



Thuku v Landluck Investment Limited & another (Environment and Land Case 32 of 2019) [2025] KEELC 6720 (KLR) (29 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6720 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 32 OF 2019**

**JG KEMEI, J
SEPTEMBER 29, 2025**

BETWEEN

MORRISON MBARO THUKU PLAINTIFF

AND

LANDLUCK INVESTMENT LIMITED 1ST DEFENDANT

THE REGISTRAR, THIKA LAND REGISTRY 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed suit against the Defendants on 4/3/2014 seeking the following orders;
 - a. The title deed held by the 1st Defendant be cancelled and the court be pleased to declare the title held by the plaintiff as the genuine title deed for the suit land Ruiru/Kiu/Block2(Githunguri)/2871.
 - b. A permanent injunction restraining the first Defendant, whether by itself, its agents, employees, servants, assigns, persons claiming under it or under its authority, from interfering with the plaintiff's ownership, quiet possession, enjoyment and or use of the Ruiru/Kiu/Block2(Githunguri)/2871.
 - c. The 2nd defendant be directed to rectify the register for the Ruiru/Kiu/Block2(Githunguri)/2871 by removing the name of the 1st defendant as the registered owner and replacing it with the name of the Plaintiff as the registered owner.
 - d. Costs of the suit
2. The Plaintiff states that at all material times relevant to the suit, he was the registered owner of the suit land as of 8/7/2013 and remains so registered with a title. However, on 24 September 2013, after conducting a search at the lands office, it was found that the 1st Defendant was incorrectly registered



- as the owner of the suit land. Despite lodging complaints with the 2nd Defendant and the police on multiple occasions, no action was taken to correct the situation, leading to the filing of this suit.
3. The 1st Defendant denied the Plaintiff's claim and argued that it is the registered owner of the suit land, holding a title issued on 24/10/2010, as evidenced by the certificate of official search dated 24/9/2013. The 1st Defendant further alleged that the Plaintiff's title is fraudulent, having been acquired through forged documents.
 4. The 2nd and 3rd Defendants denied the Plaintiff's case and described it as an abuse of court process, noting that the matter is under criminal investigation. Furthermore, they argued that there was no omission or commission on their part and requested the Plaintiff to prove their case strictly.
 5. At the hearing, the Plaintiff's evidence was presented by PW1 - Morrison Mbaro Thuku. He relied on his witness statement dated 7/5/2014 and submitted documents marked as PEX 1-6 to support his case.
 6. The witness stated that he purchased the land in 2012 from Jacinta Mumbi Waithaka, who was a member of Githunguri Ranching Company Limited (GRCL). He dealt directly with the Chairman of GRCL, Maina Mburu. He was issued a share certificate on 30/11/12 for GRCL, which included ballot No 1871 for land parcel No 2871. Jacinta Waithaka gave a Power of Attorney to Joseph Kimani Gatheca, who entered into a sale agreement on her behalf with PW1 on 1/12/12. He obtained consent from the Land Control Board at the Githurai District Officers' Office. After paying the purchase price, he received the title to the suit land.
 7. Through a land search, he later learnt that the 1st Defendant also held a title for the same parcel of land measuring 0.05 ha. He filed suit immediately.
 8. During cross-examination by Prof Wangai, Counsel for the 1st Defendant stated that he entered into a sale agreement with Gathecha, who acted for Jacinta. He paid a consideration of Kshs 2.5 million. His title was issued on 8/7/13, while that of the 1st Defendant was issued on 14/11/2010. The clearance certificate is dated 30/11/12 and was issued before he entered into the sale agreement with Gathecha, dated 1/12/2012. It is GRCL that transferred the land to him and not Jacinta or Gathecha, as was the practice in the land buying company.
 9. While being cross-examined by Ms Ndundu, counsel for the 2nd and 3rd defendants, the witness informed the court that he conducted due diligence at the offices of GRCL, which showed Jacinta as a shareholder in the company.
 10. The witness admitted that there are two conflicting titles before the court. His title is dated 9/1/13, whereas the title of the 1st Defendant is dated 18/6/2009. The title for the 1st Defendant covers 0.05 ha, while his own covers 0.5 ha. The title was registered for him by GRCL. Jacinta paid the survey fees on 17/8/12. Although Jacinta owned the land, it was transferred to him by GRCL because it had not yet been titled, which was the usual practice. When shown the documents filed by the 1st and 2nd defendants, the witness informed the court that the Land Register had confirmed the authenticity of his title.
 11. PW2 – Sammy Muthigani Migwi testified and relied on his witness statement dated 5/5/2014 in evidence in chief. He stated that, together with Mama Njeri, they identified the suit land for the PW1. The land was owned by Gathecha, who sold it to the PW1 for the sum of Kshs 2.5 million, which was paid via bank transfer.
 12. PW3 - John Maina Mburu testified and relied on his witness statement dated 9/5/2014 in evidence in chief. He stated that he has been the Chairman of GRCL since 2009. He knows the parties in the



