



**Wairia & another v Ng'ang'a & another (Environment and Land Case 015 of 2025)
[2025] KEELC 7016 (KLR) (Environment and Land) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7016 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 015 OF 2025**

MC OUNDO, J

OCTOBER 16, 2025

BETWEEN

SUSAN NJERI WAIRIA 1ST PLAINTIFF

BEDAN NDUNGU KAMAU 2ND PLAINTIFF

AND

MARY WANJIKU NG'ANG'A 1ST DEFENDANT

**FRASHIA WANJIKU GITAU & WILLIAM NJOROGE GITAU (SUING AS
ADMINISTRATORS AD LITEM OF THE ESTATE OF THE LATE GITAU
KIRUMBA) 2ND DEFENDANT**

JUDGMENT

1. Vide a Complaint dated 23rd July 2008 and Amended on 3rd July 2025, the Plaintiffs herein sought for judgement against the Defendants for the following orders:
 - i. A declaration that the Estate of the late Kamau Gathungu is the legal owner of L.R No. Naivasha/Mwichiringiri Block 4/424.
 - ii. A declaration that the 1st Defendant held and the 2nd Defendant continues to hold the suit property in trust for the Estate of the deceased.
 - iii. An order directing the 2nd Defendant to transfer L.R No. Naivasha/Mwichiringiri Block 4/424 into the names of the Administrators of the deceased's estate.
 - iv. Any other relief that the court may deem fair and just to grant in the circumstances.
 - v. Costs of the suit.



2. Pursuant to service of the Plaintiff's Plaint, the Defendants filed their Defence dated 9th November 2011 wherein they denied the allegations contained in the Plaint putting the Plaintiff to strict proof stating that the Plaintiff's claim be directed against Mirera Suswa Farmers Ltd. The 1st Defendant denied having fraudulently registered the suit property in her name in the year 1987 but that she had acquired the same from the Government of Kenya as the first registered owner and later transferred it to the 2nd Defendant for valuable consideration.
3. The 2nd Defendant's defence was that he was a bona fide purchaser for value without notice having acquired an absolute indefeasible interest upon registration of the parcel of land. That the Plaint was scandalous, frivolous or vexatious and should be dismissed with costs.
4. Subsequently, 2nd Defendant had passed away in the year 2021 and was substituted by his legal administrator's being Frashia Wanjiku Gitau and William Njoroge Gitau.
5. In the course of the proceedings, the Plaintiff was also substituted by her son Ken Waruinge (deceased) and later by with Stephen Kimani Njoroge on the strength of a General Power of Attorney dated 22nd February, 2023 and registered at the Nairobi Land Registry on 28th March, 2023.
6. Upon compliance with the pre-trial directions, the matter proceeded for hearing on the 28th May, 2025 wherein PW1, Stephen Kimani Njoroge introduced himself as a grandson (sic) to Susan Njeri Wairia Njoroge, the 1st Plaintiff herein. That he was giving evidence on the 1st Plaintiff's behalf because he was privy to the matter herein. He explained that his mother was old and had suffered amnesia. That he had the Power of Attorney dated 22nd February 2023 to testify on her behalf which Power of Attorney had been signed and filed in the land registry on the 28th March 2023. He produced the said Power of Attorney as Pf exh 1.
7. He adopted his witness statement dated 3rd February 2025 as his evidence in chief and sought to relay on the documents filed as his evidence. He then testified that the land in question was originally his grandfather's land, one John Kamau Gathungu and who had died on 20th November 1984. That the letters of administration dated 16th September 2002 had been issued to Susan Njeri and Biden Ndungu Kamau who was the only son of his grandfather. He produced the said letters of Administration as Pf exh 2.
8. He explained that Kamau Gathungu (Deceased), who had been a member of Mirera Suswa Farmers Limited, had left land and documents to a number of people wherein the suit property herein being Plot No. Naivasha/Mwichiringiri Block 4/424 had been left to his mother. He testified that his grandfather had all the documents to certify his membership.
9. When he was referred to supplementary list of documents filed on 23rd May 2025, he confirmed that the same was a receipt dated 16th August 1977 from Mirera Suswa Limited showing payment of Kshs. 1,000/= by Gathungu. He produced the receipt as Pf exh 3. That according to Kamau Gathungu's card, serial No. 810, there was an allotment No. 1523 and that the plot number was 424. He produced the said card that had been issued on 3rd February 1979 as Pf exh 4.
10. He maintained that his grandfather was the owner of the land and had paid the required amounts as a member of the company, to acquire the same. He produced the 8 receipts as Pf exh 5 (a - h). That the receipts had indicated what the payment had been for whereupon the said payment, his grandfather had been issued with a Share Certificate dated 27th May 1982 by Mirera Suswa Limited and had been allocated 1 share which was plot No. 424 for Kshs. 1,000/=. He produced the said Share Certificate as Pf exh 6. He confirmed that the said documents were in possession of his mother, the 1st Plaintiff herein.



