



**Nderitu v Kaaria & 3 others (Environment and Land Appeal
E013 of 2024) [2025] KEELC 4821 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4821 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E013 OF 2024**

EK MAKORI, J

MAY 15, 2025

BETWEEN

MARY WAMBUI NDERITU APPELLANT

AND

STEPHEN N. KOOME KAARIA 1ST RESPONDENT

LAND REGISTRAR LAMU COUNTY 2ND RESPONDENT

**DIRECTOR OF LAND SETTLEMENT AND ADJUDICATION 3RD
RESPONDENT**

THE ATTORNEY GENERAL 4TH RESPONDENT

*(Arising from the judgment of Hon. P.E. Nabwana (SRM)
delivered on April 3, 2024, in Mpeketoni ELC No. E007 of 2021)*

JUDGMENT

1. The Appellant initiated this appeal through the memorandum of appeal dated 3rd May 2024, which outlined the grounds for the appeal.
2. Nderitu Paul Ruku passed away on October 28, 1997, leaving his wife, Mary Wambui Nderitu (the Appellant), a widow. The Appellant was not aware that her husband possessed a parcel of land, specifically land parcel number Lamu/Lake Kenyatta I/2846, situated in the Uziwa area of Mpeketoni, with an approximate size of 3.2 hectares. Her awareness of this fact was brought to her attention by a friend of her husband's. On November 28, 1997, she received an official letter of offer about the land.
3. The Appellant procured letters of administration on September 22, 1998, and the grant was confirmed on March 15, 1999. In 2005, a title deed was issued in her late husband's name, and she commenced the payment of the Settlement Fund Trust fees. Subsequently, she presented her grant to the Land



Settlement Scheme Offices to facilitate the transfer of the title into her name. Ultimately, on December 14, 2006, a title deed was issued in her name.

4. On February 8, 2021, the Appellant received reports indicating that the 1st Respondent had returned to the land and was engaged in activities such as clearing bushes, cutting down trees, and selling them. Alarmed by this situation, the Appellant reported the matter to the local chief. On February 9, 2021, the 1st Respondent was summoned and asked to provide evidence of his ownership; however, he could only present an allotment letter. The area chief remained resolute in his requirement for a title deed, which the Appellant could provide. Consequently, the 1st Respondent was instructed to vacate the land, and the Appellant was advised to report the incident to the police.
5. The matter was referred to the Directorate of Criminal Investigations, where Mr. Nyaramba, the then-DCIO, was provided with copies of the ownership documents. Thereafter, he visited the site where the 1st Respondent claimed to have occupied the land for an extended period. The 1st Respondent identified a borehole and trees he had planted; conversely, the Appellant asserted that the land belonged to her husband and presented her title deed as evidence. Subsequently, the DCIO informed her that the office of Land Adjudication had issued a report indicating that the land was the property of the 1st Respondent and that she was to surrender her title.
6. The Appellant made it unequivocally clear that she did not know the 1st Respondent and that he did not reside on the land in question. As a result, she promptly sought court orders to be officially declared the legally registered owner of the land known as Lamu/Lake Kenyatta I/2846. She additionally requested a permanent injunction to prevent the 1st Respondent from accessing or interfering with the property subject to the lawsuit. Unfortunately, she lost the suit. The circumstances mentioned above constitute the foundation of the appeal currently before this court
7. Based on the record of Appeal and the materials presented before me, the issues that I frame for this court's determination are as follows: whether the appellant acquired the suit property irregularly, whether title No. 2846 corresponds to the new number for parcel 3615, whether the learned magistrate relied on extraneous factors in reaching a decision, and determining who should bear the costs of the appeal.
8. In their submissions, I thank the parties for presenting comprehensive arguments on the appeal issues. They cited relevant laws and judicial precedents, which the court appreciates, especially concerning the validity of the primary ownership documents—the allotment letters used in the Lower Court to prove ownership. This appeal concerns the root of the title owned by the Appellant, which was under scrutiny.
9. In this appeal, I recognize the court's obligation to assess and review the evidence to ascertain whether it and applicable law justified the magistrate's conclusions. In the key case of *Okeno v Republic* [1972] EA 32 at 36, the East African Court of Appeal outlined the court's duties during an initial appeal as follows:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v. R.*, [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the



trial court has had the advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*, [1958] E. A. 424.”

