



REPUBLIC OF KENYA



**Mwaura v Kogi & 3 others (Environment and Land Appeal E147 of 2024)
[2025] KEELC 6668 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E147 OF 2024**

**JG KEMEI, J
SEPTEMBER 30, 2025**

BETWEEN

PETER WAWERU KARANJA MWAURA APPELLANT

AND

EDWARD KARANJA KOGI 1ST RESPONDENT

EMBAKASI RANCHING COMPANY LIMITED 2ND RESPONDENT

LUCY NYAKABI MATHENGE 3RD RESPONDENT

WALTER KIGERA 4TH RESPONDENT

JUDGMENT

1. This appeal arises from the judgment and orders of Hon Lucy Njora CM in MC ELC No 7304 of 2018 delivered on 2/9/24 at Milimani.
2. The appellant was the Plaintiff in the trial court. *Vide* a plaint dated 2/10/2019 the Plaintiff sued the defendants for orders ;
 - a. A declaration that the plaintiff is the owner of Plot Numbers P1954 and P1954B and the 3rd and 4th defendant be held personally liable in conjunction with 1st and 2nd defendant for fraudulently allocating the plots to the 1st defendant.
 - b. Order evicting the 1st defendant from the suit land and permanent injunction restraining the defendants, their servants and / or agents from selling, disposing trespassing or interfering in any way with the plaintiff's use and enjoyment of Plot Numbers P1954 and P1954B and the 2nd, 3rd and 4th defendant do issue the plaintiff with titles to the plots defendant.
 - c. Cost of this suit and interest.



The Plaintiff's case was that he owned Plot Nos P1954B and P1954 [referred to as the suit lands], having acquired them from Eliud Njagi Itotia. However, the 2nd, 3rd, and 4th Defendants, without the Plaintiff's knowledge and consent, fraudulently allocated the suit lands to the 1st Defendant, who currently occupies them to the detriment of the Plaintiff.

3. The 1st, 3rd and 4th Defendants did not enter an appearance nor file any statement of defence to the suit.
4. The 2nd Defendant denied the claim of the Plaintiff in its statement of defence filed on 28/1/2020. It argued that it was not privy to the sale of the suit lands and undertook to put the Plaintiff to provide strict proof.
5. At the hearing, the Plaintiff presented evidence on his own behalf and largely reiterated the contents of the pleadings. He produced several documents to support his case.
6. He stated that he acquired the suit lands from Itotia, and problems arose when he was shown incorrect plots by the 2nd Defendant. For example, he said he was initially shown Plot No Q86, but later discovered it was not P1954. Subsequently, he was shown No 430 as P1954 [bonus plot], but these plots were missing on the ground. Finally, he was given a "pink copy" to await titles for Plot Nos 105/11498 and 105/11499, as instructed by the 2nd Defendant. These plots are on Map No 1, yet his plots are on Map No 10. However, S K Maina, the 2nd Defendant's surveyor, noticing the inconsistency, refused to place beacons on the plots because the Methodist Church owned them. He stated that he has further realised that Plot Nos 105/11498 and 105/11499 are located in a public utility area, according to the surveyor of the 2nd Defendant, S K Maina, who also mentioned that the 1st Defendant is occupying his plot No P1954B.
7. He added that he is disappointed by the conduct of the 2nd Defendant and its directors, who have acted with impunity and disregard for his property rights.
8. Upon hearing the suit, the Hon trial court dismissed the claim of the Plaintiff in the following terms;
 - a. The Plaint dated 2/10/2019 and filed in the Court on the same date is hereby dismissed
 - b. The interlocutory judgment against the 1st, 3rd and 4th Defendants.
 - c. There shall be no orders as to costs.
9. It is the above decision, as embodied in the impugned judgment, that has triggered this appeal.
10. Aggrieved by the said judgment, the appellant proffered this appeal, citing 10 grounds as summarised below. That the Learned Magistrate erred in law and fact in;
 - a. Considering matters extraneous and allowing herself to be influenced by irrelevant issues.
 - b. Failed to find that the appellant had proven his case on a balance of probabilities
 - c. Failed to enter judgment in favour of the appellant as sought.
 - d. Disregarded the appellants' written submissions filed on 16/5/23 in the judiciary e-filing system when she held that the said submissions were not filed.
 - e. Disregarded the appellants' unchallenged evidence, resulting in an incorrect conclusion that the appellant was not the rightful owner of the suit lands despite substantial evidence presented before the court. She also ignored the appellant's uncontested evidence.
11. The appellant sought the following prayers;