11. That since his paternal grandfather used to live in Naivasha, they used to pass by and that the documents were in possession of her mother at their home. That his brother and mother used to visit the piece of land and that it had been during one of those visits to their paternal homes, they had gone to the land and found that there had been a ‘mishap’ where they had been advised to check at the land registry to find of the status of the land.
12. That his deceased brother visited the District Officer’s office and later wrote a letter to him asking for the records of the land wherein he had received a response vide a letter dated 8th May 2007 from the Provincial Administration District Officer Naivasha Division. Confirming that his grandfather was the owner of Naivasha/Mwichiringiri Block 4 parcel 424. That his brother had been given a copy of the Register containing the owners of land which showed his grandfather’s name assigned to Plot No. 424. He produced the letter dated 8th May 2007 as Pf exh 7 and then marked the Register dated 8th May 2007 as PMFI 8.
13. That thereafter, his brother had visited the land registry and conducted a search on the piece of land wherein they had found out that the land had been registered to the Government of Kenya in the year 1987 then subsequently to Mary Wanjiku Nganga on 17th November 1999. That the said Mary had then transferred the same to Gitau Kurumba who had been given a title deed despite his grandfather not having sold the land. He produced a Green Card dated 4th December 2006 as Pf exh 9.
14. That after they had found out that the land had been transferred from his grandfather, they had placed a caveat on the same and started following up with the DCIO. That there had been no one in occupation of the piece of land to date. That subsequently, they had filed the present suit. He testified that they had also been issued with a Register by the land’s office dated 27th April 202...which had shown that his grandfather’s name Kamau Gathunge at No. 424. He produced the said Register as Pf exh 10.
15. That further, he had a certificate of confirmation of Grant that had been issued in the matter of his grandfather’s estate on the 23rd March 2004 in Succession Cause No. 178 of 2002 in the High Court at Nairobi. That among the properties that had been given to his mother was the Share Certificate of Mirera Suswa Farmers Limited. He produced the Certificate of Confirmation as Pf exh 11 sought that the court gives them back their piece of land and they be compensated with costs.
16. When cross-examined, the witness confirmed that the case herein was on the basis of a Complaint dated 23rd July 2008. When he was referred to paragraph 1 of the Complaint, he confirmed that he was not an administrator of the Deceased Estate. That whereas the 2nd Plaintiff was deceased he had not been substituted. He confirmed that the 1st Plaintiff was the sole surviving administrator. That whereas he was in court to stand in for the 1st Plaintiff herein, he did not know whether she was acting in her personal capacity or as an administrator.
17. When he was referred to PMFI 8 he confirmed that the same was hand written and whereas it had been from the District Officer’s office, he did not know who had generated it. That the register contained several names wherein each plot of land had a number next to a name. He confirmed that his grandfather was a member of Mirera Suswa Company and that his plot had been allocated by virtue of being a member. That the company had a bigger parcel of land which had been subdivided to its members. He confirmed that he did not know the source of the Register and neither had he exhibited a map or mutation form of the subdivision of the parcels of land.
18. His response on being referred to Pf exh 11 was that the same had a schedule of the properties that his grandfather had including a Share Certificate for Mirera Suswa. He confirmed that there had been no mention of a property known as Naivasha/Mwichiringiri Block 4/424 and that his grandfather had



- never held a title by the time he had died. That at that time, the register had been at the D.O.'s office. That whereas Mirera Suswa Company was a private company, it was not one of the Defendants.
19. When he was referred to Pf exh 9, he explained that they had obtained the same from the land registry Nakuru. That whereas the first entry was the Government of Kenya, it had not been sued. That nonetheless, although he did not know if the title was a fake or not, it existed. He confirmed that they were challenging the authenticity of the title.
 20. In re-examination, and while being referred to Paragraph 5 of the Complaint, he confirmed that they had pleaded particulars of fraud in the complaint. His response in reference to PMFI 10 was that the same was a copy of the Register from Mirera Suswa Farmers that showed land parcel No. Naivasha Mwachiringiri Block 4 and that the same bore the registrar's seal.
 21. In reference to Pf exh 11, he confirmed that whereas he did not know the number of the land, the same had been issued in the year 2004 wherein the instant suit had been filed in the year 2008.
 22. PW2, one Charity Kathure Gitau an Assistant County Commissioner (ACC) Naivasha Central Division working for the Ministry of Interior testified that she was aware of parcel No. 424 since her office was the custodian of the records in regard to the said land. She explained that in the years when the companies were being formed and which were many in Naivasha, the District Officer (now the ACC) who was the Chair of the Land Board received and kept copies of their Registers in their office. That she had an extract of a copy of the Register as well as copies of Documents for Mirera Suswa Farmers Limited which she had extracted from the huge dusty book.
 23. That Mirera Suswa Limited was the owner of land parcel No. Naivasha/Mwachiringiri Block 4, which position she had also confirmed from the Chief. That she the copy of the Register showed how farmers had been allocated the various pieces of land.
 24. When she was referred to Pf exh 7, she stated that whereas she was not aware as to who had been the District Officer back then, she could see a stamp on the letter. In reference to PMFI 8, she confirmed that the same was a copy of the Register that she had kept in her office. She also confirmed that parcel of land No. 424 was registered to the name of Kamau Gathungu before producing a copy of the register as Pf exh 8.
 25. When cross-examined, she confirmed that whereas the register had been generated by the companies and placed in the office of the District Officer, the truthfulness/correctness of the record could be verified by the Directors of the companies. That once the members register had been generated, the Director would hear the members and forward it to the land registry for issuance of the title.
 26. Upon being referred to PMFI 10, she confirmed that although the next number after Naivasha Mwachiringiri Block 4 was blurred, the said numbers appear in a sequence. That PMFI 10 had been tampered with since her copy of the register did not have the name Mary Wanjiku Nganga, but the name Kamau Gathungu.
 27. Josephine Njeri Mburu, a Land Registrar at Naivasha Land Registry testified that she in relation to land parcel Naivasha/Mwachiringiri Block 4 Mirera, she had the members' register which contained all the members who had been allocated land by Mirera Suswa, a land buying company which had bought Block 4 to allocate to its members. That the land Registry got details from the company to indicate who got the land wherein titles had only been issued to the members in relation to Block 4. That the register was an extract from the larger register where the first column showed where the number of the land issued was registered, the second column indicated the name of the person while the third column contained the person's identity Card (ID) card Number.



