



**Gachucha v Njuguna & another (Environment and Land Appeal  
E054 of 2023) [2025] KEELC 6401 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6401 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E054 OF 2023  
JM ONYANGO, J  
SEPTEMBER 22, 2025**

**BETWEEN**

**NAOMI WAMBUI GACHUCHA ..... APPELLANT**

**AND**

**KEZZIAH MUGURE NJUGUNA ..... 1<sup>ST</sup> RESPONDENT**

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED .... 2<sup>ND</sup>  
RESPONDENT**

*(Being an appeal from the judgment and decree of the Chief Magistrate 's Court at Thika in  
Civil Case Case No. 953 of 2010 delivered by V. Asiyo Principal Magistrate on 5th October 2023)*

**JUDGMENT**

1. The Appellant filed suit against the Respondent in the lower court claiming that the 1<sup>st</sup> defendant had fraudulently been registered as the owner of land parcel no. Ruiru/Kiu Block 2 (Githunguri/2511 (hereinafter referred to as the suit property). She sought to be declared as the owner of the suit property. She also sought cancellation of the Appellant's title and an order that she be registered as the owner of the suit property.
2. The Appellants filed an Amended Defence and Counterclaim denying the Respondent's claim. They accused the Respondent of having been fraudulently registered as the owner of the suit property using forged documents. They claimed that the Respondent was a trespasser on the suit property and prayed that she be evicted from the suit property and that the structures that she had erected thereon be demolished. They further prayed for a permanent injunction to restrain the Respondent from trespassing or in any manner dealing with the suit property.
3. The suit initially proceeded ex-parte and judgment was entered in favour of the Appellant. However, the said judgment was subsequently set aside and the suit was heard afresh when both parties testified



and called their witnesses. The Trial Magistrate then dismissed the Appellant's case and entered judgment for the Respondents on their Counterclaim vide her judgment dated 5<sup>th</sup> October 2023.

4. Being aggrieved by the said judgment, the Appellant filed the instant appeal citing the following grounds of appeal. That the learned Trial Magistrate erred in law and in fact by:
  - i. Ignoring and disregarding fundamental and crucial evidence produced by the Appellant that demonstrated that she is the undisputed sole and legal owner of parcel number Ruiru/Kiu Block 2 (Githunguri/2511;
  - ii. Allowing the 2<sup>nd</sup> Respondent's substituted Director to recant the evidence of the initial director supporting the Appellant's case without any justification which recanted testimony was relied on by the court when rendering its judgment against the Appellant's case. The recanted testimony was then admitted by the learned Magistrate in arriving at a manifestly wrong and unjust conclusion in his final determination.
  - iii. Ignoring and failing to find that Nairobi Succession Cause No. 1344 of 2007 relied upon by the 1<sup>st</sup> Respondent was distinct from Nairobi Succession Cause No. 344 of 2007 on the green card entry records thus arriving at decision that was wrong in law and unjust in its effect.
  - iv. Ignoring the fact that the 1<sup>st</sup> Respondent's Share Certificate dated 30<sup>th</sup> November 1981 apportioned ¼ acre only to the 1<sup>st</sup> Respondent while the Appellant's Share Certificate dated 13<sup>th</sup> January 2009 apportioned 11/4 acres thus arriving at a decision that was wrong in law and unjust in effect as the two did not relate to the same parcel.
  - v. Allowing the Counterclaim on grounds of fraud despite the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failing to produce any evidence of fraud thus arriving a decision that was wrong in law and unjust in effect.
  - vi. Ignoring and disregarding crucial evidence produced by the Appellant that demonstrated that anomalies on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' evidence and which if taken into account would have led to a different determination.
  - vii. Failing to apply his mind to the provisions of the Land Registration Act, a statute that is relevant to the Appellant's case and how the provisions of the said law impacted upon the Appellant's case and or its effect in the final determination despite the Appellant citing the law extensively; thus arriving a decision that was wrong in law and unjust in effect.
  - viii. Relying on receipts produced by the 1<sup>st</sup> Respondent as evidence of payment despite the fact that they did not support the claim as some of the receipts were issued by a different company related to a non-existent water project thus arriving at a decision that was wrong in law and unjust in effect.
  - ix. Ignoring and failing to apply his mind to the interpretation of the words "endorsement withdrawn" on the Share Certificate No. 3633 which was relied upon by the 1<sup>st</sup> Respondent as proof of ownership which words are



fundamental to the case and are unequivocal and manifestly clear to the validity and authenticity of the Share Certificate.

