



REPUBLIC OF KENYA



KENYA LAW
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**Ngacha v Karanja & 3 others (Environment and Land Case E045 of 2021)
[2025] KEELC 7372 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7372 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E045 OF 2021**

JA MOGENI, J

OCTOBER 29, 2025

BETWEEN

MARGARET WANJIKU NGACHA PLAINTIFF

AND

GRACE WAMBUI KARANJA 1ST DEFENDANT

ITHANGA COMMUNITY DEVELOPMENT LTD 2ND DEFENDANT

EQUITY BANK LIMITED 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. By a Plaint dated 15/04/2021 the Plaintiff filed suit against the Defendants seeking the following reliefs;
 - a. A Declaration that the suit property belongs to the Plaintiff.
 - b. An order for cancellation of the existing title GATUANYAGA NGOLIBA BLOCK 1/2262 and the issuance of a new title in favour of the Plaintiff, following this honorable Court's declaration.
 - c. A mandatory Order compelling the 2nd Defendant and/or the 3rd Defendant to surrender the title to the 4th Defendant for cancellation.
 - d. An order compelling the 2nd and 3rd Defendants to register a discharge of charge against the suit property.
 - e. Damages for loss of use.
 - f. Costs and interests.
 - g. Any further relief that this Honorable Court deems fit to grant.



2. It is the Plaintiff's case that she is a member of Gatundu Nyakinyua Company Ltd and holds Share Certificate number 0028 transferred to her by one Lucy Mwihaki Gachomba on the 28th day of October 2011 which entitles her to parcel of land, Magogoni Plot No. 2262 which is allocated through balloting system.
3. The Plaintiff stated that she received her Clearance Letter from the afore-said Company dated 13/09/2013 and she moved the 4th Defendant to register her for Plot No. 2262 but she discovered that there existed a Title to GATUANYAGA/NGOLOBA BLOCK 1/2262 issued to the 2nd Defendant on 24/11/2011.
4. According to the Plaintiff, the 2nd Defendant is unknown to both the Plaintiff and Gatundu Nyakinyua Company Limited and she claims to have purchased the suit land from the 1st Defendant but according to the Plaintiff, the 1st Defendant is not a member of Gatundu Nyakinyua Company Limited and therefore she could not have been allocated the said land.
5. The Plaintiff claims that the 1st Defendant caused the suit property to be transferred to her name fraudulently using forged documents purported to have been issued by Gatundu Nyakinyua Company Limited. That as a result of this discovery the Plaintiff placed a restriction on the land and also reported to the DCIO Offices at Thika and there is an ongoing Criminal Case No. E213/2021.
6. The suit is opposed. The 1st Defendant filed a Statement of Defence dated 24/08/2021 and denied all the averments in the Plaintiff and asked the Court to strike out the Plaintiff and to issue a declaration that the title passed to the 2nd Defendant is legitimate and prayed for costs.
7. The 2nd Defendant also filed a Statement of Defence dated 16/08/2021 and stated that in Defence the second Defendant has no averment to make on pleading in response to paragraphs 4, 5, 6 and 7 of the Plaintiff. The second Defendant stated that it is not enjoined and it remains unsuited although he admits charging the suit property and adds that it has met its obligation to fully repay its borrowed sum.
8. The gist of the 2nd Defendant's Defence was to deny every allegation made in the Plaintiff against the 2nd Defendant and prays for the suit against it be dismissed.
9. The 4th and 5th Defendants filed a joint Statement of Defence denied all the averments in the Plaintiff and states that the registration of the 1st Defendant as the owner of GATUANYAGA/NGOLIBA BLOCK 1/2262 was based on the documents presented before the 4th Defendant's offices who exercised due diligence and the documents being believed to be genuine were thus registered.
10. Thus the 4th Defendant performed their duties as prescribed by the law. The 4th Defendant also averred that Gatundu Nyakinyua Company Limited the alleged allocation authority of the suit property is a necessary party to the suit.

