



Munyinyi (Suing as the Administrator of the Estate of Susan Munyinyi (Deceased)) v Chief Land Registrar Kajiado & 13 others; Muchanga (Interested Party) (Environment & Land Petition 11 of 2019) [2025] KEELC 4781 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4781 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 11 OF 2019**

LC KOMINGOI, J

JUNE 26, 2025

**IN THE MATTER OF: ARTICLES 22(1), 23(1)
AND 23(3) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION AND VIOLATION OF RIGHTS
AND FUNDAMENTAL FREEDOMS GUARANTEED UNDER ARTICLES 10, 19, 20,
21(1), 24, 27(1) AND (2), 40, 47, 50(1), 60(1) (B), 64 AND 232(E) OF THE CONSTITUTION**

AND

**IN THE MATTER OF: ALLEGED VIOLATION OF THE
FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

AND

**IN THE MATTER OF: UNPROCEDURAL, FRAUDULENT, RE-
TRANSFER, REGISTRATION AND SUBDIVISION OF PROPERTY
REGISTERED AS TITLE NUMBER KAJIADO/KAPUTIEI NORTH/3113**

BETWEEN

**MORRIS KUNGU MUNYINYI PETITIONER
SUIING AS THE ADMINISTRATOR OF THE ESTATE OF SUSAN MUNYINYI
(DECEASED)**

AND

**CHIEF LAND REGISTRAR KAJIADO 1ST RESPONDENT
HON ATTORNEY GENERAL 2ND RESPONDENT
MEGA RACK TRADING LIMITED 3RD RESPONDENT
JOHN CALBIN OGONY 4TH RESPONDENT**



PENINAH N AKECH OGONY	5 TH RESPONDENT
CHARLES SITONIK RUTTO	6 TH RESPONDENT
JUDY CHEPKEMBOI KOECH	7 TH RESPONDENT
HILDAH WANGARI MWATHI	8 TH RESPONDENT
JAMES SAMUEL MWANGI NYAGA	9 TH RESPONDENT
CATHERINE MUTHONI MWANGI	10 TH RESPONDENT
JOSEPH GICHUNGWA KIHANYA	11 TH RESPONDENT
LEO PALM PHARMACEUTICALS LIMITED	12 TH RESPONDENT
JAVAN MTOTO MZUGHA	13 TH RESPONDENT
DAVID NDUNG’U MUTURI	14 TH RESPONDENT

AND

BROWN P. MUCHANGA	INTERESTED PARTY
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JUDGMENT

1. The Petition before Court dated October 18, 2019 is brought under Rules 3, 4(1), 8 and 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013. It is supported by the Affidavit of Morris Kungu Munyinyi who is the son and Administrator of the Estate of the late Susan Munyinyi.
2. The Petitioner avers that the late Susan Munyinyi acquired suit property Kajiado/Kaputiei North/3113 which measures approximately 0.44 hectares on 23rd August 1993. She held title to the suit property at all times and never transferred or sold it to anyone until her demise on 28th July 2005. Upon registration of the suit property in her favour, she became the indefeasible owner as per Section 26 of the *Land Registration Act* and her rights safeguarded by Article 40 and Article 60 (1) of *the Constitution*.
3. After her demise in 2005, the Petitioner was confirmed as the legal Representatives through a Certificate of Confirmation of Grant dated 5th June 2018. On 3rd May 2018, he carried out a search to ascertain the status of the suit property only to discover that title to the said land had been closed by subdivision on 6th March 2007. Further investigations revealed that the 1st Respondent re-issued the Interested Party with title to the suit property on 23rd October 2003 and the property was subdivided to parcels Kajiado/Kaputiei North/24738, 24739, 24740 and 24741. The Petitioner claims that the late Susan Munyinyi never sold, transferred or executed any documents in favour of the Interested Party to warrant the re-issuance of title to him and that she was still in possession of the original title deed.
4. Upon this discovery, the Petitioner lodged a complaint with the 1st Respondent through a letter dated 12th September 2018 but the same went unanswered and the 1st Respondent continues to infringe and violate the Petitioner’s rights by depriving the Petitioner use and enjoyment of the suit property. And any action by the 1st Respondent was undertaken fraudulently and in violation of the Petitioner’s rights including right to property; right to fair administrative action; right to equality, fair treatment and protection of his fundamental rights; and right to unlawful deprivation of property without



compensation, contrary to Article 10, 19, 20, 21(1), 24 27, 47 and 50 of *the Constitution* as well as Section 4 of the *Fair Administrative Action Act*.