10. At the heart of the proceedings before the magistrate was the regularity and legality of the allotment letters held by the Appellant’s husband and the 1st Respondent. The allotment letter provided to her husband subsequently enabled the acquisition of the title she had, which was under scrutiny at the trial.
11. After a thorough review of the parties’ ownership documents, the trial court concluded in paragraph 15 of the judgment that:

“ 15. This court has carefully and exhaustively examined the documents on record as well as the testimonies of the witnesses and came up with the following findings:-

1. Of the two allotment letters as produced by the Plaintiff and the 1st Defendant, it is the letter of allotment for the 1st Defendant that is genuine;
2. Finding (1) above is premised, first on the issue that even though they were issued on the same date, P. Exh 3 as produced by the Plaintiff bore the Plot No. as 2846, which was a number not available as at 28th November, 1997;
3. I find so in (2) above since the charge issued on 8th June, 1999 (P.Exh. 6), two years after the allottee had died, made reference to Plot No. 2762 (2846) NEW. This clearly indicates that Plot No. 2846 came much later after letters of allotment had already been issued. There is therefore no way that the deceased would have been issued with an allotment letter for a plot number that did not exist at the time;
4. Exh. ...3, which is the letter of offer produced as a copy in favour of the Plaintiff, indicates that the postal address for the Department of Land Adjudication and Settlement is P.O. Box 30449, Nairobi. I have taken the liberty to search through the Google Platform of this Postal Address, and it does not exist for the said department. No document comes forth as such. However, the 1st Defendant’s D. Exh 1 which is a letter of offer indicates that Department of Land Adjudication & Settlement as having its postal address as P.O Box 30297, Nairobi. A cursory search through google brought about this document
<http://www.parliament.go.ke/sites/default/files/2023-04/Report%20%20Auditor%20-General%20on%20Land%20Settlement%20for%20the%20year%20ended%202023%20June%202022%20compressed.pdf> which shows the address to belong to the land settlement fund office to have its address at Ardhi House, 8th Floor P.O. Box 30297-00100, Nairobi;
5. If the above reasoning is not enough to persuade anyone, then the documents produced by the Attorney General for the 2nd, 3rd, and 4th Defendant in the main suit shed more light on this



issue. D. Exh. 1 thereof is a letter from the Director of Land Adjudication and Settlement stating that is not clear how the titles to Plot No. 2762 and 2846 were obtained. He subsequently directed the District Land Adjudication Officer to provide a ground and record status of the said parcels of land.

6. D. Exh. 2 of the AG was a copy of the Map Sheet No. for Plot No. 2762 which shows that title was issued in line with the said number to Paul Nderitu Ruku. However, Map Sheet 17 showed Plot No. 3615 gave rise to new Plot No. 2846.
 7. D. Exh. 7 of the AG which is a copy of the list of allottees, shows Plot No. 2762 as belonging to Nderitu Ruku Paul of Identity Card No. 0161112/63, whilst Plot No. 3615 belongs to Stephen Kome Kaaria of Identity Card No. 8520283/70;
 8. I am aware that the Land Registrar, Lamu County, who is new to the area, testified as witness number 2 for the 2nd to 4th Defendant's case and stated that, according to his file, the title to Plot No. 2846 belongs to the Plaintiff, Mary Wambui Nderitu. However, in view of my findings above, the process leading to her obtaining the said title was marred with mistakes, and that irregularity taints the title she so obtained. Accordingly, that title must be cancelled.
 9. Lastly, though Learned Counsel Mr. Omwancha propounded an interesting argument that the deceased was not a beneficiary of two (2) parcels of land within the same area, the evidence on record suggests that indeed he benefited from two parcels of land within the same scheme. Whilst Plot Nos. 2762 and 2846 are not close to each other; they are still within the same Scheme of Lamu/Lake Kenyatta 1. The policy direction, as testified by Mr. A.H. Mohamed, is that one single person cannot benefit from two parcels of land within the same scheme.
 10. This policy was not just mere talk. It is grounded in the principle of fairness which is to enable more people benefit from land acquisition within a scheme as opposed to one person obtaining several parcels of land to himself. The Land Registrar, in his testimony, stated that he was not aware of the said policy. The court deduces that this could be due to the fact that he was recently posted to Lamu, but most importantly, that he was not involved in the adjudication of the said parcels of land."
12. In scrutinizing the origins of the title held by the Appellant, the trial court appropriately referred to the authoritative decisions in this field, including the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, wherein the court articulated the following:

"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.”