- a. The appeal is allowed
 - b. The judgment of the trial court be set aside and judgment entered against the defendants as prayed in the plaint.
 - c. The defendant be ordered to pay the costs of the appeal and at the trial court.
12. Upon admission of this appeal for hearing, the parties opted to present their case through written submissions.
 13. Counsel for the appellant outlined four issues for determination. Regarding whether the appellant had established a valid title, counsel answered in the affirmative. It was submitted that the trial magistrate disregarded the evidence presented before her, thus reaching an incorrect decision, even though the appellant had established an unbroken chain of documents leading to the root of his title/suit lands. He relied on the case of *Danso Kiamnu Gcina & Anor v Embakasi Limited* [2014] EKLK, where the court stated;

The law on unregistered land is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which leads to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered, then the holder of the documents is entitled to the protection of the law. There is no doubt that such parcel will be on a balance of probabilities but the court must be left in no doubt the holder of the documents proceeding is the one entitled to the property.
 14. It was further submitted that after the appellant acquired the suit lands, the 2nd respondent deliberately and fraudulently reallocated to him different plots [Q86 and 430] which were not the suit lands. This amounted to fraud and misrepresentation.
 15. Furthermore, counsel argued that the appellant had properly paid all dues to the 2nd Respondent and therefore cannot claim ignorance of his claims.
 16. Counsel argued that the appellant met the required standard of proof on a balance of probabilities, having submitted unchallenged documentary evidence. The documents, which included a share certificate, transfer documents, payment records, allocation letters, and maps, made it unnecessary for the appellant to provide a title since the 2nd Respondent had acknowledged him as its shareholder, as he was issued with a pink copy pending the issuance of a title. The court was criticised for disregarding the totality of the evidence presented to it.
 17. That the court received sufficient evidence to draw an adverse inference against the Defendants for failing to adduce any evidence to controvert the appellant's evidence.
 18. On the issue of lifting the corporate veil, counsel submitted that the conduct of the 2nd respondents demonstrates a deliberate pattern of committing fraud and abusing the corporate structure to the detriment of innocent purchasers such as the appellant. They authorise the transfer of plots that they know or ought to know do not exist and continue accepting monies from unsuspecting purchasers without allocating them land. The court was asked to rely on the case of *Multichoice Kenya Limited v Mainkam Limited & Anor* [.....], the proposition that in the presence of a fraudulent and improper design by scheming directors or shareholders, the law allows for the corporate veil to be lifted to pierce the corporate personality and hold the individual members of the company liable for redress.
 19. That the trial court failed to apply the principle, thus letting the 2nd respondent go scot free in their fraudulent and illegal dealings at the risk of members losing their hard-earned investments.



Analysis and determination

20. The key issues for determination are;
- a. Whether the appellant has established title to the suit lands.
 - b. Whether the court should lift the corporate veil of the 2nd Respondent to allow the 3rd and 4th Respondents to be held personally liable for the fraudulent allocation of his plots to the 1st Respondents.
21. It is not in dispute that the case of the appellant has not been controverted. That said, the appellant bears the burden of proof to establish their case, even in the absence of the respondents in the contest, as in this case.
22. Sections 107, 108 and 109 of the [Evidence Act](#) Cap 80 provide for burden of proof and who is to prove it that;
107. Burden of proof
- [1] Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - [2] When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. Incidence of burden
- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. Proof of particular fact
- The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
23. It is the appellant's case that he purchased the suit lands from one Mr. Itotia via a sale agreement dated 21/4/2011. One of the terms of the sale agreement was that the appellant was to take possession of the land immediately. Oddly, over a decade and a half later, the appellant is still not in possession of the land.
24. Among the documents handed over by Itotia to the appellant were those in his possession, which he received from the original owner from whom he purchased the lands, namely Josphat Mwathi Waweru. According to a letter of allotment dated 23/11/82, Waweru was allocated Plot No P1954, with a share certificate No 1621 for one share. He also paid survey fees, as evidenced by receipt No 9835 issued by the second Respondent. Another receipt on record, No 3108 dated 31/3/1987, was for civil engineering fees, issued by the same Respondent. On 12/8/1989, the site of Plot No P1954 was confirmed to be in Map No 10 - Phase One.
25. Fast forward, Itotia acquired the land from Waweru. On 22/7/93, he was issued a receipt No 1139 by the 2nd respondent for the sum of Kshs 6000/- as payment for a bonus plot, namely P1954-B, hereinafter called the bonus share, via share certificate No 11711. Itotia was also issued a share certificate No 11711 for the bonus share.