5. The Petitioner therefore sought that:

- a. A declaration be and is hereby issued that the 1st Respondent's decision and or action to re-issue a title deed to the Interested Party regarding the Petitioner's title to all that property known as Kajiado/Kaputei-North/3113 situated in Kajiado County within the Republic of Kenya violated the provisions of Articles 10, 19, 20, 21 (1), 24, 27 (1) & (2), 40, 47, 50 (1), 60(1) (b), 64, 67 & 232(e) of *the Constitution*, Section 4 of the *Fair Administrative Action Act*, No. 4 of 2015 and Section 14 (3), (4) and (7) of the *National Land Commission Act*, 2012.
- b. A declaration that the purported re-issue of Title Deed to property known as Kajiado/Kaputei-North/3113 to the Interested Party by the 1st Respondent was fraudulent, unprocedural, illegal, unlawful and unconstitutional.
- c. A declaration that any purported resultant sub-division and transfer of property known as Kajiado/Kaputei-North/3113 into Sub-Plots namely Kajiado/ Kaputei-North 24738,24739,24740 and 24741 in favour of any third party is null and void for want of compliance with the law.
- d. An order of permanent injunction be and is hereby issued restraining the Respondents, their agents, officers, assigns, the Interested Party or anyone howsoever claiming through them or under them, from in any way dealing and or interfering with all that property known as Kajiado/Kaputei-North/3113 and further sub-divisions of the Property into sub-plots known as Kajiado/Kaputei-North 24738,24739, 24739, 24740 and 24741 situated in Kajiado County within the Republic of Kenya.
- e. An order of permanent injunction be and is hereby issued restraining the Respondents jointly and severally whether by themselves, their employees, officer's, agents and or servants, the interested party or anyone whatsoever claiming under them, from in any way interfering with the Petitioners' quiet use, possession, ownership and interest over all those properties known as Kajiado/Kaputei-North/3113 situated in Kajiado County within the Republic of Kenya.
- f. An order of Mandamus be and is hereby issued compelling the 1st Respondent to order for cancellation of Title to property known as Kajiado/Kaputei-North/3113 re-issued to the Interested Party and sub-subsequent sub-plots namely Kajiado/ Kaputei-North 24738, 24739, 24740 and 24741 and or in the alternative an order directing that transfer be effected in respect of property known as Kajiado/Kaputei-North/3113 in favour of the Susan Wanjku Munyinyi (Deceased).
- g. A declaration be and is hereby issued that the Deceased is the sole and legal owner of the Suit Property known as Kajiado/Kaputei-North/3113 situate in Kajiado County within the Republic of Kenya.
- h. That the Honourable Court do award the Petitioner General damages against the 1st Respondent for losses and inconveniences suffered by the Petitioner following the unlawful arbitrary administrative decision of re-issuing the Title to the Interested Party over property known as Kajiado/Kaputei-North/3113 and further causing the Suit Property to be sub-divided into sub-plots namely Kajiado/Kaputei-North 24738, 24739, 24740 and 24741.
- i. The Honourable Court do award the Petitioner exemplary damages against the 1st Respondent for breach of the Petitioners' fundamental rights.