- dispute well. He processed the title issued in the name of the Plaintiff in 2013. That GRCL issued PW1 with a clearance certificate as well as the share certificate No B135, both dated 30/11/12; the suit land was registered in the name of GRCL; obtained land control board consent to transfer to PW1; paid stamp duty and registration fees, and handed over the title to PW1.
13. Shown the documents filed by the 1st Defendant in defence of its title, PW3 disowned the documents of the 1st Defendant as follows: the 1st Defendant's title issued in 2010 is not genuine because there were titles issued during this period due to the Government's embargo on the issuance of new titles between 2007 and 2012; all the documents did not emanate from GRCL, such as the receipt dated 24/8/09 No. 049; GRCL did not issue share certificate No. 1371; the title issued on 24/11/2010 while the register was opened on 22/11/2010 – that title was registered before the register was opened. In his opinion, the title of PW1 is the genuine one. He admitted GRCL processed the title for PW1.
 14. While under cross-examination, the witness stated that the land was transferred from Waithaka Rungaruro to Jacinta Mumbi Waithaka. He admitted that there was no formal transfer from Rungaruro to Jacinta and that instead, they relied on a letter from the area chief and the police to demonstrate that the share certificate, ballot, and members' receipts were lost. The family of Jacinta agreed to register the land in her name, as she was the daughter of the original owner. He issued a duplicate ballot.
 15. When presented with ballot No 1871 issued on 1/9/85, receipts dated 18/8/87 and 19/3/92, he stated that he cannot verify the documents as he was not a chairman at that time. However, he admitted that the clearance certificate and share certificate in the name of the 1st Defendant were issued by one of the Directors of GRCL before he joined the Company. He maintained and believed that the documents of the 1st Defendant had been lost.
 16. Regarding the title of PW1, he reiterated that Jacinta agreed with Gathecha to sell the land to PW1. He issued a duplicate ballot 10/8/12 to Jacinta, leading to the sale agreement dated 14/8/12 in the sum of Ksh 2.5 million. The agreement, along with the power of attorney, was signed at the offices of GRCL in his presence.
 17. PW3 further stated that PW1 panicked when he discovered that the 1st Defendant held a prior title issued for the same parcel of land before he purchased it. He stated that GRCL issued Jacinta a share replacement certificate No B-3079 dated 10/8/12.
 18. When shown the 1st Defendant's documents, PW3 stated that the green card was issued on 18/6/09 and the title on 24/11/2010. He also explained that PW1 wrote a letter to the Land Registrar complaining that, by the time he obtained the title, another title in the name of the 1st Defendant had already been issued in 2010, as evidenced in the search dated 24/9/13.
 19. PW3 reiterated his evidence that he submitted the transfer documents to the Land Office as per the practice of the land buying company's procedures.
 20. Noting the obvious double ownership of the parcel of land, PW3 stated that two people cannot own land and that, in this case, one title is genuine while the other is not. He opined that the genuine title belongs to the Plaintiff.
 21. During re-examination, he stated that he advised PW1 to file a police report because the title of the 1st Defendant listed an area of 0.05 ha. Those 100 shares represented three plots, not a 1.25-acre plot. The clearance certificate was issued on 24/8/09, but the counterfoil was issued on 26/2/2010; the green card was opened on 18/6/09, while the title was issued on 24/11/2010; he did not clear the title in the name of the 1st Defendant.