28. That land parcel No. 424, had been allocated to Kamau Gathungu wherein had the land been sold before issuance of the title, the Directors would correct the register to read the current owner. That nevertheless, land parcel No. 424 had not been corrected and that the same still reflected the name of Kamau.
29. When she was referred to PMFI 10, she confirmed that it was the same as her register and that it had been certified by her office. She produced the said Register as Pf exh 10 stating that she also had a copy of the Green Card in relation to land parcel block 4/424 which indicated that the current registered owner on the 12th January 2000 was Gitau Kirumba upon a transfer from Mary Wanjiku Nganga who was registered as the first owner on 17th November 1999 after the Government. That the said Gitau Kirumba had bought the land from Mary.
30. It was her testimony that as per the register, Mary Wanjiku Ngángá had not been allocated the suit land by the company and therefore from their records, she did not know how she had become registered as proprietor. That in the instance case, one could not be legally registered if they were not members of Mirera Suswa Company Limited. That in any case, there had been no letter traced asking that the land be transferred to Mary Wanjiku Nganga. She produced a copy of a handwritten Green Card as Pf exh 12.
31. She explained whereas for a transfer to occur from one person to another, stamp duty had to be paid, they did not have a record of payment of stamp duty by Gitau Kirumba or a consent from Land Control Board from Mary Nganga to transfer the suit land to Gitau Kirumba. That as a Land Registrar, it was not clear how the land had been transferred from the land buying company.
32. When she was cross-examined, she confirmed that the copy of the Green Card she had produced originated from records in their office showing the transactions carried out on the land. She also confirmed that the entries in the Green Card had been made by the land Registrar hence what they had in their records was authentic.
33. She confirmed that the member's register she had produced reflected Gathungu's name. She admitted that an original member could sell his land wherein the Directors would then change the entries of the register by cancelling, counter signing and stamping after which they would write the new allottee.
34. When she was referred to No. 5 of the Plaintiffs further list of documents, she responded that she did not know about the said copy of Register. That whereas there was a stamp affixed, she could not confirm the same. She however confirmed that in the list of documents dated 29th July 2009 filed in Milimani High Court on 18th August 2009, the said document had been included.
35. She explained that against land parcel No. 424, the name Kamau Gathungu had appeared but it was a different handwriting. That above Gathungu's name there was a name Alice. That however, the two names had been cancelled and above Alice's name Mary Wanjiku Nganga's name had been affixed.
36. She confirmed that after the Government of Kenya, the land had been registered to Mary Wanjiku Nganga and that the same had been consistent with the documents that had been brought by the Plaintiff. That whereas as a Registrar, it was their duty to ensure payment of stamp duty which had been executed before registration, they had not been sued in the instance case.
37. In re-examination, she confirmed that whereas whenever there was a transfer, the Directors of Mirera Suswa would cancel and stamp, there was no stamp on the register. That further, whilst there was a column of remark on the register, there had been no remark on the transfer.
38. By consent, the subsequent register was produced as Pf exh 13.



The Plaintiff thus closed its case.

39. The Defence case proceeded for hearing with the testimony of William Njoroge Gitau who testified that the instant case was brought against Mary and Gitau, the 1st and 2nd Defendants herein. That the 2nd Defendant who was his father had passed away in the year 2021. That he was given permission to take over the instance case together with his mother Frashia Wanjiku through an application dated 20th January 2022 for substitution.
40. That there had been a Succession Cause 17/2021 in Kikuyu Magistrate's Court wherein the Letters of Administration had been issued on 28th October 2021 which letters he produced as Df exh 1. He adopted his witness statement dated 30th May 2022 as his evidence in chief.
41. He then testified that the case herein had been going on for a long time. That his father had bought property known as Naivasha/Mwicingiri Block 4/424 from Mary Wanjiku in the year 2000 after which he had been issued with a title deed around the year 2007 which title deed unfortunately got lost. That subsequently, his father had gone to the registry wherein he had been given a new title deed in the year 2011.
42. That the present case had originally been filed in Nairobi then it was transferred to Nakuru before ending up in Naivasha. That his father had passed away during the pendency of the suit. That before his father died, he had asked him to make sure that all his properties were put together hence his presence in court. That he knew where the land that measures 1.224 hectares was situated and that there was nothing growing on the same. That previously, they had wanted to build on the land but had been enjoined by the court.
43. When he was referred to Pf exh 4, he stated that he wished to rely on the same Green Card. That the land had been bought through a written agreement dated 5th January 2000 at a purchase price of Kshs. 320,000/= . He produced the said agreement as Df exh 2 stating that his father had paid the full purchase price. He then produced a copy of the lost title deed dated 12th January 2000 Df exh 3.
44. When he was cross-examined and referred to Df exh 2, he confirmed that the purchase price was Kshs. 320,000/= that he was an administrator of his father's estate and that although his father's, statement drawn by Oriaro Advocates had been signed on 6th March 2012, the said signature was his father's.
45. He was drawn to paragraph 7 of the statement, wherein he confirmed that the purchase price was Kshs. 200,000/= and that the land had been sold to his father by Mary Wanjiku Ngángá, the 1st Defendant herein.
46. His response on being referred to paragraph 5 of the statement was that whereas the same had talked of a search having been conducted, he had neither been shown a copy of the search nor had one been filed in court. That further, he had not been shown any transfer or consent to transfer. That he was not aware whether his father had filed the same as he had not been present at the time. He admitted that whereas he had not seen payment of stamp duty, he had only seen the title deed and the Green Card. He confirmed that there was a filed joint defence by his father and Mary Wanjiku that had been drawn by Oriero Advocate.
47. That whereas the 1st Defendant did not explain how she had acquired the land, she said that she was the first registered owner although he did not know if she had filed any documents in relation to the land.
48. When he was re-examined, he clarified that he had adopted his statement not his father's and that he had never met the 1st Defendant hence he was not in a position to defend her. He reiterated that the



