



**Gecau (Suing as the legal representative of the Estate of Douglas Kuria Githende alias Kuria Githende - Deceased) v Njogu & another (Land Case E008 of 2025) [2025] KEELC 7842 (KLR) (Environment and Land) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7842 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**  
**ENVIRONMENT AND LAND**  
**LAND CASE E008 OF 2025**  
**MC OUNDO, J**  
**NOVEMBER 13, 2025**

**BETWEEN**

**SALOME NJERI GECAU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DOUGLAS KURIA GITHENDE ALIAS KURIA GITHENDE - DECEASED) ..... PLAINTIFF**

**AND**

**LEONARD NJOGU ..... 1<sup>ST</sup> DEFENDANT**

**MARTQU LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Vide a Complaint dated 5<sup>th</sup> August, 2024, the Plaintiff herein sought for the following orders:
  - i. A declaration that the entries Nos. 2 to 12 entered between the 12<sup>th</sup> of July 1996 and 5<sup>th</sup> February 2014 on the Certificate of Title of the parcel of land registered as LR. No. 3777/806 to be fraudulent and void.
  - ii. A declaration that the transfer of parcel number 3777/806 to the 1<sup>st</sup> Defendant on the 29<sup>th</sup> of January 2009 and the 2<sup>nd</sup> Defendant on the 5<sup>th</sup> of February 2014 was fraudulent and void on account of frauds by the Defendants and further on account that none of the Transferors had the proper title to transfer the Suit Property.
  - iii. That the Court orders the Registrar of Titles in Nairobi to cancel the fraudulent transfer registered on the 5<sup>th</sup> of February 2014 and that the ownership of the parcel of land registered as LR. No. 3777/806 be reverted back to the names of Kuria Githende.



- iv. An order that the Defendants, their agents, representatives and/or any other person acting on their behalf to vacate from the parcel of land registered as LR. No. 3777/806.
  - v. An order of a Permanent Injunction restraining the Defendants, their agents, assigns, representatives and/or anyone acting on their behest from entering, trespassing, possessing, erecting structures and/or developing the piece of land known as LR. No. 3777/806 or disrupting the Plaintiff's beneficial rights over the subject piece of land.
  - vi. General damages.
  - vii. Costs of the suit together with interest thereon at court's rate from the date of judgement until payment in full; and
  - viii. Such other and/or further remedies that the court may deem fit to grant.
2. Despite the service of Pleadings upon the Defendants including through substituted service, they never entered appearance nor responded. Subsequently, on 30<sup>th</sup> June 2025, the court entered judgement against the Defendants and directed that the matter proceeds for Formal Proof Hearing.
  3. The Plaintiff having complied with the pretrial directions, the matter proceeded for hearing on formal proof on the 23<sup>rd</sup> July 2025 wherein PW 1 Salome Njeri Gecau, the Plaintiff herein introduced herself as a retired social worker who was now a farmer living in Gilgil within Nakuru.
  4. She adopted her Verifying Affidavit and Witness Statement both dated 5<sup>th</sup> August 2024 as her evidence in chief before proceeding to testify that she had brought the instant case as the Legal Representative of the estate of Douglas Kuria Githende who was her father, having been granted the Grant Ad litem in Nakuru High Court Succession Cause No. E0202 of 2022. She produced the Grant as Pf exh 1.
  5. That she was in court to defend her parents' parcel of land No. LR 3777/806 that had been registered to her father on the 17<sup>th</sup> November 1995 as per the title deed she produced as Pf exh 2.
  6. That she was the sixth born in the family of eight siblings and that they had been born in Gatundu North where her father had 8 acres parcel of land. That her father was among the first people who had been detained during independence hence when he had been released in the year 1962, he wanted to expand his land saying that he had fought for the land. That subsequently, he had sold the 8 acres parcel of land in Gatundu in a place called Kairi and because of his influence with the detainees like Angaine, he had moved to Ndundiri near a place called Pasenge wherein he had bought a parcel of land measuring about 40 acres.
  7. That since her mother developed health problems as she could not cope with the cold climate, father and other people decided to buy land in Gilgil – Alias Kairu. That her father talked to an Italian called Dominico who was selling land wherein he bought the suit land from him upon which land they had grown up.
  8. That in the year 1988 her mother passed away and was buried on the suit land wherein around the year 2008, during the clashes, her father also passed away and was also buried on the suit land. That she was the one who had built the tomb.
  9. That although they had been sent to the university out of the country, her father did not sell the land to anyone but their second born sister called Wambui Njenga took advantage of the fact that they were out of the country, and the home was vacant, to form a company with one Njogu, called "Hyden Homes" to sell and develop plots and this was despite their father having left a will stating that they should not do anything without consulting.