- j. The costs consequent upon this Petition be borne by the Respondents.
 - k. The Honourable Court do award interest on (g), (h) and (i) at court rate from the date of filing of Petition until settlement thereof in full; and,
 - l. The Honourable Court do make any such other or further Orders as it may deem just and expedient in the circumstances, to give effect to the orders above.
6. The Interested Party Brown Paul Muchanga in his Replying Affidavit dated 26th October 2020 while contesting this Petition stated that he was of old age and had misplaced some of his documents including documents pertaining to the suit property. He however acknowledged that the suit property belonged to him having purchased it from local residents years back, but denied knowledge of the Petitioner and the allegation that the property belonged to the late Susan Wanjiku Munyinyi, contesting that there was no evidence of transfer of the suit property between him and the late Susan Munyinyi. He also stated that when he was served with this Petition, he sent his son George Muchanga to the Land Registry to verify the green card provided by the Petitioner, but the Land Registrar refused to verify the said document on grounds that he was unaware of this Petition and had not been served with the pleadings.
 7. The Interested Party also raised questions on the Green Card's entries pointing out that the first entry was dated 3rd December 1993 while the second entry was dated 23rd August 1993 which was chronologically improper. He also pointed out the handwritten entry on Part B showed that it was a subdivision of land known as, 3020 and not the suit property 3113. He thus stated that only the Land Registrar could validate or invalidate the Petitioner's claim, documents produced as well as the anomalies on the Green Card. He also asked that allegation of fraud against him be proved and stated that the reliefs sought were unmerited and the Petition should be dismissed with costs.
 8. The 1st Respondent on 15th May 2023 filed an application seeking joinder of the 3rd to the 14th Respondents on grounds that they were the registered proprietors of various sub-divisions of the land and the same was allowed.
 9. In the Supporting Affidavit sworn by Rosemary Wamuyu Mwangi she confirmed that parcel Kajiado/Kaputiei North/3113 was closed on 6th March 2007 upon subdivision to parcels Kajiado/Kaputiei North/24738-24741 and each registered in the Interested Party's name and titles issued on 15th March 2007. On 1st April 2008, the parcels were transferred to the 3rd Respondent and on 18th April 2008 they were closed on combination with the resultant parcel being Kajiado/Kaputiei North/26195 and title issued on 22nd April 2008. Parcel 26195 was then closed on subdivision to give rise to Kajiado/Kaputiei North/26404-26412 which at the time of this Affidavit were registered in the names of the 4th to the 14th Respondents.
 10. The 3rd to the 14th Respondents neither entered appearance nor filed a response.

Evidence of the Petitioner

11. PW1 Morris Kungu Munyinyi the Petitioner and Administrator of the estate of the late Susan Munyinyi adopted his witness statement as evidence in chief and produced his bundle of documents which was marked as P. Exhibit 1 to 6.
12. On cross-examination he stated that his mother was issued a certificate of title dated 23rd August 1993 but he did not have documents to show how his mother acquired the suit property. He confirmed that the first entry on the green card was dated 3rd December 1993 while the second entry was dated 23rd August 1993 and that the green card showed that it was opened on the 3rd December 1993. He testified



that his mother passed away in 2005 but it was until 2018 when he went to the suit property and carried out a search. This is because he applied for Grant of letters of administration in the year 2015.

13. On re-examination he stated that he was out of the country and that is why he had not visited the suit property. He also indicated that the alleged transfer between his late mother and the interested party in 2003 was fraudulent because his mother never undertook such a transaction.

Evidence of the Respondents

14. DW1 Rosemary Wamuyu Mwangi the Land Registrar Kajiado adopted Paul Tonui's witness statement dated 15th December 2021 and produced the bundle of documents as D. Exhibits 1 to 14. She testified that suit property 3113 was closed on subdivision on 6th March 2007 giving rise to parcels 244738 to 24741. These parcels were later closed on combination giving rise to parcel 26195 and it was subsequently closed on subdivision on 29th May 2008 giving rise to parcels 26404 to 26412 and as such parcel 3113 was neither in existence nor was the Interested Party a proprietor of any of the resultant parcels.
15. On cross examination she confirmed that the first entry on the green card produced was dated 3rd December 1993 while the second entry was in favour of Susan Wamunyinyi which showed that she was issued with title on 23rd August 1993 for parcel Kajiado/Kaputiei North/3113. She confirmed that entry number four showed that title was issued to the Interested Party – Brown Paul Muchanga on 23rd October 2003 although she had not seen any documents regarding that transaction in his favour. She also added that she did not produce the copy of the title deed for that entry because it was not issued. When asked about the letter dated 12th September 2018 to the Land Registrar complaining of illegal dealings, she stated that she could not confirm whether the said letter was received and that there was no response in the parcel file.
16. On re-examination she stated that entries on the title deed and entries on the green card should tally. She also stated that by the time the Grant was confirmed in favour of the Petitioner on 5th June 2018, parcel 3113 was no longer in existence. She also stated that the letter dated 12th September 2018 requiring the Land Registrar to investigate the fraudulent entries could not be adhered to because investigations were carried out by the Directorate of Criminal Investigations and there was no report from them regarding any fraudulent dealings.
17. At the close of the oral testimonies parties tendered final written submissions.