13. The trial court cited Warsame J. (as he then was) in *Rukaya Ali Mohamed v David Gikonyo Nambacha & Another*, Kisumu HCCA No. 9 of 2004, regarding rights accruing from an allotment letter:

“... once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was outrightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

14. In circumstances where two titles (sic – two letters of offer) concerning the same land were presented, the magistrate referred to the case of *Hubert L. Martin & 2 Others v. Margaret J. Kamar & 5 Others* [2016] KEELC 1092 (KLR):

“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 title 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. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld.”

15. On the powers of the court to cancel a title irregularly and illegally acquired, the trial court cited the case of *Kassim Ahmed Omar & another v Anwar Ahmed Abeid & 5 others* [2015] KEHC 3016 (KLR):

“A certificate of title is an end product of a process. If the process that was followed in issuing the title did not comply with the law, then such a title can be cancelled by the court.”

16. Based on the cited judicial precedents, the trial magistrate emphasized the principles of investigating a title acquired irregularly and unlawfully. I want to reiterate that in this matter, we do not have two titles but two contested allotment letters, which are alleged to be the primary documents showing the allocation of the disputed parcel of land to the disputant parties. The title under challenge is in the name of the Appellant, who obtained it through transmission. However, did the trial court reach the correct decision based on the evidence presented?

17. From the review of the evidence offered before the trial court, it is undisputed that the Appellants' husband, the late Nderitu Paul Ruku, was issued a letter of offer for land parcel Lamu/Lake Kenyatta 1/2846 on November 28, 1997. Furthermore, the Appellant paid a deposit for the suit land on September 3, 1998, as shown in the Settlement Fund Trustees (SFT) documentation contained



in the record of appeal. Additionally, on June 8, 1999, the Appellant made further payments for conveyancing charges, and finally, on December 2, 2005, she made a payment towards the issuance of the title deed. The records indicate that the first registered owner of the suit land, as evidenced in the green card, is the Settlement Fund Trustees, effective July 23, 1998. This information is found on the registry map sheet No. 17, which indicates the land size as approximately 3.2 acres. Therefore, this information elucidates the sequence of events from when the title for the suit land was generated to when it was transferred to the Appellant.

18. The Appellant subsequently encumbered the suit land in favor of the Kenya Women Finance Trust and secured a loan. Despite an advertised gazette notice, this transaction progressed through the succession process without any objections. The Adjudication Record produced by the Land Registrar indicated that it was issued to the Appellant's husband. This information comes from the Adjudication Record, where the demarcation map identified as No. 2846 is consistently referenced. No official record shows the alleged change in number to 3615 as mentioned by the 1st Respondent. The 1st Respondent discharged the suit land while litigation was ongoing, even though a caution was still active. In light of the foregoing, the Appellant sufficiently presented evidence demonstrating that title 2846 was appropriately acquired, and the 1st Respondent did not contest this in his evidence.
19. Section 26 of the *Land Registration Act* stipulates grounds for title cancellation. The certificate issued by the Registrar to a land purchaser upon transfer is prima facie evidence of the named proprietor's absolute ownership, subject to encumbrances, easements, restrictions, and conditions. The title may only be challenged:
 - (a) for fraud or misrepresentation proven against the person, or
 - (b) If the certificate was acquired illegally, un-procedurally, or through corruption.
20. It has been observed that the law is significantly protective of title and only permits two specific circumstances under which it may be challenged. The first circumstance arises when the title is procured through fraud or misrepresentation, wherein the individual must be established as a related party. The second circumstance emerges when the certificate of title has been obtained unlawfully, un-procedurally, or via a corrupt scheme. Concerning the first condition, it must be established that the Appellant's title was procured through fraud or misrepresentation. Nonetheless, there is no evidence from the record substantiating the claim that it was acquired in such a manner, nor is there any evidence that connects her to fraud or misrepresentation. Concerning the second condition, the Appellant provided a comprehensive account of her acquisition of the title deed, clearly indicating no evidence of illegality, deviation from proper procedure, or involvement in corrupt practices.
21. The 1st Respondent claims that parcel No.2846 represents the new designation for 3615 and 2762. This assertion is premised on the observation that 2846 cannot logically replace 2762, as they are located on different map sheets. Specifically, 2762 is situated on Map Sheet 35, while 2846 is found on Map Sheet 17, with approximately 18 intervening map sheets separating them. Furthermore, it remains pertinent to question why the size or area of 2762 does not correspond to that of 2846, given that 2762 is measured at 6.1 hectares, in contrast to the suit land designated as 2846, which measures only 3.2 hectares.
22. The 1st Respondent continues to assert that parcel 3615 is the previous designation of 2846, yet fails to provide any substantial evidence to support such claimed amendments, whether in a resolution or minutes. Any intentions or communications regarding these modifications should have been conveyed to the Appellant. Without such information, it is legally indefensible to accept this evidence. Furthermore, it is highly unusual for a single parcel of land to be assigned multiple identifiers, as this