- x. Finding that parcel number Ruiru/Kiu Block 2 (Githunguri/2511 belongs to the 1<sup>st</sup> Respondent without any proper statutory, jurisprudential or factual basis thus arriving at a decision that was wrong in law and unjust in effect.

The court directed that the appeal be canvassed through written submissions and both parties duly complied.

### **Appellant's Submissions**

5. The Appellant's written submissions dated 27.9.24 were filed through the firm of Mwamuye, Kimathi & Kimani Advocates. Learned counsel for the Appellant identified 3 issues for determination:
  - i. Whether the Appellant proved on a balance of probabilities that she is the beneficial owner of the suit property;
  - ii. Whether the title deed issued in the name of the 1<sup>st</sup> Respondent should be cancelled; and
  - iii. Who should bear the costs of the Appeal and the suit in the trial court.
6. It was counsel's submission that even though sections 24 and 25 of the *Land Registration Act* provides that a registered proprietor of land is vested with absolute rights and privileges, those rights may be challenged as provided in section 26 of the Act.
7. Section 26 of the *Land Registration Act* provides that:

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 grounds 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 un- procedurally or through a corrupt scheme.
8. Counsel relied on the cases of *Wainaina v Kiguru & Another* (Environment and Land Case No.E023 of 2021) (2022) KEELC 3261 and *Munyu Maina v Hiram Gathiha Maina* (2013) eKLR for the proposition that when the registered proprietor's title is challenged, the court must investigate the root of title in order to establish if the said title was validly obtained.
9. Counsel submitted that the Appellant had produced evidence to show that the suit property was transferred to her by one Wilson Ngondi pursuant to a sale agreement dated 10th January 2009 which indicates that the suit property measures 1 ¼ acres. She stated that before she entered into the sale agreement, she conducted a search and established that the land belonged to Wilson. However, she did not produce the Certificate of official search. She also produced Share Certificate no. 97 and in her name and Share Certificate No. B1100 in the name of Wilson Ngondi both issued on 13.1.2009.
10. Wilson Ngondi who testified as PW2 told the court that he had purchased the suit property from one Ndirangi Mwangi who was the holder of ballot No. 2114 dated 21.3.1985 and Share Certificate No.



1100. However, he did not produce the sale agreement between him and the said Ndirangu Mwangi as he said it was lost. He admitted that he had not seen the register for Githunguri Constituency Ranching Company Ltd in order to confirm if the said Ndirangu Mwangi was a member of the company. He testified that he had been in quiet possession of the suit property from 1992 upto 2009 when he gave vacant possession to the Appellant.
11. On the other hand, the 1<sup>st</sup> Respondent testified that the suit property initially belonged to her late husband Samuel Njuguna Karera who was the holder of Share Certificate No. 2114 and share certificate no. 3633. The said Samuel Njuguna Karera was a member of Githunguri Constituency Ranching Company Ltd as indicated in the company's register.
  12. Following the demise of her husband, the 1<sup>st</sup> Respondent obtained a Grant of Letters of Administration in Nbi HC Succession Cause No. 1344 of 2007 after which she had the suit property transferred to her name. She produced a copy of the title deed dated 9.8.1993 in the name of her late husband Samuel Njuguna Karera and another one dated 20<sup>th</sup> November 2018 in her name. Although counsel has submitted that the said title deeds indicate that the acreage is  $\frac{1}{4}$  of an acre, the acreage on the face of the titles is 0.500 Ha which is approximately  $1\frac{1}{4}$  acres.
  13. Counsel's faulted the trial magistrate for making a finding that the lawful owner of the suit property was the 1<sup>st</sup> Respondent. He pointed out that the number of the Succession Cause indicated on the green card differed from the one produced by the 1<sup>st</sup> Respondent. He also submitted that 1<sup>st</sup> Respondent's exhibits were marred with discrepancies. The first one is that the Share Certificate no. 3633 produced by the 1<sup>st</sup> Respondent indicates that the size of the land is  $\frac{1}{4}$  of an acre whereas on the ground it measures  $1\frac{1}{4}$  acres. He adds that no explanation has been offered for this discrepancy.
  14. It is counsel's submission that the Appellant's sale agreement and Share Certificates No. B097 and B1100 supported her claim that the suit property measures  $1\frac{1}{4}$  acres. He wondered how the Respondent would claim the suit property measuring  $1\frac{1}{4}$  acres.
  15. The second discrepancy is that the Share Certificate No. 3633 in the name of Samuel Njuguna bears the words "Endorsement Withdrawn" stamped on it which meant that Samuel Njuguna (Deceased) had not paid the survey fees. He submitted that the 1<sup>st</sup> respondent had not produced any receipts to show that the said survey fees had subsequently been paid. He was also of the view that if the deceased made the necessary payment, he should have followed up with the 2<sup>nd</sup> respondent to issue a fresh Share Certificate. He was therefore of the opinion that the trial magistrate misinterpreted the meaning these words and arrived at the wrong decision.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' Submissions**