Plaintiff's Case

11. The Plaintiff testified as PW1 and adopted her witness statement as her evidence in chief dated 7/04/2021 and produced as exhibits her List of Documents dated 10/04/2021 which are marked as 'Pexh 1-45' and documents 3-6 were marked as 'MF- 3-6' to be produced by the markers of the documents.
12. Upon cross-examination by Counsel for the 1st Defendant Mr Ng'ang'a she stated that there is an ongoing Criminal Case and that she bought the land from Lucy Mwihaki Gachamba in June 2011 and the transfer was done at Gatundu Nyakinyua offices and she paid her. She testified that they attended the Land Control Board and she got a Clearance Certificate and she proceeded to the Lands Office for



- the Title. She testified that she paid Lucy in many instalments the last one was done before the Land Control Board Consent.
13. She said the Sale Agreement is dated 30/6/2011 and it is drawn by Cyrus Muiruri Wanyoike and herself. She told the Court that Cyrus represented the owners of the suit property – Lucy Mwihaki although she testified that she had not stated this particular fact in her witness statement. The witnesses to the Agreement are Wangui Gicharu and Ann Wanjiku Muhia.
 14. She told the Court that she is not calling Lucy Waitthaka nor Cyrus Wanyoike as witnesses although the agreement is between herself and Cyrus Wanyoike on behalf of Lucy Mwihaki Wangui. She stated that Lucy appeared before the Board to transfer the land to her.
 15. She also testified that the land was previously owned by Wangui Gicharu before she sold it to Lucy and that is why the Share Certificate showed the land belonged to Wangui.
 16. She stated that the 1st Defendant is registered as the owner of the suit property from 1992 and that she learnt about this when she submitted her documents for registration. She stated that there was no fraud committed by herself, Lucy and Cyrus and also that she did not know the relationship between Wangui and Cyrus.
 17. It was her testimony that she was shown the land on the map and on the ground and she constructed a small house on the land.
 18. On re-examination she stated that she submitted in evidence a charge sheet to show there was a Criminal Case in the matter and that she also had the original Share Certificate, receipts of payments made, ballot of the parcel of land and sale agreement.
 19. According to her, she carried out a search at Nyakinyua office and not land office although when she went to register the land, she was told it was already registered in another name. She told the Court that she lives on the land.
 20. PW2 - Wangui Wa Gitaru, adopted her witness statement dated 7/04/2021 as her evidence in chief. She testified in the Kikuyu language and a translator assisted the Court to convey her testimony in English.
 21. On cross-examination, she stated that she was a member of Nyakinyua Investment Company Ltd and she stated that she knew the Share Certificate in the suit belonged to Wanjiku Ngacha since it was hers then she sold the land to Wanjiku Ngacha but that she could not recall how much she sold it for.
 22. The agreement for the sale was prepared at Gatundu Nyakinyua offices. She said she knows Cyrus Wanyoike and that his role was to identify the land and confirm that the land belonged to her. She again told the Court that she bought the land from one Rachel Karinge Muturi.
 23. When re-examined, she told the Court that she signed the agreement as the seller of the land on 30/06/2011. She denied knowing Lucy Mwihaki. At this point the Counsel for the Plaintiff sought leave and applied for Summons for other witnesses. Hearing resumed on 25/05/2023.
 24. PW3 – Ann Wacu Kyaka a Director of Gatundu Nyakinyua Company. She testified that the ballot marked ‘Pexh 3’ is genuine and that she had the original. She told the Court that she had Share Certificate number 008 in the name of Margaret Wanjiku Ngacha and other exhibits as No. 4, 5 and 6. That the land was allocated to Ms. Ngacha.
 25. When she was cross-examined, she stated that she is a Director of the Company since 2012 and that there was a different Director of the Company in 2010 and also in 2011 to 2013 the Director was



- different but she said she is in Court to confirm that the documents presented were authentic and they are from the Company. That the parcel number 2262 was registered in the name of Wangui Gicharu.
26. In her testimony she stated that according to the Company's records the land belongs to Wanjiku Ngacha and that she did not know when Gicharu got the land and that the details must be in the records of the Company.
 27. She stated that Wanjiku Ngacha was registered as the owner of the parcel in 2011 and that before that the land was registered in the name of other owners whose record is in the Company. She said that she did not produce the records showing previous owners because it was not necessary. With this the Plaintiff closed her case.