The Petitioner's Submissions

18. Counsel submitted that the Petition was filed pursuant to Article 21(1) of *the Constitution* which mandates the State and State organs to promote and protect the fundamental rights and freedoms and allows individuals to initiate Court proceedings seeking redress for infringement of those rights. It highlighted the following issues for determination hereunder summarised.
19. Whether the 1st Respondent's action to re-issue the suit property's title in favour of the Interested Party violated the Petitioner's rights, Counsel submitted that Article 40 and Article 65 of *the Constitution* granted the Petitioner a right to own land and that the State should deprive such ownership unless such ownership is done legally. Reference was made to the case of Rutongot Farm Ltd vs Kenya Forest Service & 3 others [2018] where the Supreme Court held that legally acquired land was guaranteed protection by Article 40 of *the Constitution*. Counsel also made reference to the provisions of the repealed Registered *Land Act* on the effects of registration pointing out that since the issuance of title in favour of the late Susan on 23rd August 1993, the same was never transferred or cancelled and she



was at all material times the absolute proprietor. And if any transfer was ever carried out, then the 1st Respondent ought to have produced supporting documents as proof and in this case, no evidence was presented to this effect. Reference was made to the case of Wambugu (suing as the Legal Representative of John Wamburu Kamau) vs Tembo Ventures Housing Cooperative Ltd & another [2022] eKLR on the importance of trail of documentation in support of land transfers and registration. Counsel also made reference to the Court of Appeal case of Richard Kipkemoi Limo vs Hassan Kipkemboi Ngeny & 4 others (2019) eKLR which held that where a certificate of title was under challenge, then the root must be proved; and Milan Kumar Shah & 2 others vs City Council of Nairobi & another where the Court held that irregularities of land acquired fraudulently cannot be sanitised in the name of indefeasibility of title.

20. On the culpability of the 1st Respondent, counsel submitted that the Land Registrar being the custodian of land documents neither produced any evidence validating the transfer of the suit property from the Petitioner to the Interested Party nor was any explanation given for the anomaly in entries one and two of the green card. Therefore, the 1st Respondent participated in depriving the Petitioner of property and breached its duty as custodian of the land register. Reference was made to Kariuki vs Taraya & 3 others (2nd & 3rd Defendants sued as Trustees of Kenya Industrial Research Institute Headquarters Welfare Society) [2023] KEELC 22233 (KLR) where court held that: While fraud should not only be pleaded but also strictly proved, the duty of the custodians responsible for maintaining the integrity of land documents cannot be understated.
21. On whether the prayers sought should be granted, counsel submitted that the Petitioner had proved his case of how he was deprived of his property and his rights violated and was thus seeking redress against the said violation and be restored as the owner of the suit property. To support this argument reference was made to the case of Miriam Njoki Karanja vs Chief Land Registrar, Attorney General & Thika District Land Registrar [2020] KEELC 3188 (KLR) where the Court held that the Petitioner having proved that she was the registered proprietor of the suit property, her rights were protected under Article 40 of *the Constitution* and Section 24 of the *Land Registration Act* and granted the reliefs sought. Counsel went on to submit that the prayers seeking to reverse subsequent transactions to the 3rd – 14th Respondents should also be granted because the transactions were from an unlawful process citing Dina Management Ltd vs County Government of Mombasa & 5 others [2023] eKLR.
22. On the prayer of general damages, counsel submitted that an award was appropriate and effective remedy for redress of infringement of the Petitioner's rights citing Kooba Kenya Ltd vs County Government of Mombasa [2022] KEHC 1631 (KLR) which held that payment of compensation under the public law was to amend the wrong done due to breach of public duty by not protecting the Citizen's fundamental rights. And Zinji Ltd vs Attorney General, Commissioner of Lands, Principal Land registrar of Titles, Chief Land Registrar & Department of Defence [2018] KEELC 4037 (KLR) which affirmed that general damages was awardable in cases of deprivation of property. Counsel also submitted that the Petitioner was entitled to exemplary damages for the Respondents actions citing Godfrey Julius Ndumba Mbogori & Karimi Business Associates Ltd vs Nairobi City County [2018] KECA 702 (KLR) and Kenya Guards Allied Workers Union vs Security Guards Services & 38 others.

