred to the letters dated 8/8/1996, 11/11/1996, 26/1/2000, 31/1/2000, 7/12/2022, 16/12/2022, 28/3/2023 and 13/12/2023 to show how the father to the 1st Appellant lost the suit land to Fred Mogaka Nyairo and Loice Momanyi and later the same was allocated to the Respondent. But when cross-examined by Mr. Gathumbi, the witness said that the Notices of repossession to Mwangi Thairu were sent through his last known address and the directorate of Land Adjudication and Settlement assumed that the letter was delivered to its addressee. He admitted that he did not have the cancellation letter to Mr. Nyamongo. He equally admitted that he didn't have the 1st Notice of 1993 to Mwangi Thairu. He said that he could not find the receipt for plot Number 266 paid by the Respondent nor could he tell its date but that the Respondent paid for it in full.
7. The first Appellant also gave evidence on 25.7.2024 by adopting his statement dated 11.3.2024 as his evidence in chief. He said he was Mwangi Thairu's son who died on 1.11.2003. The latter had bought Plot No. 997 – Unit No. 329/Kaimbaga from Kuria Kinyanjui, the initial allottee. It was pointed out to the said Thairu. It was later issued L.R. NO. Nyandarua/Kaimbaga/266. Since his father's demise he has been cultivating the land together with his siblings. It was during the succession process of his father's Estate that he discovered that the land had already been allocated to another person, the Respondent, who was unknown to them. On cross examination, the 56-year-old Mr. Stephen Njenga Mwangi said his father bought the land in 1972 and that the land is 10 Acres on the ground. He says he was shown Parcel No. 266. He produced the following documents.
 1. A Declaration /Agreement of individual member Payment receipts to Olkalou Salient in respect to Plot No. 997.
 2. Certificate of death in respect to the late Mwangi Thairu
 3. A photograph of the Suit property.
 4. Introduction Letter from Area Chief Wanjohi dated 15.5.2023.
 5. Letter to the Director of Lands dated 21.9.2023.
 6. Letter to the Director Settlement Fund Trustees Scheme dated 15.11.2023.
 7. Letter to Directorate of C I D dated 22.9.2023.
8. DW 2, Stephen Njenga Nding'uri, who is a nephew to the 1st Appellant testified that since 2002, he has lived on the suit land till 2023 when he was arrested for living on the land on grounds of trespass.



9. The 3rd Defence witness, Joseph Maina Kuria, testified that Mwangi Thairu bought the suit land from his father, Kuria Kinyanjui in 1975 before he re-located to Limuru.
10. The last witness on the part of the Appellants, Joseph Wahome Mwangi who claimed to be a lessee of the Suit Property, testified that one Nyamongo claimed the Suit property in 2020. On cross examination he said that he pays Kshs 3,000/= per year and that he does not belong to the family. After this evidence was adduced the Learned trial Magistrate retired to write her judgment as follows:
- “..... The defendants have not proved fraud on the part of the Plaintiff and I find the Plaintiff has proved his case on a balance of probabilities and I enter judgment for the Plaintiff against the defendants jointly and severally as follows;
- a. A declaration be and is hereby issued that the plaintiff is the lawful registered proprietor of parcel of land known as LR Number Nyandarua/Kaimbaga/266.
 - b. A declaration be and is hereby issued that the 1st and 2nd defendants continued threats, erection of structures and harassment of the plaintiffs are illegal and thus unlawful, having no legitimate title to the suit property.
 - c. An order be and is hereby issued that the Plaintiff is entitled to vacant possession of LR number Nyandarua/Kaimbaga/266 and all structures erected on the said parcel of land be demolished within 30 days by the Defendant’s failure to which the Plaintiff will be at liberty to demolish the same at the Defendants expense.
 - d. An order of permanent injunction be and is hereby issued restraining the defendants, whether by themselves or their servants, employees and or agents from entering, remaining , tampering with, erecting structures of any description or dealing in any way whatsoever with LR number Nyandarua/ Kaimbaga/ 266.
 - e. The commanding officer Ol-Kalou Police Station do ensure compliance with these orders.
 - f. Costs and interest of the suit be borne by the defendants.....”.
11. As a consequence, the Appellants filed an Appeal praying for the lower Court’s Judgment to be set aside in its entirety and for the Respondent’s suit in the lower Court to be dismissed with costs on the following grounds:
- a. That the Learned Trial Magistrate erred in Law and in fact in adjudging that the Respondent was the lawful registered proprietor of L.R. No. Nyandarua/ Kaimbaga/266 despite there not being sufficient evidence on how the Respondent got the Title.
 - b. That the Learned Trial Magistrate erred in Law and in fact in failing to find that L.R. No. Nyandarua/Kaimbaga/266 was discharged to the Respondent yet the due procedure was not followed to the latter.
 - c. That the Learned Trial Magistrate erred in Law and in fact in failing to acknowledge that the Appellants had acquired the first allotment of Plot No. 977 which plot later changed to now L.R. No. Nyandarua/Kaimbaga/266 through buying from the late Mwangi Thairu.