16. In his submissions dated 30.1.2025 learned counsel for the Respondents identified the following issues for determination:-
  - (i) Whether the Appellant's suit is merited
  - (ii) Whether the Defendant's Counterclaim is merited
  - (iii) What order should issue and
  - (iv) Who should pay the costs of the suit.
17. On whether the Appellant's suit(sic) is merited counsel submitted that the Appellant had produced various documents purportedly issued by the 2<sup>nd</sup> Respondent which the 2<sup>nd</sup> Respondent denied having issued. Alluding to the fact that the said documents were fraudulent, counsel relied on the case of



Koinange & 13 Others v Charles Karuga Koinage (1986) KLR for the proposition that allegations of fraud must be strictly proved to standard that is more than a balance of probabilities.

18. Counsel submitted that the Respondents had not only set out the particulars of fraud in their counterclaim but they had gone ahead to prove fraud. He pointed out that the receipt No. 0314 dated 10.5.1992 issued in the name of Wilson Mwangi Ngondi in respect of Transfer fee was issued on a Sunday yet the 2<sup>nd</sup> Defendant company did not transact any business on weekends. Further, Share Certificate no. 1100 dated 16.5.92 in the name of Wilson Mwangi Ngondi was issued on a Saturday yet the 2<sup>nd</sup> Defendant company mainly conducted its business on Fridays. He submitted that the number on the said certificate (B1100) which was issued after Ndirangu Mwangi, the previous owner of Share Certificate No. 1344 purportedly transferred the suit property to Wilson Mwangi Ngondi does not follow the numbers serially as it ought to have been greater than and not less than 1344.
19. It is counsel's submission that the Appellant did not produce any receipts, ballot or share certificate in the name of Ndirangu Mwangi nor did she produce a sale agreement between Wilson Mwangi and the said Mwangi Ndirangu. Additionally, the Appellant did not prove that Mwangi Ndirangu's name appears in the register of the 2<sup>nd</sup> defendant company which was the original owner of the suit property.
20. Counsel submitted that Share Certificate No. 097 which was produced by the Appellant was fraudulent and had not been issued by the 2<sup>nd</sup> Defendant since the original certificate (No.097) still appeared blank in the company's records.
21. On whether the Respondents had proved their Counterclaim, counsel submitted that the 1<sup>st</sup> Respondent titles could be traced to the 2<sup>nd</sup> Respondent company. He submitted that the 1<sup>st</sup> Respondent had produced the original ballot card No. 2114, copies of receipts and Share Certificate No. 3633 issued to Samuel Njuguna Karera.
22. In response to the Appellant's submissions that there were anomalies on the said share Certificate, counsel submitted that John Mburu Maina, the Chairman of Githunguri Constituency Ranching Company Ltd who testified as DW2 explained the apparent anomalies. DW2 testified that members of their company were entitled to 1 ¼ acres and that Samuel Njuguna Karera was a fully paid up and compliant member, that is why he was issued with a title deed way back in 1993.
23. With regard to the words "Endorsement Withdrawn" appearing on the Share Certificate No. 3633 produced by the 1<sup>st</sup> Respondent, counsel submitted that the 2<sup>nd</sup> Respondent's witness (DW2) had explained that at the time of balloting most of the shareholders had not completed paying for their shares and their share certificates hence the said words were stamped on their certificates but once they completed their payments, the certificates were signed and issued to them.
24. It was counsel's submission that the Respondents had proved their case on a balance or probabilities. He relied on the case of William Kabogo Gitau v George Thuo & 2 Others (2010)1 KLR 526.