1st and 2nd Respondents submissions.

23. On who was the bonafide owner of the suit property, counsel submitted that the Green Card produced showed that the suit property was initially registered in the Interested Party's name on 3rd December 1993 then a transfer registered in favour of the late Susan Wanjiku Munyinyi on 8th August 1993 and a subsequent transfer back to the Interested Party on 23rd October 2003. Counsel submitted in such a case where two people had title to the same property, then the Court should investigate the root title



and follow all the processes and procedures that brought forth the two titles without a break in the chain to determine which of the two titles should be upheld, citing *Munyu Maina vs Hiram Gathiha Maina and Hubert L. Maina & 2 others vs Margaret J. Kamar & 5 others* [2016] eKLR. Counsel submitted that the Petitioner had not evidenced how the late Susan acquired title to the suit property adding that the interested party was never issued with a title deed during the first registration how then was he able to transfer it to Susan without a surrender. Counsel also pointed out that the interested party was registered as the owner on 3rd December 1993 and the late Susan on 8th August 1993 adding that the entry number on the proprietorship section of the title deed in the name of the late Susan did not coincide with the entry number on the proprietorship section of the Green Card, which should be the same. Therefore, due to these irregularities, the Petitioner's title could not be protected by Section 26 of the *Land Registration Act* citing *Dr. Joseph Ngok vs Justice Moiwo Ole Keiuwa & 5 others and Elijah Makeri Nyangw'ra vs Stephen Mungai Njuguna & another* [2013] eKLR.

24. On whether the suit was statute barred, counsel submitted that the impugned transfer was registered in 2003 and this suit was filed in 2019 which was 16 years later contrary to Section 7 of the *Limitation of Actions Act* therefore the Court did not have jurisdiction to determine the suit and should be dismissed citing *Bosire Ogero vs Royal Media Services* [2015] eKLR.
25. On whether the 1st Respondent acted fraudulently in re-issuing title to the Interested Party, counsel submitted that the issue of fraud had not been proved as was held in *Emfil Ltd vs Registrar of Titles Mombasa & 2 others* [2014] eKLR and *Kuria Kiarie & 2 others vs Sammy Magera* [2018] eKLR. Counsel went on to submit that the transfer to the Interested Party was undertaken on the strength of the documents presented to it and could not have been aware of any irregularities making reference to *Chief Land Registrar and 4 others vs Nathan Tirop Koech & 4 others* [2018] eKLR.
26. On whether the Petitioner was entitled to the orders sought, counsel submitted that the Petitioner's prayers were unwarranted because title to property 3113 ceased to exist in the year 2003 and the other registered owners were unaware of the suit or that their titles were under challenge. Adding that Article 40 of *the Constitution* could not protect illegally acquired land and the Petition should be dismissed with costs to the Respondents.

The Petitioner's Supplementary submissions.

27. Counsel for the Petitioner filed supplementary submissions in response to the issue of whether the Petition was statute barred, counsel submitted that cases involving violation of fundamental rights and freedoms had no time limitation citing the Supreme Court case of *Janmohammed (SC) (Suing as the Executrix of the Estate of the late H.E. Daniel Toroitich Arap Moi) & another vs District Land Registrar Uasin Gishu & 4 others* [2024] eKLR. Counsel added that, this notwithstanding, the Petitioner became aware of the fraud and illegalities pertaining the suit property in 2018 upon carrying out a search and time began running upon discovery of the said fraud and the Petition was therefore not time barred. Counsel also submitted that the 3rd to the 14th Respondents despite being served with the Petition did not enter appearance to prosecute their case and this should not bar the Court from determining the validity of the title.