Defence Case

28. DW1 - Grace Wambui Karanja stated that she was a retired teacher, she adopted her witness statement dated 24/08/2021 as her evidence in chief and produced her List of Documents dated 14/08/2021 from pages 15-28. She also produced a Supplementary List of Documents dated 6/05/2022 and had all marked as 'Dexh 1-9'.
29. She testified that the disputed land is parcel 2262 which she acquired in 1991 from Gatundu Nyakinyua Co. Ltd and she obtained title in 1992. It was her testimony that she owned the land for 20 years before she sold it in 2011. That the dispute arose in 2013 when she had already sold the land. She urged the Court to dismiss the suit.
30. Upon further cross-examination by Counsel for the 2nd Defendant Ms Wanjiru, she testified that a search at the Lands Office show that the land belonged to her and the property was transferred to the 2nd Defendant.
31. On further cross-examination by Counsel for the 4th and 5th Defendant Ms Ndundu, she stated that Nyakinyua Investment Company processed the title in her name and that the copy of the Green Card she produced at page 26 show that the title was issued on 27/02/1992. She confirmed that the ID showing on the green card was hers and the entry number 4 shows the name of Grace Wambui Karanja which is hers after she filed for change of name. That at page 8 of the 4th and 5th bundle she had produced the application for change of name and thereafter she was issued with title showing the change of name.
32. That later the land was transferred to the 2nd Defendant as shown at page 17 and that all legal procedures were followed from the transfer of the land from Nyakinyua to the 2nd Defendant.
33. Upon further cross-examination she reiterated that she bought the land from Gatundu Nyakinyua Investment Company Ltd. She stated that she had a receipt for the shares but she had not produced the same. That her share number is 2952 which she was issued with on 30/5/1992 but she had not produced the ballot paper. She further stated that she had produced the Share Certificate.
34. She also testified that she did not pay any money from the land but that she paid fees but she had not produced the receipts in Court. That she had not called the officials of Nyakinyua and also that she did not obtain any Clearance Certificate from Nyakinyua. The only document she said she presented to the Lands Office is the Share Certificate.
35. She told the Court that she does not live on the land she had a care-taker and that she cultivated the land a few seasons. She then sold the land and when she did, she took the 3rd party who bought the land to view the land and it was vacant with no buildings and this was in 2011 and it was sold for Kesh 900,000. She stated that she has never seen any person living on the land.



36. On re-examination, she reiterated that the Nyakinyua Company processed the title, the certificate of share was issued in 1991 and her title was processed in 1992. She stated that she had receipts for the land but she had misplaced them over the years. She stated that she took possession of the land and she bought shares from the Company. With this the 1st Defendant closed her case.
37. The 2nd Defendant's Counsel Mr Kamiro told the Court that they adopt the Defence of ET Ng'ang'a fully and that they were not going to call a witness.
38. On the part of the 4th and 5th Defendant their witness did not appear in Court to testify rendering their witness statement just a statement without any probative value.
39. The Court issued directions on filing of submissions and the parties adhered by the Plaintiff filing their submissions dated 2/05/2025 and the 1st Defendant filing their submissions dated 12/05/2025. The other Defendants did not file any submissions.

Plaintiff's Submissions

40. The gist of the Plaintiff's submissions was that the 1st Defendant had not provided evidence to support her averments and that her documents were full of contradictions. For example, in her evidence on 5/10/2023 she produced a Share Certificate No 2952 of 1991 from Gatundu Nyakinyua Company Ltd (Company) in the name of Wambui Karanja but there were no receipts to support the alleged transfer.
41. The Plaintiff further submitted that the 1st Defendant shared two title deeds one at page 16 and 22 in the name of Wambui Karanja ID 582731/68 and one dated 4/02/2011 in the name of Grace Wambui Karanja ID 582731 and documents applying for correction of name and consent dated 11/11/2010 and 02/12/2010.
42. The Plaintiff submits that the change of name by the 1st Defendant was not accompanied by a Deed Poll as is required by law and he relied on the case of Republic v Kenya National Examination Council & Another ex-parte Audrey Mbugua Ithibu (2014) eKLR Korir J stated that:

“.... it is my view that since the Applicant changed his name through a Deed Poll, which is a legally recognized method, it is not the business of state agencies to select names for Kenyan citizens.”
43. In light of the above it is the Plaintiff's submission that the change of name was only in relation to the title deed and not the ID and so the contradiction in names persist. For example, the Plaintiff submits that the 4th and 5th Defendant's consolidated bundle at page 19 there is a Personal Identification Number (PIN) A00146730G of one KIMANI GRACE WAMBUI dated 9.6.1993 and in the same bundle the document of transfer of land between the 1st and 2nd Defendant dated 3/11/2011 the transferor bears ID 5482731 PIN A00146730G under the name Grace Wambui.
44. According to the Plaintiff's submissions, the 1st Defendant on 27/02/1992 under the name Wambui Karanja ID 542731/68 as per title deed must then have had a PIN certificate to this name Wambui Karanja to enable her own land in Kenya and if so, then how then did she become Kimani Grace Wambui in 1993. He also submits that the 1st Defendant has not produced a photocopy of the 1992 Identity Card together with her PIN number in the name of Wambui Karanja.
45. The Plaintiff therefore alleges fraud and he relied on the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015]eKLR.