22. With that, the Plaintiff closed his case.
23. DW1 – Ahmed Chege Kigera testified and relied on his witness statement dated 30/1/2013 as evidence in chief, and produced documents marked as DEX No 1-3.
24. He stated that the 1st Defendant is the registered owner of the suit land measuring 0.5 ha, issued on 24/10/2010. The green card was opened on 18/6/2009. The green card is opened before a title is issued, and there is nothing untoward with the 1st Defendant's title regarding the dates of issuance of the title and the green card. He holds a search dated 24/9/2013 showing the title is in the name of the 1st Defendant.
25. DW1 stated that he paid for the land, although he failed to produce any supporting evidence. No evidence of application, booking, or registration form was provided by DW1.
26. Reiterating his testimony, DW1 stated that he holds the original title for the suit land and cannot be held responsible if the land registry has not maintained its own records. He challenged the land registry to produce the documents they used to register his title. He possesses the ownership documents, including the share certificate, ballot, and receipts from the previous owner, to support the basis of his title.
27. DW1 informed the court that the Land Registrar has produced two green cards; one dated 18/6/2009 in the name of the 1st Defendant and the other dated 9/11/13 in the name of PW1. The green card of the 1st Defendant takes precedence.
28. Regarding the 0.05 acreage appearing on the title, the witness denied any responsibility. He stated that he purchased the land from Gichuhi through a sale agreement and obtained a genuine title.
29. DW2 – Patrick Maina Gichuhi testified and presented the sale agreement dated 10/3/2008, share certificate No 292; ballot No 2871, clearance certificate dated 11/3/2008; various receipts; sale agreement dated 4/8/2009; share certificate No 1371 dated 24/8/2009; title deed in the name of the 1st Defendant issued on 24/11/2010, all marked as DEX No 4-11.
30. He sold the land to the 1st Defendant. He was issued the clearance by GRCL B119, although it has erasures. He sold share certificate No B757 to the 1st Defendant. He was not involved in executing any transfer or in obtaining LCB consent.
31. He stated that by the time he purchased the land, Rangaruru, the original owner, had passed away, and the sale agreement dated 10/3/2008 was executed by his wife, who exhibited no letters of representation of the estate of the late Rangaruru Waithaka. He did not execute any transfer in favour of the 1st Defendant or DW1. He admitted that the sale agreement dated 10/3/2008 contains erasures, particularly concerning the parcel number.
32. The case of the 2nd and 3rd Defendants was presented by Robert Mugendi Mbuba, who gave testimony as DW3. He relied on his witness statement dated 18/11/2019 as his principal evidence and submitted documents marked as DEX 11-28.
33. DW3 informed the court that there are two registered open on 18/6/09 and 9/1/23. The register of 18/6/2009 in the name of the 1st Defendant is not supported by any documents. It is a bare green card. The original owner of the land is GRCL, but there are no documents from GRCL either. He is not aware of the Government's embargo on the registration of titles in 2009.



34. He informed the court that when there is a duplication, as in this case, the allotting Company, in this instance GRCL, should clarify who the bona fide allottee is, based on the members' register. It is the members' register that establishes the root of title.
35. At the conclusion of the hearing, the parties agreed to file and exchange written submissions. The Plaintiffs' submissions are dated 14/2/2025, while those of the 1st Defendant are dated 8/4/25. The 2nd and 3rd Defendants failed to comply with the directions regarding the filing of these submissions. I have read and considered the said submissions and thank counsel for their insight and diligence.

Analysis and determination

36. Having read and considered the pleadings, the evidence adduced during trial, the written submissions and all the material placed before the court, the issues that commend themselves for determination are;
- a. Who between the Plaintiff and the 1st Defendant has proved the root of title?
 - b. Whether the court ought to cancel the title in the name of the 1st Defendant
 - c. Who meets the cost of the suit?
37. The background of the dispute concerns land parcel No RUIRU/KIUBLOCK2/(GITHUNGURI)/2871, located in Ruiru, Kiambu County. Like many parcels in the area, this land has its origins in a land buying company called GRCL, which was incorporated in 1973. Records show that GRCL purchased the larger parcel in the 1970s for subdivision and allocation to its members. See the copies of share certificates on record.
38. It is not in dispute that the suit land traces its roots to the ownership of one man, Geoffrey Rangaruru Waithaka (Waithaka), who purchased the land through shares in the GRCL. DW2 led evidence and informed the court that the said Waithaka died some time ago.
39. The nature of the dispute before the court concerns double titling of land, where the Plaintiff and the 1st Defendant both claim ownership. Therefore, this court is tasked with determining which party is the legitimate owner of the suit land. This will be established by tracing the root of the title.
40. Land registration in Kenya is governed by law. Multiple registration of titles is not permitted by law. In this case, the plaintiff and the 1st defendant each hold titles issued at different times. Therefore, the burden of proof regarding the rightful owner of the title rests on the person who asserts it. The plaintiff has claimed ownership and urged the court to issue declaratory orders confirming his ownership. Additionally, the plaintiff has challenged the title of the 1st defendant on various grounds and urged the court to cancel it due to its tainted nature.
41. The burden of proof is found in sections 107 -109 of the [Evidence Act](#) provides as follows;
- “ 107.
- (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. 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. 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.
42. Section 24 the *Land Registration Act* No. 3 of 2012 provides that;
- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
43. Section 25 of the *Land Registration Act* provides;
- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
44. Section 26 the *Land Registration Act* 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.
45. Section 26 of the *Land Registration Act* speaks to the certificate of title being taken by courts as prima facie evidence that the person named therein is the absolute and indefeasible owner of the land subject to the encumbrances and limitations spelt out in the law. The Act further provides instances in which a title may be challenged on grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
46. *The Constitution* of Kenya guarantees property rights to land. However, this protection is not available if the title was obtained illegally. See art 40 (6) of *the Constitution*.



