



**Mungai (Suing as the personal representative of the Estate of the Late Peter Mungai Nganga) v Githunguri Ranching Company Limited & 4 others; Vipro Limited (Third party) (Environment and Land Case 1290 of 2014) [2025] KEELC 7279 (KLR) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7279 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 1290 OF 2014  
CA OCHIENG, J  
OCTOBER 27, 2025**

**BETWEEN**

**MARY NJERI MUNGAI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE PETER MUNGAI NGANGA) ..... PLAINTIFF**

**AND**

**GITHUNGURI RANCHING COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT  
SAMUEL MWANGI KIMANI ..... 2<sup>ND</sup> DEFENDANT  
DAVID MACHARIA KAMAU ..... 3<sup>RD</sup> DEFENDANT  
BY PASS LINKS LIMITED ..... 4<sup>TH</sup> DEFENDANT  
LAND REGISTRAR THIKA ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**VIPRO LIMITED ..... THIRD PARTY**

**JUDGMENT**

1. The Plaintiff commenced this suit vide a plaint dated 2<sup>nd</sup> October 2014 and amended on 2<sup>nd</sup> November 2018. She claimed that her late husband, Peter Mungai Nganga-deceased, was allocated ballot No. 149 A which entitled him to land parcel number Ruiru Kiu 2 (Githunguri) 3757, hereinafter referred to as the 'suit land', by virtue of his shareholding with the 1<sup>st</sup> Defendant (share certificate No. B0707) of which he took possession in 1998. Further, that around 2014, her late husband conducted a Search at the 5<sup>th</sup> Defendant's offices in Thika and discovered that the 1<sup>st</sup> Defendant had illegally and unlawfully allocated the suit land to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively, who later sold it to the 4<sup>th</sup> Defendant upon which, the 5<sup>th</sup> Defendant issued a title deed. She claimed that the suit land has since been illegally sold to the Third Party by the 4<sup>th</sup> Defendant.



2. She hence sought for the following Orders:

- a. A revocation of title and cancellation of entries of title made by the 5<sup>th</sup> Defendant in respect of land parcel number Ruiru Kiu Block 2 (Githunguri) 3757 as the disposition to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants and the third party herein was invited by illegality and unlawfulness.
- b. Permanent injunction be issued against the 1<sup>st</sup> - 4<sup>th</sup> Defendants and the third party either by themselves, their servants, agents, employees or person acting under their direction or authority from interfering with the quiet possession and occupation of the Plaintiff on land parcel number Ruiru Kiu Block 2 (Githunguri) 3757.
- c. An order directing the 4<sup>th</sup> Defendant either by itself, agents, servants and /or employees to cause the removal and/or clearance of any structure or development made on land parcel number Ruiru Kiu Block 2 (Githunguri) 3757 and give a vacant possession of the same in default, the Plaintiff to cause the removal.
- d. An order directing the Third party either by itself, agents, servants and /or employees to cause the removal and /or clearance of any structure or development made on land parcel number Ruiru Kiu Block 2 (Githunguri) 3757 and give a vacant possession of the same in default, the Plaintiff to cause the removal.
- e. A declaration that the suit property Ruiru Kiu Block 2 (Githunguri) 3757 legally belongs to the Plaintiff.
- f. Costs of this suit.
- g. Any other relief the court may deem fit to grant.

### **Responses**

3. The suit is opposed by the 1<sup>st</sup> to 3<sup>rd</sup> Defendants who filed a joint statement of defence. They denied allegations leveled against them in the plaint and contended that the 1<sup>st</sup> Defendant allotted land to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who sold it to the 4<sup>th</sup> Defendant.
4. The 4<sup>th</sup> Defendant filed an amended statement of defence. It denied allegations leveled against it and contended that it purchased the suit land from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and that it has since sold it, to the Third Party thus the Plaintiff has no cause of action against it.
5. On its part, the Third party filed a statement of defence denying the allegations levelled against it in the plaint. It contended that it is the registered owner of the suit land, has been in possession thereon since 2013. Further, that it has erected seventeen (17) Go downs and other major developments thereon. It insists that its property is 3.027 acres while the Plaintiff claims 1 1/4 acres thus the property is in a different location on the ground.
6. The matter proceeded for hearing where both parties had witnesses.