46. The Plaintiff has urged the Court to dismiss the 1st Defendant's claim and has stated that she has confidently fenced the land since 2011 and built her homestead without disturbance.

1st Defendant's Case

47. The 1st Defendant reiterated in her submissions and stated that she was issued with Title on 27/02/1992 under the name Wambui Karanja as opposed to her full name Grace Wambui Karanja. But she made an application and following a confirmation from the Chief of Ngoliba Location the name in the Title was changed to reflect that in the national ID.
48. She identified two issues being whether the Plaintiff has proved ownership and whether she is entitled to orders sought. She relied on the cases of Embakasi Properties Limited & Another v Commissioner of Land & Ano. [2019] eKLR.
49. The 2nd to 5th Defendants filed their Statements of Defence but never appeared in Court to give their testimonies about the instant suit leaving their statements and witness statements as mere statements with no weight attached to them.

Determination

50. The case of the Plaintiff is that the land to which the 1st Defendant lays claim does belong to the Plaintiff and not the 1st Defendant. She alleges to have been issued with a Share Certificate number 2952 on 30/05/1991 but she did not produce a certified copy or the original of the Share Certificate. Neither did she produce the ballot paper nor the receipt for the fees that she paid for the land. In fact she also did not have a Clearance Certificate from Gatundu Nyakinyua Company Limited which would have allowed her to get the title deed from the Land Registrar. In summary the 1st Defendant did not present the requisite documents from the Company she purports to have allotted her the land under Share Certificate number 2952.
51. The said Share Certificate was not authenticated by PW3 who is a Director under the Nyakinyua Investment Company. So, there is no knowing where the 1st Defendant got the said Share Certificate from.
52. The 1st Defendant alleges to have filed for change of name which enabled the Land Registrar to now change her name from Wambui Karanja of ID 5482731/68 to Grace Wambui Karanja of ID 542731. There is no Deed Poll that has been produced to show the legal procedure of change of name neither a Gazette Notice.
53. A Registrar of Land in Kenya cannot change a name on a title deed without a Deed Poll and Gazette; these are legal requirements to make the change official. The process requires a Deed Poll to be registered, after which the name change is published in the Kenya Gazette, making the name legally official. After these steps, a proprietor can apply to the Land Registrar for rectification of the title to reflect the new name.
54. The 1st Defendant did not present any of these documents. Worse still the Land Registrar did not appear in Court to tender their evidence on how they acted suo motto and changed a name on title deed without following the due process. The documents filed in Court by the 4th and 5th Defendants have no probative value.
55. On the substance of the case, the Plaintiff did produce various documents in an attempt to demonstrate her ownership of the suit property. This includes the sale agreement between herself and Lucy Mwhaki Gachomba dated 30/06/2011 for parcel number 2262, transfer done by Nyakinyua Officers and they



also attended the Land Control Board Meeting. She also produced the Clearance Certificate that she took to the Land Registrar's Office, she also had the original Share Certificate and receipts of payments and ballot of the parcel.

56. Nevertheless, the fact of the matter is that now the 1st Defendant is the registered proprietor of the suit land. To enable me cancel her title as sought by the Plaintiff, I have to be convinced that the provisions of Section 26 of the *Land Registration Act*, Act No.3 of 2012 have been met. Section 26 is drawn in the following terms;

“26. 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.”

57. Once a person holds a Certificate of Title, that Certificate is to be taken as prima facie evidence that the person noted therein is the absolute and indefeasible owner. Title can be annulled if the said title was acquired through fraud or misrepresentation to which the title holder is a party, or if such Certificate of Title was acquired illegally, unprocedurally or through a corrupt scheme.

58. 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, unprocedurally or through a corrupt scheme.

59. For the first limb, it appears to me that the title of the 1st Defendant was obtained by fraud or misrepresentation. It seems that the 1st Defendant realized that there was a title with similar names to hers and went on a scheme to have her name entered in the register only to realize that she needed to have a third name on the register so that future transactions cannot detect the anomaly in names.