Analysis and Determination

28. I have considered the Petition, affidavits in support, the responses thereto, the evidence on record, the rival submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether this Petition is statute barred.
 - ii. Whether the Petitioner's right to property was violated;



- iii. Whether the Petitioner is entitled to the reliefs sought including an award of General and exemplary damages;
 - iv. Who should bear costs of the Petition?
29. The Court will begin by making a determination on the issue of statute limitation which goes to the jurisdiction of this Court.
 30. Counsel for the 1st and 2nd Respondents submitted that this suit was statute barred, because the impugned transfer was registered in 2003 and this suit was filed in 2019 which was 16 years later. This was contrary to Section 7 of the *Limitation of Actions Act* which stipulates that actions against land should be brought within 12 years. Therefore, the Court did not have jurisdiction to determine the suit and it should be dismissed. The Petitioner contested this argument on the ground that suits involving violation of fundamental rights and freedoms had no time limitation.
 31. Does time lapse on suits for violations of fundamental rights and freedoms?
 32. The Supreme Court in *Janmohammed (SC) (Suing as the Executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi) & another v District Land Registrar Uasin Gishu & 4 others (Petition 17 (E021) of 2023 & 24 (E027) of 2022 (Consolidated)) [2024] KESC 39 (KLR) (2 August 2024) (Judgment)* held:
 93. In view of our decision in *Monica Wangu [supra]*, we do reiterate that as a general principle, petitions founded on claims of violation of fundamental rights and freedoms are not subject to limitation of actions.
 33. While claims arising from the infringement of fundamental rights under the Bill of Rights are generally not subject to statutory limitation, the Supreme Court in the case of *Janmohammed (supra)* went on to state that:

... However, having so affirmed, it is to be noted that this principle is not absolute. It is to be applied by a court of law on a case by case basis taking into account factors such as the nature of the right, the time taken to ventilate the alleged violation, and whether the claimant may be riding on a mischief...
 34. Was this suit filed inordinately late? Once again in the *Janmohammed* case (*supra*), the Supreme Court in elaborating what it considers as inordinate delay stated that:

...it is clear that between 1983 and 2014, neither Noah Chelugui nor his estate pursued any legal redress aimed at vindicating his claim of violation of his constitutional right to property. Such delay could not be anything else but inordinate, warranting a credible explanation... given the fact that this right was being exercised, thirty-one (31) years after the cause of action arose, and long after the promulgation of the 2010 Constitution, it was incumbent upon the Court of Appeal to interrogate such inordinate delay and on what basis it would be justifiable...
 35. In this suit, the Petitioner claims that his mother passed away in 2005 and at the time of her passing she was in possession of title to the suit property. It was not until 2015 when he applied for grant and this was confirmed in 2018 upon which he discovered that the suit property was no longer registered in his mother's name, having been re-issued to the Interested Party in the year 2003 and closed on subdivision in the year 2007. The Petitioner testified that he used to reside out of the country which is the reason why he neither visited the suit property and took time to discover the fraud. It was also argued that time



started running when the fraud was discovered in 2018. Reading the Supreme Court’s reasoning in what amounts to inordinate delay and taking into consideration the facts and evidence before Court, I find that this delay is justifiable and thus the Petition is not statute barred.

36. The next issue for determination is whether the Petitioner’s rights were infringed?
37. In Kenya, land is an emotive issue and Courts are called upon to exercise Solomonic wisdom in determining land disputes. To begin with, Section 7 of the Land Act provides methods of land acquisition in Kenya.
7. Title to land may be acquired through-
- (a) allocation;
 - (b) land adjudication process;
 - (c) compulsory acquisition;
 - (d) prescription;
 - (e) settlement programs;
 - (f) transmissions;
 - (g) transfers;
 - (h) long term leases exceeding twenty-one years created out of private land; or
 - (i) any other manner prescribed in an Act of Parliament
38. The Petitioner claims that his mother, the late Susan Wamunyinyi was registered as the proprietor of land Kajiado/Kaputiei North/3113 on 23rd August 1993 and issued with its title. As such, she was the legal proprietor protected by Section 26 of the Land Registration Act which provides:
- “(1) 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.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”
39. The Petitioner decries that sometime on 23rd October 2003, the suit property, Kajiado/Kaputiei North/3113 was re-registered back to its previous owner Brown Muchanga, the Interested Party herein without his mother’s knowledge, information or consent. And that his mother neither sold nor transferred the said property. This transfer was unprocedural, fraudulent and in total disregard



of their right to property; right to fair administrative action; right to equality, right to fair treatment and protection of his fundamental rights; and right to unlawful deprivation of property without compensation, contrary to Article 10, 19, 20, 21(1), 24 27, 40, 47 and 50 of *the Constitution* as well as Section 4 of the *Fair Administrative Action Act* were violated.