purchase price was Kshs. 320,000/= and that the same was what had reflected in the sale agreement and paid. He also confirmed that the lawyer was still alive.

49. The 2nd Defendant closed their case, and parties were directed to file their written submissions.
50. The Plaintiff, vide their submissions dated 16th day (sic) of 2025 summarized both their case and the Defendants case and thereafter submitted that;
51. The Plaintiff's submission in relation to the capacities of the parties was that, whereas the 2nd Defendant had raised an issue of law on the capacity on which PW1 had been testifying on behalf of the 1st Plaintiff, the 1st Plaintiff was the only surviving administrator of the estate of the late Kamau Gathungu wherein PW1 had testified on behalf of the 1st Plaintiff using a Power of Attorney dated 22nd February 2023, and registered in the land registry on 28th March 2023. That PW1 had clarified that he only testified for the 1st Plaintiff (a "septuagenarian" who could not testify) and was not performing statutory duties reserved for the estate administrators.
52. That it was also PW1's testimony that the suit parcel of land had been issued to the 1st Plaintiff vide a certificate of confirmation of grant that had been produced as Pf exh 11.
53. They placed reliance in the court of appeal decision in *Rebecca Njeri Muturi v Violet Wambui Muturi* [2019] eKLR. to support the distinction between merely testifying on behalf of an administrator (which PW1 did) versus performing exclusive statutory duties of administration.
54. Thereafter, the Plaintiff framed one (1) issue for determination, to wit; whether the 2nd Defendant holds a good title to the suit land.
55. In response, the Plaintiff's submission was that vide their amended Complaint dated 3rd July 2025 they had sought inter alia a declaration that the Estate of the late Kamau Gathungu was the legal owner of the suit parcel of land being Naivasha/Mwishiringiri/Block 4/424.
56. That whereas it was the Defendants' allegations that the 1st Defendant having been registered as first proprietor to the suit land in the year 1987 having acquired the said land from the Government of Kenya wherein she had sold it to the 2nd Defendants who became a bona fide purchaser for value without notice, yet they had challenged the 1st Defendant's title as having been obtained fraudulently and listed the particulars of fraud in their Complaint, thus the root of title held by the 2nd Defendant stood challenged.
57. That this being the case, the 1st Defendant was called to explain how she had acquired the title by demonstrating steps, with documentation and explanation which she failed to do but only stated in her defence that she had acquired the suit property from the Government. They placed reliance in the Supreme Court's decision in the case of *Dina Management Ltd v County Government of Mombasa & 5 others* (2023) KESC 30(KLR) wherein it had been held that when a root title is challenged, the registered proprietor must go beyond the instrument and prove the legality of the title.
58. That on the contrary, the Plaintiff had through evidence by PW1 produced documents demonstrating how the late Kamau Gathungu had acquired the suit property as a member of Mirera Suswa Farmers Limited which documents included receipts of payment, member certificate, ballot, allotment certificate and records in possession of the Government offices, the Assistant County Commissioner's office (former District Commissioner) and the land registry. That subsequently, it was clear from the evidence that had been produced, that the 1st Defendant, on a balance of probabilities, could only have acquired the suit property fraudulently since there having been no paper trail showing as to how she had acquired the land. That it was also clear that she had caused her name to be entered into the title