- d. That the Learned Trial Magistrate erred in Law and in fact in adjudging that Plot No. 977 and L.R. No. Nyandarua/ Kaimbaga/266 are not the same yet there was sufficient evidence to demonstrate the same.
 - e. That the Learned Trial Magistrate erred in Law and in fact in failing to find that L.R. No. Nyandarua/Kaimbaga/266 was discharged to the Respondent without the relevant consents and publications.
 - f. That the Learned Trial Magistrate erred in Law and in fact in misconstruing the law and the facts in the case thus arriving at an erroneous decision.
12. The court of appeal in Peterson Ndung’u, Stephen Gichanga Gituro. N. Ojwang, Peter Kariuki, Joseph M. Kyavi & James Kimani V Kenya Power & Lighting Company Ltd [2018] Eklr stated as follows regarding the duty of the first appellate court: -
- “This being a first appeal , we are reminded of our primary role as a first appellate court namely to re-evaluate , re-assess and reanalyze the extracts on record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons why.....On a first appeal from the High Court, the Court of Appeal should consider the evidence, evaluate itself and draw its own conclusions though it should always beware in mind it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence....”
13. It is not in dispute that the Respondent was working at the Lands office, Ardhi house Nairobi. He also testified that he had been allocated plot No. 719 and that he was later relocated to plot No. 266 at his request and that he demanded for and was refunded the money he had paid for Plot No. 719. What the Respondent did not say is who occupied Plot No 266 before he moved there and why the relocation was deemed necessary. Plot No. 266 cannot have been vacant since the 1960s when the Kaimbaga settlement scheme was started and people settled there until 2023. The 2 plots are not far from one another and after he was refunded Kshs. 44,768/- for plot No. 719 he did not pay for plot No. 266. The Respondent did not also indicate how and why Plot No. 266 was repossessed from the late Fred Nyamondo and Rose K.Momanyi. In fact there is no letter of repossession to Fred Nyamondo and Rose K.Momanyi.
14. If you compare this with the evidence of the Appellants that parcel No. L.R Nyandarua/ Kaimbaga/266 which was initially Plot No. 997 Unit No. 329 and that the 1st Appellant’s father, Mwangi Thairu bought the same from Kinyua Kinyanjui and that he has been cultivating the same ever since his father died on 1/11/2003 having bought the same in 1972 the Appellants’ evidence seems credible. Indeed, the Deed dated 4/12/1975 shows clearly that the Appellants’ father Mwangi Thuita was a co-owner of Plot No. 997 unit 329 - Kaimbaga with the Settlement Fund Trustees. The connection between L.R No.Nyandarua/ Kaimbaga/266 and Plot No. 997 is brought out in the letter from the Directorate of Criminal Investigations dated 24.11.2023 requesting for documents from the Principal Secretary, Lands and Physical Planning to investigate the fraud involving this land. This letter was produced by the Respondent himself.
15. There are receipts to show that the earlier owner, Kuria Kinyanjui used to pay for it on 30/6/1967, 1/12/1996, 11/1/1968, 26/6/1998, 29/11/1969, 31/1/1967, 1/9/1997 and on 30/11/1968 at the rate of Kshs. 20/= each.