26. On 3/5/2011, the said share certificate was approved by the 2nd respondent for transfer to the appellant. Itotia also paid Kshs 5000 on 23/7/2009 for a site visit to Plot No P1954 [share certificate No 1621], also known as the original plot. This was documented by receipt No 5197 issued by the 2nd respondent. On the back of the said receipt, there is an endorsement countersigned on 2/7/2009, instructing the allottee to check the site on map 10 on 8/8/2009.
27. A transfer dated 3/5/2011 was ultimately executed by Itotia and the appellant, transferring certificate No 11711 [whole share] to the appellant. Stamp duty was duly paid, and the 2nd Respondent attested to the transfer. It should be noted that, by then, no title had been issued for the suit lands. Other payments made via bankers' cheques are on record, and the 2nd Respondent has not challenged the payments received from the appellant for various services, including site visits. The court observes that site visits appear to be a cash cow for the 2nd Respondent, given the numerous payments and notices to allottees to make site visits. See the receipt dated 11/12/2018 for the suit lands – P1954 and P 1954 B. That said, the pink copy dated 13/12/2013 No 2212, referred to by the appellant and issued by the 2nd Respondent, is on record. At the back of this receipt, the appellant was allocated Plot Nos 105/11497 and 105/11499 in place of P1954 and P1954B.
28. Eventually, the appellant was issued with a share certificate No 2798 for the suit lands, along with instructions to visit the site in January the following year.
29. The Learned Trial Magistrate in her decision stated as follows;

“However, there is no proof on record demonstrating Josephat Mwathi Waweru sold this plot or bonus plot to Itotia. The only sale agreement on record is between the plaintiff and Itotia, and in the absence of a sale agreement, there is a shroud of mystery as to how Itotia acquired his interests in the suit lands, i.e. was it lawful? Was it regular.

Again, the court asks why evidence demonstrating how Itotia acquired the said properties is not before the court. Why is there no explanation provided for this omission? In my view, the court is entitled to issue adverse orders against the party who failed to present the evidence.

.....

.....

In the end, since I have not seen proof demonstrating how Itotia acquired the suit properties, I cannot hold that he lawfully or procedurally acquired any interest in them, and as such, I also cannot uphold the Plaintiffs' alleged interest for want of evidence...
30. I have said enough to demonstrate the origin of the plots from the original owner, Josephat Mwathi Waweru, then to Itotia and finally to the appellant. Considering the court's decision in Gacina above, the court is satisfied that the appellant has established the root of his ownership of the suit lands through an unbroken chain of documents, which I have analysed above.
31. The Learned Trial Magistrate therefore erred in disregarding the evidence on record thus reaching the wrong decision.
32. On the issue of lifting the corporate veil, the appellant has argued that the conduct of the 3rd and 4th Respondents, in conjunction with the 2nd Respondent, is fraudulent in the manner they are distorting the records and disposing of properties of allottees to third parties, leaving them empty-handed. That the illegal activities of the directors of the 2nd Respondent are causing confusion in the manner in which properties are being allocated and presented to the true owners.



33. Undoubtedly, the 2nd Respondent, being a corporate body or vendor, has a duty of care to its purchasers to ensure they receive their titles or lands as contracted or allocated. Property rights in Kenya are protected by law, reinforced by a constitutional imperative in Article 2 of *the Constitution*, which serves as the supreme law of the land and binds all persons and state organs, including the national and devolved governments. Article 260 of *the Constitution* defines a person to include a company, association, or other body of persons, whether incorporated or unincorporated. Accordingly, the 2nd Respondent is not exempt from the constitutional obligation to respect property rights, alongside its normal contractual duties and liabilities.