### **Analysis And Determination**

25. This being a first appeal, it is essential to reaffirm the parties' right to a full and independent re-evaluation of the entire record. The jurisdiction of this court, sitting as the first appellate authority demands a fresh and thorough scrutiny of the evidence, guided by the law, culminating in a reasoned and coherent decision.
26. The principles governing this court's role are well articulated in *Selle and Another v Associated Motor Boat Co. Ltd and Another* (1968) EA 123 where the Court held that a first appeal bears the character of a retrial. It imposes upon the appellate court a solemn duty to re-examine the evidence, draw its own



conclusions, and support those conclusions with clear and persuasive reasoning. This obligation is to be discharged carefully, with due regard to the fact that the trial court had the distinct advantage of observing the witnesses as they testified and assessing their credibility.

27. In undertaking this task, I remain mindful that this court did not have the benefit of hearing the Appellant testify or of observing any witness firsthand. That limitation necessitates a measured approach. The appellate court must rely entirely on the cold record, reading it with attentiveness and care, while making appropriate allowances for the absence of visual and auditory cues which often inform credibility assessments. The standard, therefore, is one of rigorous re-evaluation grounded in fairness, balance, and fidelity to the record.
28. Guided by the above principles, I have carefully considered the Memorandum of Appeal, the entire Record of Appeal and the rival submissions. Each of these has been weighed carefully with a view to determining whether the trial court committed any error of fact or law that would warrant interference by this court.
29. Section 26 of the *Land Registration Act* regards a certificate of title as prima facie evidence of absolute ownership. Yet that presumption is not inviolable. It is displaced where the title is shown to have been acquired through fraud, illegality, or procedural impropriety.
30. The Appellant maintains that the trial magistrate erred in upholding the 1<sup>st</sup> Respondent's title as the process of acquiring it was tainted with fraud. He pointed out the acreage indicated on the title deed differed from the one on the 1<sup>st</sup> Respondent's share certificate No. 3633. He was of the view that the said share certificate was invalid as it had the words "endorsement withdrawn" stamped on it. He also pointed out that the succession case no. indicated on the green card did not correspond with the certificate of confirmation of grant produced by the 1<sup>st</sup> Respondent.
31. Having scrutinized the evidence on record, I am not persuaded that the anomalies highlighted by the Appellant are sufficient to warrant overturning the findings of the trial magistrate. As correctly observed by the trial magistrate, he who alleges must prove. The anomalies on Share Certificate No. 3633 were explained by DW2 who stated that the terms "Endorsement Withdrawn" were stamped on the certificates of shareholders who had not completed their payments and once they completed the payments, their documents would be processed and they would be issued with title deeds.
32. He also explained that each paid up member was entitled to a parcel measuring 1¼ acres and not a ¼ acre as indicated on the Share certificate. It is not in dispute that the 1<sup>st</sup> Respondent's late husband was issued with a title deed on 9.8.1993 as confirmed by the green card produced by the Appellant. DW2 also confirmed that the deceased was a member of Githunguri Constituency Ranching Company Ltd as evidenced by the company's register. The 1<sup>st</sup> Respondent had the deceased's title transferred to her through transmission. She produced the original ballot card No. 2114, copies of receipts, Share Certificate No. 3633 and a copy of the title deed issued to her deceased husband. It is therefore possible to trace the root of her title to the 2<sup>nd</sup> Respondent company.
33. As regards the succession case number, it was incumbent upon the Appellant to adduce evidence to prove that the two succession cases refer to different estates. It should not be left to the court to guess whether or not a digit was left out of the number on the green card. This is because the number on the green card is HC Succession Cause No. 344 of 2007 while the Certificate of Confirmation of Grant reads HC Succession Cause No. 1344 of 2007.
34. On the other hand, the Appellant claimed that she purchased the suit property from one Wilson Mwangi Ngondi who in turn purchased it from Mwangi Ndirangu. The said Wilson Ngondi did not produce the sale agreement between himself and Ndirangu Mwangi. He also admitted that Ndirangu



Mwangi was not a member of Githunguri Constituency Ranching Company Ltd. The Appellant's root of title could therefore not be traced to the said company. To make matters worse, share certificate no. B097 which she produced was discredited by the Chairman of Githunguri Constituency Ranching Company Ltd as he produced evidence to show that according to their records, the said share certificate had not yet been issued to anyone.

35. In view of the foregoing, it is my finding that there is no valid reason to interfere with the findings of the trial magistrate. The Appeal lacks merit and it is hereby dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 22ND DAY OF SEPTEMBER 2025.**

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**J. M ONYANGO**

**JUDGE**

**In the presence of;**

1. Mr Mwangi for Mr. Kimani for the Appellant
2. No appearance for the Respondents

Court Assistant: Hinga