16. The Appellants' 3rd witness, Joseph Maina Kuria testified in court that Mwangi Thairu bought the suit land from Kuria Kinyanjui in 1972 before the latter relocated to Limuru and the Appellant's last witness testified that he had leased the suit land from the Appellants at Kshs. 3,000/- per year. The Respondent exhibited a Title Deed issued to him on 31/3/2023 as a first registration and a transfer dated 22/3/2023 together with the Discharge of charge dated 22/3/2023 equally issued to him. There is nothing to show who owned the land all this time since Kaimbaga settlement scheme came into being in the 1960s. There is a letter dated 14/6/2023 immediately after the Title Deed was issued to the Respondent being a response to a letter from the Director, Land Adjudication and Settlement department of P.O Box 30297 Nairobi where the Respondent worked and from the Land Adjudication and Settlement Officer, Nyandarua confirming that the land had been allocated to Fred M. Nyamondo and Rose K. Momanyi. The letter, which indicates that the correspondence it is responding to from the addressee has been attached to it but which attachment was never produced in court, does not say why the Respondent was allocated this land nor does it say that this was an exchange for Plot No 719. In the unsigned letters dated 8/8/1994 and 11/11/1996 respectively produced by the Respondent himself and extensively referred to by the Deputy Director, Land Adjudication and Settlement, the Director of Land Adjudication and settlement purports to cancel the allotment of Plot No. 266 to Mwangi Thairu. The former talks of breach of conditions and abandonment of the Plot and/or committed other breaches of conditions of the letter of allotment being: -
- failure to fence.
 - failure to reside in the plot.
 - Neglect and/or failure to cultivate the plot.
 - Failure to pay the necessary fee.
17. Quite clearly and in a calculated manner, this letter does not indicate how much was the balance and in the Appellants' evidence it has been shown that the initial owner, Kinyanjui was paying the premiums and he would have as well cleared the loan. The Respondent's witness did not even tell the Court how much was payable for the suit land. The third "failure" does not tally with the evidence by the Appellants that they have been cultivating the suit land since their father died on 1.11.2003 which evidence was corroborated by DW2, Stephen Njenga Nding'uri, the 2nd Appellant who said he has lived on the land since 2002 and one Joseph Wahome Mwangi who said he had leased the land since 1975.
18. There is also no evidence that the letters dated 8/8/1994 and 11/11/1996 were ever served upon the Appellants and this is so because, during cross-examination, PW2 confirmed that the Notices issued to Mwangi Thairu were sent to the last known address and he stated: -
- ".....so we assume it was delivered."
19. The Notices dated 8/8/1994 and 11/11/1996 to Mwangi Thairu clearly indicated that the letters were addressed to care of District Land Adjudication and Settlement Officer and the postal address of the District Land and Adjudication Settlement Officer is what was given. How could the address of the District Land Adjudication and Settlement Officer be the last known address of the deceased for purposes of service of Demand for payment of the loan and the Notice of repossession? Were the correspondences expected to reach the owner of the land? Did the District Land Adjudication Settlement Officer show that he ever received them and if so, that he delivered the letters to the Deceased? And I would agree with Counsel for the Appellants that the primary purpose of serving a Notice is to ensure the individual or party being notified is aware of the pending legal action and has



an opportunity to address the situation before it advances to more unfathomable levels. In addition, the letters of repossession were in any case invalid and of no consequence for want of signatures.