- of the suit property fraudulently since no documents or evidence had been presented explaining how she had come to be registered.
59. That it follows then that the suit property was subsequently fraudulently transferred to the 2nd Defendant, both Defendants having failed to produced Land Board Consents to transfer, stamp duty payment receipts which PW3 testified could not be traced in the suit property's file. That indeed, the Plaintiffs had placed material before court demonstrating how the suit land had been acquired from Mirera Suswa Farmers Ltd where the late Kamau Gathungu had been a member, that he had been allocated plot No. 424 which later came to be known as Naivasha/ Mwachiringiri Block 4/424 an account that had been collaborated by both the Assistant County Commissioner (PW2) from the records held in their offices, and the Land Registrar (PW3) from records held in their offices.
 60. That from the foregoing, the evidential burden to demonstrate how the 1st Defendant had acquired the parcel of land had shifted to her the moment the Plaintiff testified and demonstrated by records from government offices and from documents issued by Mirera Suswa Farmers Ltd.
 61. It was their submission that the 1st Defendant never discharged the said evidential burden wherein it had been incumbent upon her to demonstrate how she had acquired her title, her name not having appeared in any of the documents in possession of the Government institution. Reliance was placed on the case of *Munyu Maina v Hiram Gathiha Maina* (2013) KECA 94 KLR that had invoked Section 112 of the *Evidence Act*, to state that the burden of explaining how the title was acquired (a fact especially within the 1st Defendant's knowledge) was upon her. Further reliance was also placed in the decided case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 KLR.
 62. In regard to the 2nd Defendant's allegation that he was an innocent bona fide purchaser for value hence he could not be disposed of the suit property, the Plaintiffs placed reliance on the decided case of *Samuel Kamere v Land Registrar* (2015) eKLR to submit that whereas the 2nd Defendant in his original witness statement and the statement by DW1 had stated that a search had been conducted at the land registry, when challenged to produce the same they never did. That further, neither the land board consent, evidence of stamp duty, payments for the transfer had been produced whereas there had been discrepancies in the purchase price (Kshs. 320,000/= vs. Kshs. 200,000/=). That in any event, it had not been demonstrated that the purchase price had been paid.
 63. It was thus their submission that the 2nd Defendant had also not discharged his evidential burden hence he did not hold a legal title. That in any event, the title of the 1st Defendant having been demonstrated to have been fraudulently acquired, it follows that the title that had been acquired by the 2nd Defendant could also not stand since the court could not sanction an illegality.
 64. In conclusion, they submitted that they had discharge the burden of proof hence they were merited to be issued with the prayers sought in their plaint.
 65. The 2nd Defendant, vide his written submissions dated 8th July 2025 first submitted on the capacity of parties to the effect that whereas PW1 Stephen Kimani Njoroge had informed the court that the 2nd Plaintiff Bedan Ndung'u Kamau who was a Co-Administrator of the deceased's estate had died leaving 1st Plaintiff as the sole Administrator of the estate, the documents to support the said assertion were never availed.
 66. It was their submission that the 1st Plaintiff who was an Administrator appointed by the Court had no power to delegate her authority and responsibility through a Power of Attorney to any person. That subsequently, the appointment of Stephen Kimani Njoroge and his participation in the proceedings on the strength of a Power of Attorney had been illegal and void. That Stephen Kimani Njoroge could only take up the proceedings by substituting Susan Njeri Wairia Njoroge, the 1st Plaintiff herein as



an Administrator of the Estate of Kamau Gathungu. That in any event, the wording of the Power of Attorney itself had only empowered the Donee to deal with personal matters of Donor Susan Njeri Wairia Njoroge and not the affairs of the Estate of Kamau Gathungu. Reliance was placed on the decisions in the cases of *In re Estate of Amos Njenga Gikonyo (Deceased)* (Succession Cause 426 of 2006) [2022] KEHC 10425 (KLR) (2 June 2022) and the Court of Appeal's decision in *Rebecca Njeri Muturi v Violet Wambui Muturi* [2019] eKLR to urge the Court to dismiss the suit since the person who prosecuted the suit on behalf of the estate of the late Kamau Gathungu had no capacity to do so.

67. Reliance was then placed on the decided case of *Jackson Gathumbi Mutuota v Mwiki Company Limited & Another* [2022] eKLR to submit that the 2nd Defendant was an innocent purchaser for value and had fulfilled all the conditions as had been set in the said case. That the Plaintiffs had not established any wrong doing or fraud that had been committed by the 2nd Defendant. That in any event, the Estate of Kamau Gathungu never held a title to the suit property for which they not sued the parties who could have shed more light on how the title had been issued to Mary Wanjiku Nganga, the 1st Defendant herein and not Kamau Gathungu. That the documents availed by the Plaintiffs themselves had shown that Mary Wanjiku Nganga, the 1st Defendant herein, had acquired interest in the suit property which interest had been recorded in the books held by the company. They thus urged the court to find that the Plaintiff's suit had not merit.

Determination.