40. Article 40 of *the Constitution* provides:

- (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....
- (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.

41. It is not in contention that title to the suit property was registered in favour of the late Susan Wamunyinyi on 23rd August 1993, re-issued to the Interested Party in 2003 and closed on subdivision in the year 2007. The 1st Respondent's witness testified and equally acknowledged this position. To confirm whether the Petitioner's claim of violation of rights is valid, the Court shall go to the history of title as held by the Supreme Court in Janmohammed case (Supra):

...Where the registered proprietor's root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. The registered proprietor must go beyond the instrument of title and show that the acquisition was legal, formal and free from encumbrance. However, the responsibility to prove legitimacy of title was not only limited to the party whose title was being challenged. It also extended to the party claiming infringement of his property rights, to prove his entitlement warranting the attendant constitutional protection sought...

42. The history of this title begins sometime in 1993. The Green Card produced by the 1st Respondent's witness shows that the first entry was recorded on 3rd December 1993 in favour of Brown Muchanga and the second entry 23rd August 1993 in favour of Susan Wamunyinyi. I have underlined the dates for emphasis because it is a Land Registry procedure that entries are made in a chronological order, from the earliest to the latest date. This is not the case in the Green Card produced by the 1st Respondent.

43. The third entry in the Green Card is dated 23rd October 2003 in favour of Brown Muchanga and this title was closed on subdivision on 6th March 2007. It is important to note that the 1st Respondent's witness did not produce evidence of how the registration in 2003 was effected. In fact, she categorically



stated that there were no records for the said transaction and the 1st Defendant also did not have copy of the title because the same was not issued to Brown Muchanga.

44. The Interested Party was absent for the hearing, however in his Replying Affidavit he indicated that he was the initial owner of the suit property, but being of old age he had misplaced documents relating to the suit property.
45. Counsel for the 1st and 2nd Respondents submitted that the transfer of the property to the Interested Party in 2003 was undertaken on the strength of the documents presented and the Land Registrar could not have been aware of any irregularities. But, these alleged documents presented to the 1st Respondent were not brought to Court as evidence. How is the Court supposed to believe there were any documents in the first place if the same were not produced as evidence? It cannot be gainsaid that he who alleges must prove and he who wants court to believe a certain fact must show its existence as espoused under Sections 107, 108, 109 of the *Evidence Act*.
46. What is similar in the green Cards produced by both the Petitioner and the 1st Respondent is that on 23rd August 1993 the suit property was registered in favour of Susan. If this is the case, is it possible that the first entry is dated December 1993 and the second entry dated August 1993? I find not and the only plausible explanation of the order of entries is that some entries were unprocedurally done.
47. It is also in record that the late Susan was still in possession of the title issued in 1993 and DW1 testified that in 2003 when the suit property was registered in favour of the Interested Party, he was not issued with a title. The unanswered question is why the said title was never issued. It is also on record that DW1 on being asked how the transfer process in 2003 was undertaken, she testified that there were no records or documents of the said transaction.

Munyao J. in *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others*[2016] eKLR held:

“... 31. 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...”

48. What is evident from the above analysis is that there was massive procedural impropriety in the registration process of the suit property in 2003 as well as in the records kept by the 1st Defendant. While fraud has not been proved to the required standard, there being no evidence of how the suit property moved from being owned by the late Susan, to Brown Muchanga and later subdivided and transferred to the 3rd – 14th Respondents, only means that these transactions were irregularly undertaken.
49. As earlier indicated Section 7 of the *Land Act* provides methods of land acquisition. And no evidence has been tabled to show that the said land was acquired by Brown Muchanga in any of the stated methods. What that means is that the late Susan and now the Petitioner were unlawfully deprived off their property. Which was a breach of their right to owning property contrary to Article 40 of *the Constitution*. And this deprivation having been undertaken without their knowledge or consent means



that their right to fair treatment, right to information, right to Fair Administrative Action, right to equal protection before the law as well as right to their enjoyment and protection of fundamental rights and freedoms were infringed.