20. In his testimony, Elias Kamaru Muchiri, Deputy Director in the Directorate of Land Adjudication and settlement, certainly a colleague of the Respondent at Ardhi House at the material time, claimed that his office “ assumed “ that the cancellation (repossession) letter reached the addressee having been sent to his last known address. Cancellation of Title being a very draconian and painful thing that disentitles a Kenyan citizen his interest in land contrary to Article 40 of *the Constitution* of Kenya, 2010 cannot be done so casually. Is this Court expected to believe that an unsigned letter, sent through the District Land Adjudication and Settlement Officer ever reached the owner of the suit land? No one from that office was called to testify how the letter was conveyed to the land owner. The Appellants were living in the suit land. Why was it not delivered to them personally? Or better still, sent by registered post. And because of the interest he had in the land, the Respondent was always visiting the suit land. Furthermore, if the Directorate of land adjudication and settlement had earlier on had all the time to visit the suit land to allegedly establish that the suit land was not fenced nor was it cultivated, why didn’t the same directorate send someone to deliver the Demand letter to the owner or the occupants thereon. And it cannot be that the Appellants were not occupying the land for them to be served thereon since one of the Respondent’s prayers in the Complaint was:

“(c)An order that the Plaintiff is entitled to vacant possession of L.R. No. Nyandarua/ Kaimbaga/ 266 and thus any and all structures erected on L.R. No. Nyandarua/Kaimbaga /266 be demolished within 30 days.....”

21. This means that the Appellants were in occupation of the land and service could have been personally effected upon them on the suit land. In *Thananga -Vs- Nyagah & 2 Others* (Environment & Land Case 100 of 2023 [2023] elc 22011 (Klr) (30 November 2023 (Judgement), the Court held as follows:-

“The Court is thus of the opinion that in the absence of any evidence of service of the requisite notices upon the 3rd Defendant the purported repossession and sub-division of Plot 588 was irregular, unlawful and of no legal consequences and did not extinguish the 3rd Defendants’ interest over Plot 588.....”

22. These malpractices were in view of the fact that there was another allottee in waiting, the Respondent. How was he identified for purposes of allotment? Was the suit property advertised for purposes of re-allotment? The Respondent said in cross-examination that he was told to apply for plot No. Nyandarua/Kaimbaga/266. Is this the normal and legal procedure for allotment? You walk into the office of the directorate of adjudication and settlement and say that you want land and without much ado, you are told to apply for “XYZ” Plot. This was against the legitimate expectation of the Appellants. The Respondent’s witness, Elias Kamaru Muchiri did not produce any document(s) to show that the Respondent paid the requisite loan (if any) in respect to plot No. Nyandarua/Kaimbaga/266 at all. Nor did the Respondent. The witness also confirmed that the Respondent was refunded the money he had paid for plot No. 719 before he was relocated to plot No. 266. The reason he was not required to pay for the loan in respect to plot No. Nyandarua/Kaimbaga/266 must be because there was no loan payable for the latter. It must have been cleared by Kuria Kinyanjui before he sold the land to Mwangi Thairu. Interestingly, the witness didn’t say what became of plot No. 719 nor why the Respondent wanted to be relocated. Further, in the letter dated 16/12/2022 from the Director-Directorate of Land Adjudication and Settlement, the author tells the Respondent to pay Kshs. 44,768/= for Plot No 266. He never paid for the suit property. It had already been paid for by Kuria Kinyanjui. Again, there is no receipt for the same and one of the reasons the Appellants had their father’s property repossessed was alleged non-payment of the unspecified loan. And of utmost importance is the fact that although



the Respondent claimed to have been given Plot No. 266 in place of Plot No 719 none of the letters or documents from the office of Director of Land Adjudication and Settlement states that the alleged allotment of Plot No. 266 was in exchange for plot No 719. Or even how he had acquired the latter. In fact, the letter dated 16/12/2022 is preambled,

“..... I am pleased to inform you that your application for a settlement plot has been successful.....”.