68. I have considered the Plaintiffs' suit, the Defendant's defence, the parties' respective submissions and the authorities cited in support and in opposition thereof of their positions, as well as the applicable law.
69. This matter was filed by the 1st Plaintiff, vide a Plaint dated the 23rd July 2008 which was amended on 3rd July 2025. PW1's brief history in evidence was that 1st Plaintiff was septuagenarian who could not testify as she suffers from amnesia and therefore being her a son, he was testifying on her behalf pursuant to a donated Power of Attorney dated 22nd February 2023 that had been filed in the land registry on the 28th March 2023. That the 2nd Plaintiff, Biden Ndungu Kamau had passed away.
70. That the 1st Plaintiff was the sole surviving administrator and daughter to John Kamau Gathungu who was his grandfather and was a member of Mirera Suswa Limited, a land buying Company, wherein by virtue of the number of shares in the company, he had paid Ksh, 1,000/= in 1977, and was issued with a Member Card in 1979 (Serial No. 810), showing Allotment No. 1523 for Plot No. 424. On 27th May 1982, he was issued with a Share Certificate for 1 share for plot No. 424. His Grandfather died on 20th November 1984 wherein letters of Administration were issued to the Plaintiffs Susan Njeri and Biden Ndungu Kamau (deceased son) and subsequently on 23rd March 2004, a Certificate of Confirmation was issued in Succession Cause No. 178 of 2002, listing the Share Certificate for Mirera Suswa Farmers Limited among the properties given to the 1st Plaintiff (his mother).
71. That it had been in the cause of a visit to the suit land (in his mother's paternal home) that his brother and mother discovered that there had been some anomaly on the same wherein a search at the lands Registry revealed that the land had been registered to the Government of Kenya in the year 1987 then subsequently to the 1st Defendant Mary Wanjiku Nganga on 17th November 1999 who had then transferred the same to the 2nd Defendant Gitau Kurumba who had been issued with a title deed, this despite his grandfather not having sold the land. That registration of the Defendants to his



grandfather's land was therefore fraudulent. That vide this suit, they were challenging the Defendants' root of the title which was obtained fraudulently.

72. In support of his case, the Plaintiff relied on the following exhibits.
- i. Power of Attorney as Pf exh 1.
 - ii. Letters of Administration to Susan Njeri and Biden Ndungu Kamau as Pf exh 2.
 - iii. A receipt dated 16th August 1977 from Mirera Suswa Limited for payment of Kshs. 1,000/= by Gathungu as Pf exh 3.
 - iv. Kamau Gathungu's card, issued on 3rd February 1979 serial No. 810, showing allotment No. 1523 and plot number as 424 as Pf exh 4.
 - v. 8 receipts of payment as Pf exh 5 (a - h).
 - vi. A Share Certificate as Pf exh 6.
 - vii. Letter dated 8th May 2007 from the District Officer confirming ownership as Pf exh 7
 - viii. Suswa members' Register dated 8th May 2007 as Pf exh 8.
 - ix. A Green Card dated 4th December 2006 as Pf exh 9.
 - x. A Register dated 27th April 202 (sic) showing Kamau Gathunge at No. 424 as Pf exh 10.
 - xi. A Certificate of Confirmation as Pf exh 11
 - xii. A copy of a handwritten Green Card as Pf exh 12.
 - xiii. A register was produced as Pf exh 13
73. The Defendants' case which was prosecuted by DW1 on behalf of his deceased father, the 2nd Defendant (Gitau Kirumba) was that after father died in 2021, he became an administrator of his estate in succession proceedings in the Kikuyu Magistrate's Succession Cause No. 17 of 2021. That his father bought the land, Naivasha/Mwichiringiri Block 4/424 measuring 1.224 hectares, from the 1st Defendant, Mary Wanjiku in the year 2000 vide a written Sale Agreement dated 5th January 2000 for a price of Kshs. 320,000/=, which money was paid in full.
74. That thereafter, his father was issued with a title deed around the year 2007, the same subsequently got lost but was replaced with a new one in the year 2011. That the case had been long-running, having been transferred from Nairobi to Nakuru and finally to Naivasha and that they had been enjoined by the court from building on the land which was vacant. That he had neither seen the copy of any transfer documents, consent to transfer, or payment of stamp duty. That further, he did not know how the 1st Defendant-Mary Wanjiku acquired the land and was not therefore in a position to defend her.
75. The 2nd Defendant relied on the following exhibits as his evidence;
- i. Letters of Administration had been issued on 28th October 2021 as Df exh 1
 - ii. Sale Agreement dated 5th January 2000 as Df exh 2
 - iii. A copy of the lost title deed dated 12th January 2000 as Df exh 3.
76. The 1st Defendant did not participate in the proceedings.
77. Having heard the evidence as adduced in court, certain facts arose that are not in dispute being;