47. Where a court is faced with two titles over the same parcel of land, it must investigate the root of title, the processes and procedures through which the title was acquired. It is only that title whose root and pathways have been established that the court may give a stamp of approval.
48. The above proposition was made in the case of *Hubert L Martin & 2 others v Margaret Kamar & 5 others* (2016) EKLK, where the court stated as follows;
- “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.”
49. Bearing the above in mind, I will now examine the facts and the law to determine which party, the Plaintiff or the 1st Defendant, has established the root of title.
50. The Plaintiff’s case is that he purchased the suit land from one Gatheca for Kshs 2.5 Million. He enlisted the help of PW2 to find land for him. PW2, in turn, received assistance from Mama Njeri, who identified the suit land for the Plaintiff. PW2 stated that the land belonged to the family of Jacinta, who had appointed Gatheca to act for her.
51. According to the members register, the land was initially registered in the name of Waithaka Rungaruro. The second entry is in the name of Jacinta Mumbi Waithaka. PW2 provided unchallenged evidence that Jacinta appointed him to sell the land on her behalf. PW3 informed the court that he issued the duplicate ballot to Jacinta based on the letter from the District Officer, Kiganjo, dated 11/7/12, which confirmed that the originals were lost.
52. PW3 further provided evidence that he applied for and obtained land control board (LCB) consent in 2013, executed the transfer in favour of the Plaintiff, and facilitated the registration of the title in the name of the Plaintiff, leading to its issuance thereof.
53. Furthermore, it was the evidence of the Land Registrar that there are two registers for the same land. According to the register in his custody, the title for the Plaintiff is supported by documents, while the register for the 1st Defendant is a bare.
54. The entire body of evidence above proves that documents support the Plaintiff’s title, therefore its root has been established as far as the registration is concerned.
55. On the side of the 1st Defendant, evidence was presented that it purchased the land from Patrick Maina Gichuhi. On 10/3/2008, he entered into a sale agreement with Mary Wanjiru Waithaka for the suit land for the sum of Kshs 250,000. On 4/8/2009, he sold the suit land via a sale agreement to DW1, a director of the 1st Defendant, for Ksh 550,000, and a share certificate in the name of the 1st Defendant was issued to the defendant. Ownership documents in the name of Waithaka include the share certificate ballot, dated 1985, and receipts dated 1992. Gichuhi testified that he purchased the land from Waithaka’s wife after Waithaka’s death. The court notes that Mary Waithaka was never registered as the owner of the land. Since she was not a shareholder in GRCL, it is unlikely she could



have transferred any interest in the land. Also, Gichuhi never held any share certificate in the land-buying company.

56. DW2 explained to the court the documents required for a successful transfer: the transfer, land control board consent, clearance from the GRCL, and stamp duty payment.
57. Regarding the title in the name of the 1st Defendant, he confirmed that these documents are unavailable. DW1 was firm that he had nothing to do with the missing documents, but he failed to show that these documents were available and had been presented before the Land Registrar for the issuance of the title.
58. In the case of *Munya Maina v Hiram Gathiha Maina* Civil Appeal No. 239 of 2009 [2013] eKLR states as follows:

“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 and free from any encumbrances including any and all interests which need not be noted on the register.”

59. Flowing from the above decision, the court therefore finds that the title of the 1st Defendant has no root and the same cannot be left to stand.
60. This court, being a court of justice and equity, is guided by the provisions of Section 80 of the [Land Registration Act](#) and proceeds to cancel the titles of the 1st Defendant.
61. 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 found that the Plaintiff has succeeded in his claim. I find no reason to deny him costs
62. Final orders
 - a. It is hereby declared that Ruiru/Kiu/Block2(Githunguri)/2871 belongs to the Plaintiff and the title deed held by the 1st Defendant be and is hereby cancelled.
 - b. A permanent injunction be and is hereby issued restraining the first Defendant, whether by itself, its agents, employees, servants, assigns, persons claiming under it or under its authority, from interfering with the plaintiff’s ownership, quiet possession, enjoyment and or use of the Ruiru/Kiu/Block2(Githunguri)/2871.
 - c. The 2nd defendant be and is hereby directed to rectify the register for the Ruiru/Kiu/Block2(Githunguri)/2871 by removing the name of the 1st defendant and replacing it with the name of the Plaintiff as the registered owner.
 - d. Costs of the suit shall be in favour of the Plaintiff.

63. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI



JUDGE

Delivered Online in the presence of:

Mr Gachau for the Plaintiff

N/A for the 1st -3rd Defendants

C/A – Ms Kendi