contradicts the principles of consistency and reliability associated with issued titles within a specific section. Consequently, it is difficult to advance this argument effectively.

23. The 1st Respondent's claim that parcel 2846 is the new designation for 3615 is misleading, as parcel 2846 is the original designation. The offer for parcel 2846 was issued on 28 November 1997, establishing it as the original number. It is claimed that the 1st Respondent's offer letter was issued on the same date, raising the question: how can they assert that the Appellant's designation is a new number when both were allegedly issued simultaneously? The Appellant met the conditions and received the title in 2006, while the 1st Respondent claims to have fulfilled the terms on 12 March 2021, confirming receipt of a letter of offer for parcel 3615 and consistently making payments since 2021. If 2846 is truly the new designation for 3615, it was confounding that the 1st Respondent continued payments under 3615. Additionally, the 1st Respondent submitted a Land Settlement Fund Repayment document, which does not match the size and description of the suit land. Furthermore, he did not explain why he did not receive his title in 2006 when titles were issued to all individuals in the Lake/Kenyatta Scheme. The Land Registrar testified that parcel No. 3615 is not in the Director of Land Settlement's adjudication records. The 1st Respondent provided a photocopy of the offer letter instead of the original, which was allegedly issued by A.K. Cherwon but was unsigned.
24. The Appellant reiterates that the 1st Respondent could not process payments associated with parcel 2846, as this parcel had already been allocated. Furthermore, the records from the Lake Kenyatta Settlement Scheme indicate that upon the closure of the register at the scheme, the highest number recorded did not exceed 3600. Consequently, the designation of 3615 by the 1st Respondent does not exist within the adjudication records at the principal adjudication office in Nairobi.
25. On page 5 of the judgment, the trial magistrate mentioned using Google to verify the address in the offer letter. This point was not discussed during the trial, introducing new evidence that the Appellant could not examine. The Google search results pointed to the official website of the Parliament of Kenya, but it seems the trial magistrate did not fully acknowledge the Land Registrar's testimony. He labelled him a newcomer, overlooking the value of his expertise, which should not have diminished his credibility. The fact that the Land Registrar was new should not have detracted from his evidence, and it is worth noting that the defense did not raise this during the examination. Moreover, the trial magistrate trusted Mr. A.H. Mohamed, a Land Settlement Officer, who emphasized that one person could not benefit from two land parcels in line with Policy Directions. However, the specific policy directions were not brought forward.
26. The 1st Respondent did not raise any claims against the Appellant in his counterclaim. Although the orders issued by the court directly and significantly affected the Appellant, she was not found to have colluded or acted in concert with the Defendants to prompt the crystallization of section 26 of the *Land Registration Act*. In my opinion, the trial court exceeded its authority and attempted to decide the issues based on facts that were not presented. It disregarded the Appellant's evidence and, given the circumstances, arrived at a fundamentally incorrect decision.
27. That said, what are the appropriate orders that warrant issuance? Having found that the trial court relied on extrinsic evidence (Google evidence) to arrive at the determination that parcel No. 2846, the new designation for parcel No. 3615, goes to the core of the appeal and requires a fresh re-examination, I believe that the appeal will partially succeed to the extent that the verdict rendered by the trial court is set aside. The matter will be remitted for retrial at the Magistrates Court, Mpeketoni, by a magistrate other than Hon. P.E. Nabwana (SRM).
28. As to costs, each party will bear its costs concerning this appeal.



DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 15TH DAY OF MAY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kiptoo for the Appellant

Mr. Oduol for the 1st Respondent

Ms. Lutta for 2nd – 4th Respondents

Happy: Court Assistant