50. The registration of the Interested Party having been questioned, means that he cannot be shielded by Sections 24, 25 or 26 of the *Land Registration Act*. The Court of Appeal in *Daudi Kiptugen v Commissioner Of Lands Nairobi Lands, Chief Lands Registrar Nairobi, The Hon. Attorney General, Heldo Food Stuff Limited & District Land Registrar Eldoret* [2015] KEELC 674 (KLR) held:

... The acquisition of title cannot be construed only in the end result, the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein...

51. He therefore had no valid title to pass to the other Respondents and cannot fall on the bonafide purchaser for value doctrine.
52. The next issue for determination is whether the Petitioner is entitled to relief of general and exemplary damages for infringement of his rights.
53. It has been settled in law that general damages are compensatory in nature and are awarded for losses that cannot be precisely quantified in monetary terms but have afflicted and affected the person one way or another. While the case of *Butt v Khan* [1978] KECA 24 (KLR) was in regard to general damages for an accident, the Court of Appeal elucidated at length its considerations in awarding the general damages. In the suit at hand, it has been settled that the Petitioner has been denied his right to property illegally. I therefore find that the Petitioner is entitled to general damages of Kshs. 500,000/=. On exemplary damages or punitive damages, these are awarded not for compensation but to punish and deter similar misconduct in the future as held by the Court of Appeal in *Municipal Council of Eldoret v Titus Gatitu Njau* [2020] KECA 782 (KLR):

... in *Godfrey Julius Ndumba Mbogori & another v Nairobi City County* [2018] eKLR:

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes v Barnard* [1964] AC 1129 where Lord Devlin set out the categories of cases in which exemplary damages may be awarded which are:

- i. in cases of oppressive, arbitrary or unconstitutional action by the servants of the government,
 - ii. cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and
 - iii. where exemplary damages are expressly authorized by statute”.
54. Exemplary damages being awarded in cases involving oppressive, arbitrary, or unconstitutional conduct as a punitive award, I find that the Petitioner is entitled to exemplary damages of Kshs. 1,000,000.



55. The Petitioner having succeeded in his claim against the Respondents, I see no reason why he should be denied costs of the petition. The Petitioner shall have the costs of the petition to be paid by the 1st Respondent and the Interested Party jointly and severally.
56. The disposal Orders are thus:
- i. A declaration is hereby issued that the Petitioner's fundamental rights and freedoms guaranteed under Article 27, 40, 47, 50 and 60 of the Constitution have been violated by the 1st Respondent.
 - ii. A declaration is hereby issued that the 1st Respondents' purported transfer, of the Petitioner's title Kajiado/Kaputiei North/3113 was unconstitutional, null and void for want of due process.
 - iii. A declaration is hereby issued that the title held by the Petitioner in respect to the suit property Kajiado/Kaputiei North/3113 is conclusive evidence of ownership.
 - iv. A declaration is hereby issued that the Petitioner is the absolute and indefeasible owner of all that parcel of land known as Kajiado/Kaputiei North/3113.
 - v. An order that the Petitioner's title to all that parcel of land known as Kajiado/Kaputiei North/3113 be reinstated and that the registration of the Interested Party, the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th Respondents as the proprietors of all that parcel of land known as Kajiado/Kaputiei North/3113 and consequent subdivisions and the titles issued to them be hereby and forthwith cancelled.
 - vi. The Petitioner is awarded general damages of Kshs. 500,000/= and exemplary damages of Kshs. 1,000,000 to be borne by the 1st Respondent and the Interested Party jointly and severally with interest at court rates from the date of this Judgement until payment in full.
 - vii. Costs of the petition to be borne by the 1st Respondent and the Interested Party.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF JUNE, 2025.

L. KOMINGOI

JUDGE

In the presence of

Mr. Gisemba for Ms. Otinga for the Petitioners.

Ms. Nyawira for the 1st, 2nd Respondents.

N/A for the 3rd- 14th Respondents.

N/A for the Interested Party.

Court Assistant – Mateli.

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