23. It is also not clear why the Respondent did not call Nyamongo and Rose K. Momanyi to testify that they were the second allottees of Plot No 266. Unfortunately, the people who were duty-bound to explain to the Appellants how to get their Title Deed got an opportunity to facilitate the illegal acquisition of the land to one of their own. I would not hesitate to say that even craftiness requires some degree of intelligence, sound mind and consistency. But where wicked conspirators and crooks gathered in this matter, the angel of God preceded and confused them.
24. Having given the above analysis of the evidence in the lower court, it is important to note that the Appellants have been battling for the suit land with a person who works in the same place where all the documents concerning the suit land were processed and in custody and one could be excused to imagine that the Respondent had a hand in the machinations by the Director, Land Adjudication and Settlement. The law is clear in as far as possession of a Title Deed is concerned. It is trite law that when ownership of property is disputed, it is not enough for the Title holder to dangle an instrument of Title and expect the Court to affirm it as sacred. One must establish the root of the Title and that the same was acquired legally and validly since whereas Title is conclusive evidence of proprietorship, the same can be challenged on the basis of fraud, illegality, or acquisition of the said Title through a corrupt scheme. In the case of *Munyu Maina Vs Hiram Gathiba Maina, Civil Appeal number 239 of 2009* the Court held that: -

“where a party’s certificate of title is under challenge, it is not enough to wave the instrument of title as proof of ownership but prove the legality of how he acquired the title”.

25. Section 26(1)(a) &(b) of the *Land Registration Act*, 2012 guides me on the need to protect the sanctity of a Title Deed but limits me where there is darkness: -

“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.

26. The proviso to this sacred Section has been brought out clearly in the monkeyshines and tomfooleries in this case. There are so many particulars of fraud, illegal procedures in the transfer of the Title in respect to L.R. No. Nyandarua/Kaimbaga/266 ranging from failure by the Respondent to pay for the suit property, mischief by the Director, Land and Adjudication and settlement in wrongly repossessing a land from a person who had committed no breach of conditions of the allocation of land and failure



to serve him with a Notice before the repossession in order to aid and suit a colleague's selfish and self-centered interests and self-aggrandisement. The Respondent must have hatched a fraudulent scheme and successfully executed it with the connivance of some officials at the Lands office, in particular in Land Adjudication and Settlement directorate. A registered proprietor only enjoys the statutory protection of Title as long as he can show that the Title was acquired procedurally. I do agree with the learned Trial Magistrate that the Appellants had to prove fraud on the part of the Respondent in order to impeach the Title Deed that the latter held. (And I have shown above that such fraud was proved). However, fraud is not the only ground for impeaching or cancelling a Title Deed.

27. Article 40 of *the Constitution* of Kenya, 2010 provides that: -

- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
 - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5)
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

28. There is no wrong without a remedy. Under Article 40 (6) above, any Title that is found to have been unlawfully acquired, like the one given to the Respondent in respect to parcel No. L.R. No. Nyandarua/ Kaimbaga/266, cannot be protected.

29. To give this constitutional provision the meaning of fraud as the only ground to impeach a Title is to narrow it beyond expectation. Any unlawful acquisition of land automatically removes that Title from the protection given to a Title Deed under the other provisions of Article 40 of *the Constitution*



of Kenya, 2010. Consequently, sub-Article (6) is applicable to the Respondent's Title. None of the sub-Articles above was applied when repossessing the land from the Appellants.