- i. That the suit land herein was part of parcel of land known as Naivasha/Mwichiringiri Block 4 which had been bought by Mirera Suswa Farmers Limited a private company for allocation to its members.
 - ii. It is also not in dispute that as per the Register of the Companies members, herein produced by both the Assistant County Commissioner (ACC) who were formally known as District Officers, and the Naivasha land Registrar, that the deceased John Kamau Gathungu was a member of the company and that he had been allocated Plot 424 the current suit land as per the share he held. That the 1st Defendants name, Mary Wanjiku Nganga did not appear on the register.
 - iii. Lastly it is not in contention that the current registered owner of land parcel Naivasha/Mwichiringiri block 4/424 as seen in the copy of the Green Card, was one Gitau Kirumba (the deceased 2nd Defendant) who was registered as such on the 12th January 2000 upon a transfer from Mary Wanjiku Nganga (1st Defendant) who had been registered as the first owner on 17th November 1999 after the Government of Kenya.
78. What then is the bone of contention is how the land moved ownership from the deceased John Kamau Gathungu, to the 1st Defendant Mary Wanjiku Nganga and subsequently to Gitau Kirumba (the deceased 2nd Defendant).
79. It is not in dispute that Mirera Suswa Farmers Limited was land-buying entity that had been formed in the past to collectively purchase and subdivide large parcels of land for its members. As the name suggests its members were farmers and the land was located in the Mirera/Suswa area of Naivasha.
80. From the analysis of the pleadings and the evidence on record, I find that this is a case where the Plaintiff's claim against the Defendant is based on fraudulent registration of title to land parcel No. Naivasha/Mwichiringiri block 4/424 whereas the 2nd Defendants defence is that of a bonafide purchaser for value without notice.
81. There is yet another angle of discussion that had been brought to fore as to whether PW1 had the locus standi to represent the 1st Plaintiff wherein it was trite that an administratix cannot delegate his/her power to their attorney.
82. In the instant case it is not in dispute that the 1st Plaintiff was the sole Administrator of the Estate of the deceased John Kamau Gathungu. It is also not in contest that the said 1st Plaintiff, owing to her advanced age coupled with the condition of amnesia, appointed her son PW1 through a Power of Attorney dated 22nd February, 2023 and registered at the Nairobi Land Registry on 28th March, 2023 to testify in court on her behalf. The court was referred by both parties to the Court of Appeal's decision in the case Rebeccah Njeri Muturi vs Violet Wambui Muturi [2019] eKLR which authority I have gained sight of.
83. From the analysis of the said citation and the evidence herein adduced, I find the issues arising for my determination as follows;
- i. Whether PW1 Stephen Kimani Njoroge had the locus standi to testify on behalf of the 1st Plaintiff if so;
 - ii. Whether the registration culminating in title being registered in favour of the 1st Defendant relating to the suit property was procured fraudulently.
 - iii. Whether the 1st Defendant passed a good title to the 2nd Defendant



- iv. Whether the 2nd Defendant was a bonafide purchaser of title without notice.
 - v. Whether the Plaintiff is entitled to the reliefs pleaded.
 - vi. Who bears the costs of the suit?
84. On the first issue for determination, a summary of the Court of Appeal decision in the cited case by both parties being *Rebecca Njeri Muturi v Violet Wambui Muturi* [2019] eKLR, was that the court made a distinction between fiduciary powers which were substantive duties that required the administratrix's personal judgment and ministerial/administrative tasks (Potentially Delegable) which an administratrix could delegate/appoint an agent (who might be called an "attorney") to perform purely mechanical or administrative tasks that did not require personal discretion. That however, even for these tasks, the administratrix remained personally accountable to the court and the beneficiaries for the agent's actions.
85. Indeed, the court in *Rebecca Njeri Muturi* (supra) had held as follows:
- “However, Richard as a beneficiary of the estate has powers under Section 76 of the *Law of Succession Act* and Rule 44 (1) of Probate and Administration Rules to apply as of right for revocation of the grant. Thus, he had capacity to institute the proceedings. The fact that he invoked Power of Attorney to make the application does not render his application incurably defective. The High Court was entitled to consider his application on the merits. Further, even if Richard was acting under the Power of Attorney to institute proceedings it is clear that he was pursuing the personal interest of the respondent in the estate and not exercising or performing statutory duties exclusively conferred to the respondent by law as administrator of the estate. To that extent the respondent cannot be said to have delegated the power and duties of her office as administrator to Richard. Similarly, the High Court was entitled to entertain the respondent's protest or objection to the distribution of the suit property through her attorney.”
86. I find that testifying on behalf of the indisposed 1st Plaintiff did not constitute a fiduciary power in the light of the above Court of appeal holding but was a mere administrative task which did not go against the law.
87. On the second issue for determination, Section 26(1) of the *Land Registration Act* provides as follows:
- “the Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all counts 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 the 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
 - b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme
88. As may be observed, the law is extremely protective of title and provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the



person must be proved to be a party. The second is where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.

89. The Plaintiff's case was founded on Fraud. In *R.G Patel vs Lalji Makanji* 1957 E.A 314, the Court of Appeal stated as follows:

“Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.

90. In the case of *Arthi Highway Developers Ltd vs West End Buchery Ltd & Others* C.A Civil Appeal No. 246 of 2013 [2015] eKLR, the Court of Appeal cited the following passage from *Bullen & Leake precedents pleadings* 13th edition at Page 427:

“The statement of the claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice”.

91. From the evidence herein adduced it is clear that parcel No. Naivasha/Mwihiringiri Block 4 was owned by Mirera Suswa Farmers Limited which was a land buying company and which had bought Block 4 to subdivide it and allocate the sub divisions amongst its members according to their respective shares. There was also evidence adduced by both PW2 the Assistant County Commissioner-Naivasha Division and PW3 the Naivasha land Registrar to the effect that Mirera Suswa Farmers Limited had a register of its members that showed how farmers had been allocated their respective parcels of land as against their names. That as Chair of the Land Board they received and kept copies of their Registers in their office. That it had been based on this Register and details from the company, that the Land Registry would issue titles to members of the Company.
92. That in the Register which was produced as Pf exh 8, the same had indicated that the deceased Kamau Gathungu had been allocated Plot No. 424. Further evidence had been to the effect that upon making payments of Ksh 1,000/= on 16th August 1977 to Mirera Suswa Limited the deceased Kamau Gathungu had been issued with a card on 3rd February 1979 which showed that his allotment No. 1523 was for plot number was 424.
93. A comparison of the register produced as Pf exh 8 and which emanated from the Assistant County Commissioner's office and Pf exh 10 which PW1 had been issued at the land's office showed some discrepancies in that whereas Pf exh 8 did not have the name Mary Wanjiku Nganga, but only the name Kamau Gathungu, on the other hand Pf exh 10 had been tampered with wherein above Gathungu's name there was a name Alice and both names had been cancelled and the name Mary Wanjiku Nganga's had been affixed.
94. The land Registrar's evidence had been that Mary Wanjiku Nganga the 1st Defendant had not been allocated the suit land by the company and therefore from their records the Green card, she did not know how she had become registered as proprietor as she was not a member of Mirera Suswa Company Limited, there had been no letter traced asking that the land be transferred to Mary Wanjiku Nganga. That were an original member were to sell his land, the Directors of the company would change the entries of the register by cancelling and counter signing and stamping and thereafter write the new allottee which was not the case in the instant case.