### **Evidence of the Plaintiff**

7. The Plaintiff testified as PW1 where she adopted her witness statement as her evidence in chief. She claimed that her late husband purchased the suit land measuring 1 ¼ acres from the 1<sup>st</sup> Defendant in the year 2002 and was issued with a Share Certificate No. B 0707 and then allocated ballot No. 149A. It was her testimony that on 12<sup>th</sup> June 2012, the 1<sup>st</sup> Defendant subdivided the suit land, and the



- deceased including other members of the 1<sup>st</sup> Defendant were to be allocated plots in Ruiru Kiu Block 2 (Githunguri)/357. She insisted that her husband was issued with a clearance certificate.
8. It was her testimony that her late husband took some time before going to the 1<sup>st</sup> Defendant's office to collect his title but he later learnt that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, who were former officials of the 1<sup>st</sup> Defendant had collected his title now known as Ruiru Kiu Block 2 (Githunguri)/3757, which was an illegality. She explained that sometime in 2003, her late husband conducted a search at the Lands office which confirmed the position. Further, that he reported to the 1<sup>st</sup> Defendant's offices and the 3<sup>rd</sup> Defendant promised to surrender the title, only to sell it to the 4<sup>th</sup> Defendant who later sold it to the Third Party. She produced her List and Bundle of documents dated 2<sup>nd</sup> November 2018 and 14<sup>th</sup> June 2023 respectively as her exhibits No 1 and 2.
  9. In cross-examination PW1 reiterated that her late husband was balloted the suit land and there was a transfer to that effect, from one John Kahara to her late husband though she did not have it in court. Further, that the clearance certificate issued to her late husband was signed by Raphael JM Githuku but she had no proof that the individual was a director of the 1<sup>st</sup> Defendant. She explained that the clearance certificate indicates that her late husband's parcel is a "transfer of Share No. 8085" while his share certificate is indicated as B0707.
  10. She stated that her late husband paid John Kahara Kshs.40,000/= in cash in 2002 as purchase price for the suit land but she did not have the sale agreement thereof in Court or anything to show receipt of the purchase price. It was her further testimony that they were not paying rates for the parcel. She insisted that she had documents to show that plot 149A was registered as Ruiru/Kiu Block 2/3757, and that it is the 1<sup>st</sup> Defendant who subdivided the land, while the vendor showed her late husband the physical location of the said land. She however did not have any document to show that she paid for survey and had no receipt to confirm payment of processing of title. Further, she had nothing to show that the issue was reported to the police and investigations carried out. She also insisted that her late husband lodged a complaint with the 1<sup>st</sup> Defendant but it did not confirm who was owner of the suit land.

### **Case for the Defendants**

11. DW1 was John Maina Mburu, a director of the 1<sup>st</sup> Defendant. He adopted his witness statement as his evidence in chief. He stated that the 1<sup>st</sup> Defendant's members contributed to buy approximately 8,000 acres of land in Ruiru, subdivided into Ruiru West Block 1, Ruiru East Block 1 and Ruiru Kiu Block 2. He explained that a full member was supposed to be allocated three (3) plots being 1/8-acre residential plot on Ruiru West Block 1, 1 ¼ acres in Ruiru Kiu Block 2 or Ruiru East Block 1 and ½ acre plot in either Ruiru Kiu Block 2 or Ruiru East Block 1.
12. He admitted that Peter Mungai Nganga(deceased) was one of the 1<sup>st</sup> Defendant's members' and that he was allocated his full shares as aforementioned, held by ballot No. R/W No. 001162, thus he had no claim against the 1<sup>st</sup> Defendant unless by purchase from another member or from the 1<sup>st</sup> Defendant. He also admitted that the dispute relating to the suit land had been deliberated at the 1<sup>st</sup> Defendant's offices and the outcome was that the 4<sup>th</sup> Defendant acquired the suit land legally, thus the Plaintiff's documents were forged.
13. He pointed out that clearance certificate REF C45/69/CC/TD/192/02 dated 12<sup>th</sup> June 2002, does not show the size of the land and it is indicated to have been issued against share certificate No. B-8430 whereas share certificate No. B0707 dated 8<sup>th</sup> May 2002 indicates another transfer 8085.
14. He also pointed out that the ballot card filled by the Plaintiff for Plot No. 149 A is dated 9<sup>th</sup> May 1988 whereas the genuine ballot No. A149 generated land parcel Ruiru Kiu Block 2/3755 which was