60. However, there is no evidence that she did sign a Deed Poll that is the process that one has to engage in to change names. Further a Gazette Notice needed to be attached to the change of name title deed to prove that the change was advertised in the Kenya Gazette. None of these were presented before the Court nor did the 4th and 5th Defendants produce a Gazette Notice. It is therefore not clear how the Registrar allowed this change yet the legal process is clearly spelt out. The only explanation to me is that the fraud and misrepresentation was a collusion of the 1st Defendant and the offices mentioned herein above.

61. The 2nd Defendant may not have been a party to the fraud or misrepresentation and could be an innocent purchaser for value. They probably were conned of their money by the 1st Defendant but it is not for me to say so they can file for a claim of their money in a different forum. Yet again I cannot lose sight of the fact that the root of title is the one that lends credence to all other processes. If the root is rotten then the trunk of the tree and branches is equally affected. In this case the 1st Defendant had no good title to pass on.



62. The question I have to answer therefore is whether the title of the 1st Defendant is impeachable by virtue of Section 26(1) (b)? First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy 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, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.
63. The evidence in this case puts no one in doubt that the title to the 1st Defendant was obtained illegally, unprocedurally or through a corrupt scheme. The documents that conveyed title to her were illegal. The title could not therefore have been obtained legally or procedurally. I am satisfied that the provisions of Section 26 (1) (b) have been met and that the title of the 1st Defendant is liable to be cancelled. I therefore proceed to cancel the title of the 1st Defendant and her registration as proprietor of the suit land. The Plaintiff should be registered as owner of the suit land. It is regretful that the 2nd Defendant was snared by the scheme perpetuated by the 1st Defendant. I sympathise with them but I must ensure that the real title holder is protected and that she is registered as the proper owner of the suit land.
64. It is difficult to envision how all this may have happened if the 4th and 5th Defendants were vigilant. No evidence was however led that the 4th and 5th Defendants were also involved in the fraudulent scheme of the 1st Defendant. I will let them off the hook for want of direct evidence linking them to the fraud.
65. In conclusion it is my considered opinion supported by provisions of the law that the evidence that the Plaintiff has tendered does point to allegation of fraud or misrepresentation on the part of the 1st Defendant's acquisition of the title. A lot more than just a mere production of a Title Deed with different names and a change of name having been executed wrongly by the Land Registrar without following the due process was needed. There was no ballot produced, no receipts of payment for the fees paid to the Company, no Clearance Certificate and as matter of fact no witness from Nyankinyua to indeed identify her as a member.
66. In fact, the 1st Defendant who appears to have engineered the whole transaction of coming up with a title through fraudulent processes of change of names has been charged with a Criminal offence. The Criminal trial is still ongoing as at the time of this hearing and the less I say about it the better, for the accused is entitled to the Constitutional right of being presumed innocent until proven guilty.
67. PW3 who testified on behalf of Nyakinyua clearly stated that the land was registered in the names of Wangui Gicharu then Lucy Mwhaki and now Margaret Wanjiku Ngacha demonstrating that it is the Plaintiff who was entitled to be registered as proprietor of the suit land and not the 1st Defendant.
68. The Plaintiff also had the burden of proving that the 1st Defendant's title is bad title and she did through the evidence presented before Court. The Plaintiff has therefore proved on a balance of probabilities that it is her and not the 1st Defendant who was entitled to ownership of the land parcel Gatwanyaga/ Ngoliba Block 1/2262 and I have no option but to uphold her case against the Defendants and proceed to issue the following orders:
- a. A Declaration is hereby issued that the suit property belongs to the Plaintiff.
 - b. An order for cancellation of the existing Title GATUANYAGA NGOLIBA BLOCK 1/2262 is hereby issued and a new Title Deed should be issued in favour of the Plaintiff.



- c. A mandatory Order is hereby issued compelling the 2nd Defendant and/or the 3rd Defendant to surrender the Title Deed to the 4th Defendant for cancellation.
- d. An order is hereby issued compelling the 2nd and 3rd Defendants to register a discharge of charge against the suit property.
- e. The Plaintiff is awarded Kesh 1 million for damages for loss of use of the suit property.
- f. Costs of this case together with interest is awarded to the Plaintiff from the date of this Judgment.

69. Judgment accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 29TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Ms. Kithunka for the Plaintiff

Mr. Ng'ang'a for the 1st Defendant

2nd Defendant – Absent

Ms. Njeri holding brief for Mr. Chege for the 3rd Defendant

3rd and 4th Defendants - Absent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