95. That further, for a transfer to have occurred from one person to another, stamp duty had to be paid, they did not have a record of payment of stamp duty by Gitau Kirumba or a consent from Land Control Board from Mary Nganga to transfer the suit land to Gitau Kirumba. Indeed, the Defendant also confirmed that although the land was sold to his father by the 1st Defendant vide a sale agreement of 5th January 2000, yet he had no documents of transfer and did not know how the 1st Defendant got the land.
96. Based on both the oral and documentary evidence adduced, I find that indeed the title held by the deceased 2nd Defendant to parcel of land No. Naivasha/Mwichiringiri Block 4/424 had been procured illegally the same having not been obtained from the company or the deceased Kamau Gathungu, and therefore the vendor Mary Wanjiku Nganga did not have a good title to pass to the 2nd Defendant there having been no evidence of allocation of the same as a member of Mirera Suswa Farmers Ltd, payment of the stamp duty, and no Land Control Board consent to transfer to show the legitimacy of the title and therefore it cannot be said that the deceased 2nd Defendant Gitau Kirumba was an innocent purchaser.
97. The Court of Appeal in *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] eKLR adopted the decision of the Ugandan Court of Appeal in *Katende v Haridar & Company Limited* [2008] 2 E.A.173 that weighed in on the definition of an innocent purchaser as follows:
- “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:
- (a) he holds a certificate of title;
 - (b) he purchased the property in good faith;
 - (c) he had no knowledge of the fraud;
 - (d) he purchased for valuable consideration;
 - (e) the vendors had apparent valid title;
 - (f) he purchased without notice of any fraud;
 - (g) he was not party to any fraud.”
98. Hon. Justice Onyancha in *Alberta Mae Gacii V Attorney General & 4 Others* (2006) eKLR had stated as follows:
- “Cursed should be the day when any crook in the streets of Nairobi or any town in this jurisdiction, using forgery, deceit or any kind of fraud, would acquire a legal and valid title deceitfully snatched from a legal registered innocent proprietor. Indeed, cursed would be the way when such a crook would have the legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration. For my part, I would want to think that such a time when this court would be called upon to defend such crooks, has not come and shall never come.....”



99. Whereas in the case of Iqbal Singh Rai vs. Mark Lecchini and the Registrar of titles, civil Case No. 1054 of 2001, Hon. Justice Muchelule (as he then was) also opined as follows:

“At the time when the 1stDefendant sought to buy the land in dispute the registered proprietor was the Plaintiff. There is no dispute that he never dealt with the Plaintiff in the transaction that followed. The person with whom he dealt was not the registered proprietor of the land in dispute. The person was a fraud who had no claim whatsoever to the land. The consequence is that the 1stdefendant was a purchaser who did not deal with the registered proprietor of the land. Section 23(1) protects ‘title issued to a purchaser upon the transfer or transmission by the proprietor thereof’. The 1stDefendant did not obtain a transfer from the Plaintiff who was the registered proprietor. He obtained a transfer from a fraudulent person who had no claim to the land. He cannot I find invoke the provisions of section 23(1) to say he obtained an indefeasible title.”

100. From the evidence herein adduced, I find that the 2nd Defendant did not carry out a proper due diligence to establish the lawful owner of the suit property before purchasing it.

101. The import of Section 26 (1)(b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1)(b) is to protect the real title holders from being deprived of their titles by subsequent transactions.

102. In *Sehmi & another v Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment), the Supreme Court of Kenya while quoting the provisions of Section 23 of the registration of Titles Act (repealed) and Section 26 of the *Land Registration Act* at paragraphs 67, 68 and 69 observed as follows:

“It is important to take note of the critical shift in terminology from the repealed Act to the current statute. Under the Registration of Titles Act, a certificate of title was to be regarded by courts as conclusive evidence that the person named therein was the absolute and indefeasible owner of the land. However, under current legislation, a certificate of title is to be regarded by courts as prima facie evidence that the person named therein is the absolute and indefeasible owner of the land. It is therefore no longer possible for a title holder to erect the certificate of title as a barrier to an inquiry into its legality or otherwise”.

103. A court of law cannot therefore on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title. Having therefore scrutinized the root of the title held by the deceased 2nd Defendant and the processes and procedures that brought forth the said title, I find that such a title cannot be held as indefeasible, the same having been acquired through fraud, misrepresentation, illegality, unprocedural ways or a corrupt scheme.

104. In the end, I find in favor of the Plaintiffs’ case and enter judgement against the Defendants with costs as prayed.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 16TH DAY OF OCTOBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