- allocated by the company to Thomas Kamau Kinyanjui. He produced the 1<sup>st</sup> Defendant's bundle of documents dated 9<sup>th</sup> December 2024 as Exhibits No. 1 - 6.
15. In cross-examination, DW1 stated that the 1<sup>st</sup> Defendant allotted land to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, who sold it to the 4<sup>th</sup> Defendant and that their registration corresponds with documents given to 1<sup>st</sup> Defendant. Further, that investigations surrounding the dispute have not been concluded by the Director of Criminal Investigations. He reiterated that ballot 149 A generated LR No. Ruiru Block 2C (Githunguri 3755).
  16. In re -examination, DW1 emphasized that Ballot No. 149A produced Ruiru /Block 2/Githunguri) 3755 while the parcel in dispute is 3757.
  17. The second witness, DW2 was David Kimani Muthondu. He testified that the 4<sup>th</sup> Defendant purchased Ruiru Kiu Block 2/3757 from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and that the parcel did not have any encumbrances registered against it. Further, that the 4<sup>th</sup> Defendant was then issued with a title deed on 13<sup>th</sup> March 2007 and lawfully transferred it to the Third Party vide an agreement for sale dated 4<sup>th</sup> November, 2013. He produced the 4<sup>th</sup> Defendant's List and bundle of documents dated 4<sup>th</sup> July 2023 as Exhibits 1-2.
  18. DW3 was Robert M Mbugua, the Land Registrar, Ruiru, who adopted his witness statement as his evidence in chief. He explained that the register in respect of Ruiru Kiu Block 2/3757 was opened on 11<sup>th</sup> June 2002 and registered in the name of the Government of Kenya. Further, that on the same day, it was transferred to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and a title deed was issued to that effect. It was his testimony that on the 13<sup>th</sup> March 2007, ownership was transferred to the 4<sup>th</sup> Defendant and a title was issued. He pointed out that the transfer form was accompanied with a letter of consent to transfer, application for consent to transfer, title deed issued to the transferors as well as copies of the parties' ID cards including KRA pin. He averred that on the 6<sup>th</sup> March 2014, the 4<sup>th</sup> Defendant transferred the suit land to the Third Party, which was issued with a title. He produced the 5<sup>th</sup> Defendant's list and bundle of documents dated 21st April 2024 as Exhibits 1-27.
  19. Dw4 was John Kagonye Ngururi, a director of the Third Party who adopted his witness statement as his evidence in chief. It was his testimony that the Third Party is the registered owner of the suit land. Further, that it has been in possession thereof, since 2013. He explained that the Third Party has erected seventeen (17) Go downs and other major developments thereon and that its parcel measures 3.027 acres while the Plaintiff claims a parcel measuring 1 ¼ acres. He produced the Third Party's list and bundle of documents dated 20<sup>th</sup> September 2023 as Exhibits 1-11.

### **Submissions**

20. In her submissions, the Plaintiff provided a background of the dispute herein and contended that she had proved her case as her share certificate and clearance certificates were not challenged since no counterclaim was filed to contest her entitlement to the suit land. Further that the 1<sup>st</sup> Defendant admitted that her late husband was its member but failed to provide evidence of alleged forgery and it did not recall or cancel his documents.
21. She contended that the 1<sup>st</sup> Defendant's internal Ruling on the dispute holds no legal weight in determining the party entitled to the suit land. To buttress her averments, she relied on the following decisions: Arthi Highway Developers Limited v West Ed Butchery [2015] eKLR and Republic v Chairman, Lands Disputes Tribunal Kirinyaga District & Another Ex parte Peter Maru Kariuki [2005] KEHC 3202 (KLR) eKLR.