34. In the case of *Aster Holdings Limited v City Council of Nairobi & 4 others* [2019] eKLR it was held that: -

“There is no doubt that a company is at law a separate legal entity which is different from its shareholders and subscribers. However, in some instances, the corporate veil of a company can be pierced. The circumstances under which the corporate veil of company may be pierced were well set out in paragraph 90 of Halsbury’s Laws of England 4th Edition Vol 7 [1] which states as follows: -

“Notwithstanding the effect of a company’s incorporation, in some cases the Court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the Court will go behind the mere status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. ”

35. In the case of *Elect watts Limited v Countryside Suppliers Limited & Another* [2014]eKLR which quoted the case of Corporate Insurance Brokers Ltd & Another where it was held that the veil of Incorporation is not to be lifted merely because the company has no assets or it is unable to pay its debts is thus insolvent, the Court went further to state that a corporate veil can be lifted where there are allegations of fraud or dishonesty against the Directors

“The court in the case of *Mugenyi & Company Advocates v. The Attorney General* [1999] 2 EA 199 following *Palmers Company Law Vol. I* [22 ed] lists 10 instances under which the veil of corporate personality may be lifted or as is sometimes put, look behind the company as a legal persona and these are: -

1. Where companies are in the relationship of holding and subsidiary companies;
2. Where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors on the ground that business continued after the membership had dropped below the legal minimum, to the knowledge of the shareholder;
3. In certain matters relating to taxation;
4. In the law relating to exchange control;
5. In the law relating to trading with the enemy;
6. In the law of merger control in the United Kingdom;



7. In competition of the European Economic Community;
 8. In abuse of law in certain circumstances;
 9. Where the device of incorporation is used for some illegal or improper purpose; and
 10. Where the private company is founded on personal relationship between the members."
36. From the above, the grounds for lifting the corporate veil are numerous. In this case, the appellant claims fraud by the directors. I must note that this plea faces two problems: firstly, the appellant has neither pleaded nor particularised the instances of fraud. It is well established that fraud must be pleaded and detailed to allow the other party to respond. The second issue is that the appellant has not identified the directors and shareholders of the 2nd Respondent before this court. This could have been achieved through a recent search at the Companies Registry. I also emphasise that there is no evidence that the 2nd respondent is unable to meet its contractual liabilities as they become due, which would justify lifting its corporate veil.
37. For those two reasons, I find that this cause of action is premature /incompetent. It is struck out.
38. Although costs of an action or proceeding are at the discretion of the court, the general principle is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* [Cap.21]. As such, the successful litigant should ordinarily be awarded costs unless, for good reason, the court directs otherwise. The court has noted that the 1st Defendant did not controvert the Plaintiffs' claim. In the circumstances, the court is of the opinion that the appropriate order to make is that there shall be no order as to costs.
39. Final orders for disposal
- a. The appeal partially succeeds.
 - b. It is hereby declared that the appellant is the owner of the suit lands, namely P1954 and P1954B [suit lands]
 - c. The 2nd respondent is ordered to forthwith identify the correct suit plots to the appellant and hand over possession to him.
 - d. The 2nd Respondent is hereby ordered to register the applicant in its member register, cancel the name of the 1st Respondent, and provide the necessary documentation for the prompt processing and issuance of the titles for the suit land within the next 90 days from the date of this judgment.
 - e. The 1st Respondent is ordered to vacate the suit lands voluntarily within a period of 60 days; in default, eviction will ensue.
 - f. A permanent injunction is hereby issued restraining the respondents, their servants, and/or agents from selling, disposing of, trespassing, or interfering in any way with the plaintiff's use and enjoyment of the suit lands.
 - g. Each party to bear their own costs.
40. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2025 VIA MICROSOFT TEAMS.

J G KEMEI



JUDGE

Delivered Online in the Presence of;

Mr. Mshindi for the Appellant

NA for the 1st, 2nd, 3rd and 4th Respondents

C/A – Ms. Yvette Njoroge