30. Even under Section 26(1)(a) &(b) of the *Land Registration Act*, 2012, title of a 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.
31. Therefore, besides fraud, acquisition of land through illegality, misrepresentation, unprocedurally or through a corrupt scheme would lead to its cancellation.
32. Before I pen off I must say that this is a typical case of betrayal in the Lands office and more specifically, the directorate of land adjudication and settlement in order to enrich their own and in most cases, the officers' relatives, friends, business partners, cronies and even other people to hold the property in trust for them. The Deputy Director in the Directorate of Land Adjudication and settlement, Elias Kamaru Muchiri, had the audacity while testifying in Court to say that the Appellants defaulted in the payment of the unquantified loan yet the Demand letter was sent through the District Land Adjudication and settlement officer and he did not bother to find out whether that officer ever received the letter and if so, whether the same or its contents were indeed conveyed to the property owner and when. Is a land owner expected to camp at the District Land Adjudication and settlement officer's office waiting to receive mails from the Director of Land Adjudication and settlement officer? Having failed to discharge the duties of the Directorate of Land Adjudication and settlement office properly, he now tells the Court to justify the misnomers, malpractices and unprofessional conduct of his office that are characterized by greed and ravenousness. It is not for individuals to go to the Lands office asking whether there is land for allocation. If there is any vacant land, it must be advertised for allocation and I say loud and clear that the advertisement must be yonder the office of the Directorate of Land Adjudication and settlement and Ardhi house in general for all Kenyans and especially the landless to have an opportunity to apply for it. Again, there must be a proper way of allocating land. As a public servant working in the Lands office one is supposed to work like a banker who is surrounded with money all over but looks at that money only as paper. At the end of the working day, he picks his bag, goes to queue at the boarding stage, boards a "matatu" only to take a simple meal with his family in the evening courtesy of his monthly salary, having left all the money in his place of work. When he needs a loan from the bank, he applies for it like any other person. A land officer should also look at all the documents in his office as people's documents of which he is a steward. In case any land is available for allotment, like a bank officer, he should apply for it and in order to be allotted, he should qualify for it like any other Kenyan.
33. For one to lose land through repossession,
1. There must be a Notice preceding the repossession.
 2. The Notice must be quite clear and unequivocal as to the reason(s) for the repossession.
 3. The Demand must be communicated in the most effective way in order to ensure that the land owner has received the Demand and to avoid doubts, personal service is to be preferred.
 4. The Demand Notice should be detailed enough to indicate the parcel Number and if the reason for repossession is non-payment of a loan, premiums or any other payments, the specific amount of the loan must be correctly indicated.
 5. The property owner must be given reasonable time to pay up and redeem the property.



6. The defaulting party must also be invited to make proposals on how to clear the outgoings.
 7. The Decision of the Director of adjudication and settlement on repossession must be in writing and communicated to the land-owner in writing as well.
 8. Under Article 35 (i) of *the Constitution* of Kenya, 2010 the land owner is entitled to the written Decision that repossesses his land and if the same is by a committee or group of people, the minutes of the meeting.
34. Consequently, my hands are tied and it is indeed my duty to do only one singular thing. Which is? To get recourse to Section 80 of the Land Registration Act, 2012 as follows: -
1. Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- Subsection (2) of the Act,
- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default”
35. This proviso cannot also protect the Respondent. One, he is not in possession. In fact, his prayer was for vacant possession against the Appellants. He never paid for the suit property. It had already been paid for by the same Appellants he wanted to dispossess. The Respondent was aware that the Appellants were never served with any Notice of repossession.
36. Finally, the evil and corrupt practice demonstrated above by the Respondent is not an isolated case in the directorate of Land Adjudication and Settlement and must be nipped in the bud otherwise innocent Kenyans who have no access to the documents at the directorate will always be dispossessed by some hawk-eyed public servants working in the said department who are able to tell who has not gone to pick his Title Deed.
37. The upshot of this is that this Appeal succeeds and for the avoidance of doubt, the suit property i.e. L.R Nyandarua/Kaimbaga/266 belongs to the Estate of Mwangi Thairu, the 1st Appellant’s late father and the Title Deed registered in the name of the Respondent should be cancelled and the same rectified and registered in the name of the Administrator(s) of the Estate of the late Mwangi Thairu forthwith to be held in trust for its beneficiaries.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 15TH DAY OF MAY, 2025.

MUGO KAMAU

JUDGE

In the presence of:

C/A Samson.

Mr. Gakenia.....for the Appellants

Mr. Mugane.....for the Respondent