22. The Third Party in its submissions, contended that the Plaintiff did not tender sufficient evidence to prove that her late husband is the legal owner of the suit land since she did not produce a sale agreement to confirm the purchase of the property pursuant to Section 3 (3) of the *Law of Contract Act*. Further, that she did not demonstrate that the Third Party's title was obtained through fraud or misrepresentation and that the 1<sup>st</sup> Defendant, which is the allocating authority denied allocating the suit land to the Plaintiff.
23. On its part, the 5<sup>th</sup> Defendants submitted that the Plaintiff's evidence was contradictory and insufficient to support the claim for ownership of the suit land. Further, that DW1 also denied the Plaintiff's late husband's claim and contended that he owned a separate property adding that the 1<sup>st</sup> Defendant had also deliberated on the dispute and ascertained the genuine allottees to be the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants thus the root of their title was explained.
24. He contended that as at 2002, the procedure was that the government was registered as owner on behalf of the 1<sup>st</sup> Defendant before it subdivided the block to its members. Further, that despite particularizing the allegations of illegality as against the Defendants, the same were not proven to the required standard of proof and the Plaintiff also did not prove that the titles were obtained through any corrupt scheme.
25. To support his averments, the 5<sup>th</sup> Defendant relied on the following decisions: James Njoroge Gitau v Lucy Chepkurui Kimutai (2018) eKLR, Elijah Wachiuri Nduru v Timothy Githaiga Mwangi [2016] eKLR, Gwer & 5 Others v Kenya Medical Research Institute & 3 Others (2020) eKLR, William Kabogo Gitau v George Thuo & 2 Others [2010] eKLR and Elijah Makeri Nyangweso v Stephen Mungai Njuguna & Another [20]kjk13] eKLR.
26. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants and the 4<sup>th</sup> Defendant did not file written submissions.

### **Analysis and Determination**

27. Upon consideration of the pleadings, testimonies of the witnesses, exhibits and submissions, the following are the issues for determination:
  - a. Who is the owner of the suit land?
  - b. Whether the Certificate of Title held in the name of the Third Party should be revoked.
  - c. Whether the Plaintiff is entitled to the Orders as sought in the Plaintiff.

As to who is the owner of the suit land and if the Certificate of Title in the name of the Third Party should be revoked.

28. The Plaintiff as PW1 claimed that her late husband purchased the suit land measuring 1 ¼ acres from one John Kahara 2002 and was issued with a Share Certificate No. B 0707 and then allocated ballot No. 149A. She insisted that her husband was issued with a clearance certificate. She further claimed that her late husband took some time before going to the 1<sup>st</sup> Defendant's office to collect his title but he later learnt that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had collected his title now known as Ruiru Kiu Block 2 (Githunguri)/3757.
29. During cross examination PW1 explained that her late husband was balloted the suit land and there was a transfer to that effect, from one John Kahara to her late husband but she did not avail it in court. Further, that the clearance certificate issued to her late husband was signed by Raphael JM Githuku but she had no proof that the said individual was a director of the 1<sup>st</sup> Defendant. She insisted that the clearance certificate indicates that her late husband's parcel is a "transfer of Share No. 8085" while his share certificate is indicated as B0707. It was her further claim that late husband paid John Kahara



Kshs.40,000/= in cash in 2002 as purchase price for the suit land but she did not have the sale agreement or any proof of payment of the said monies in court. She further insisted that plot 149A was registered as Ruiru/Kiu Block 2/3757, and the vendor showed her late husband the physical location of the land. She however did not have any document to show that she paid for survey, had no receipt to confirm payment of processing of title and confirmed she did not pay rates.

30. On the other hand, the 1<sup>st</sup> Defendant's representative DW1 testified that Peter Mungai Nganga (deceased) was one of the 1<sup>st</sup> Defendant's members and that he was allocated his full shares held by ballot No. R/W No. 001162 thus he had no claim against the 1<sup>st</sup> Defendant unless by purchase. It was his testimony that they deliberated on the dispute revolving around the suit land and found that the 4<sup>th</sup> Defendant acquired the said parcel of land legally. He insisted that the Plaintiff's documents were forged. He argued that the clearance certificate REF C45/69/CC/TD/192/02 dated 12<sup>th</sup> June 2002 did not indicate the size of the land and had been issued against a different share certificate whereas share certificate No. B0707 dated 8<sup>th</sup> May 2002 indicates another transfer 8085. He also pointed out that the ballot card filled by the Plaintiff for Plot No. 149 A is dated 9<sup>th</sup> May 1988 whereas the genuine ballot No. A149 generated land parcel Ruiru Kiu Block 2/3755 which was allocated by the company to Thomas Kamau Kinyanjui. He further confirmed that the 1<sup>st</sup> Defendant allotted land to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who sold it to the 4<sup>th</sup> Defendant and that their registration corresponds with documents given to 1<sup>st</sup> Defendant. DW1 clarified that Ballot No. A149 produced Ruiru /Block 2/Githunguri) 3755 while the parcel in dispute is 3757.
31. DW2 confirmed that the 4<sup>th</sup> Defendant purchased Ruiru Kiu Block 2/3757 from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and that the parcel did not have any encumbrances registered against it. Further, that the 4<sup>th</sup> Defendant was then issued with a title deed on 13<sup>th</sup> March 2007 and lawfully transferred it to the Third Party vide an agreement for sale dated 4<sup>th</sup> November, 2013. Dw4 confirmed that the Third Party is the registered owner of the suit land and had been in possession since 2013. Further, that the Third Party had even erected seventeen (17) Go downs and other major developments and that its parcel measures 3.027 acres while the Plaintiff claims land measuring 1 ¼ acres. Since the Third party is the current registered proprietor of the suit land which title is challenged by the Plaintiff, I opine that section 107 of the *Evidence Act* places the burden of proof upon the Plaintiff to demonstrate that the root of the Third party's title is fettered.
32. On validity of title, Section 26 of the *Land Registration Act* provides that:
  - “Certificate of title to be held as conclusive evidence of proprietorship
  - (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.”



33. On root of a title, the Supreme Court of Kenya in the case of *Dina Management Ltd v. County Government of Mombasa & 5 Others*, Pet. No. E010 of 2021, held thus:

“...where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

34. Further, the Court of Appeal held as follows in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR;

“We state that when a registered proprietor 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, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

35. While in the case of *James Njoroge Gitau v Lucy Chepkurui Kimutai* (2018) eKLR, Munyao Sila J while dealing with a dispute in respect to ownership of land emanating from a company held thus:

“... What is before me is a straight contest over who between the plaintiff and the defendant ought to own the land. For either litigant to succeed, they need to demonstrate to me, the root of their title, and the root of their title must originate from the shares held at Kalenjin Enterprises.....I have absolutely no reason to doubt that register. The register shows the name of the plaintiff and assigns him the plot No. 7. This evidence is coming from the company itself, and cannot be taken lightly. It is the company which knows its members and which knows what land it has assigned to the members. If the company refutes that one is a member, then that person needs to rebut this, through cogent evidence.”

36. Based on the facts as presented while relying on the legal provisions cited and associating myself with the decisions quoted and applying them to the circumstances at hand; from my analysis above, I find that the two parcels of land Ruiru /Block 2/Githunguri)/ 3755 and 3757 are distinct. It is evident that the 1<sup>st</sup> Defendant, which is the allocating authority denied allocating the suit land to the Plaintiff and confirmed that the suit land was allocated to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. In my view, the Plaintiff failed to tender proper evidence to demonstrate how the deceased acquired the suit land as she did not avail any Sale Agreement, proof of payment of purchase price, payment of transfer fees and rates. It also emerged that the Third Party’s land measures 3.027 acres while the land claimed by the Plaintiff is 1 1/4 acres. Since the 1<sup>st</sup> Defendant has insisted that the Plaintiff’s documents were forged as even the ballot and share certificate for the suit land are different from what she is claiming, this Court has no reason to doubt that indeed the root of the Third Party’s title is not fettered and it is indeed the owner of the suit land. It is hence my finding that the Plaintiff failed to prove that the Third Party’s title was obtained through fraud or misrepresentation and I will hence decline to revoke or cancel it. It is my considered view that the Plaintiff was claiming land that she did not own and she is hence not entitled to the orders as sought in the plaint.

37. In the foregoing, I find that the Plaintiff has not proved her case on a balance of probability and will proceed to dismiss it with costs.



**DATED SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Onchagwa for Nyachoti for Plaintiff

Ms. Were holding brief for Njenga for 1<sup>st</sup> Defendant

Obura for 4<sup>th</sup> Defendant

Chege for Third Party

Court Assistant: Joan