10. That they were subsequently evicted from the suit land by “Hyden Homes” thus her reason to file suit so that they could all go back their parents’ home more so since their parents’ graves were on the said land.
11. That she had recently become aware that there was another title deed registered to “Martqu Limited” for which she did not know the land had moved from their parents to “Hayden Homes”. That subsequently, the Defendants were on the land illegally having chased her out of the land at the time she was constructing the grave and having demolished the graves thereafter.
12. She produced the death certificate of Douglas Kuria as Pf exh 3 and proceeded to state that her sister who had created “Hayden homes” had also passed away in the year 2024.
13. The Plaintiff closed her case and filed her written submissions dated the 3<sup>rd</sup> September 2025, wherein she summarized the factual background of the matter contending that the subject property was fraudulently transferred from her deceased father, for which she now sought for the cancellation of the current title and the reversion of the land back to his name. She framed four issues for determination to wit;
  - i. Whether the Plaintiff’s deceased’s father transferred the subject property to any party.
  - ii. Whether the entries Nos. 2 to 12 in the register of the Certificate of Title are legitimate.
  - iii. Whether the Defendants herein acquired the title to the subject property legitimately.
  - iv. Whether the title to the subject parcel of land should be cancelled and the same reverted back to the Plaintiff’s deceased father.
14. On the first issue for determination as to whether her deceased’s father transferred the subject property to any party, she submitted in the negative, arguing that her deceased father never transferred the property to the Defendants or any other party on the grounds that there had been no sale agreement or agreement to transfer the land by way of gift between the deceased and Joseph Kinuthia Kuria (the first alleged transferee). Secondly, the deceased never vacated the land, but had continued to utilize it wherein he kept livestock, and hosted his family there. Third, that the alleged initial transferee, Joseph Kuria, never utilized the land as its owner or built any structures on it and lastly that the deceased was buried on the subject land in 2008 according to his wishes, which the Plaintiff argues would not have been possible if he had legally transferred the property. She relied on the provisions of Section 107(1) of the *Evidence Act* to maintain that the existing fact was that the deceased never sold the land.
15. On the second issue for determination, it was the Plaintiff’s submission that since the initial Entry No. 2 was fraudulently done, it invalidated all subsequent entries (Nos. 2 to 12) on the Certificate of Title. Therefore, the title issued to the Defendants was illegal and fraudulent as it was acquired without the deceased’s knowledge or consent thus contrary to Section 26(1) of the *Land Registration Act*
16. The Plaintiff’s submission on the third issue for determination had been that the Defendants’ ownership was not acquired legitimately because it originated from a person who did not possess an indefeasible title being the one who had acquired it fraudulently from the deceased. She cited the case of Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another, Eldoret ELC Case No. 609 B of 2012 which where the court had held that a title can be impugned (challenged) even in the hands of an innocent third party if it was obtained illegally, un-procedurally, or through a corrupt scheme.
17. That the 1<sup>st</sup> Defendant’s acquisition was illegal him having short-changed her sister (his “partner in crime”) and then transferred the property to the 2<sup>nd</sup> Defendant (a company owned by him) in an attempt to defeat justice.



18. That there had been lack of tangible and legitimate sale agreements or transfer documents showing the legal transfer to the 1<sup>st</sup> Defendant and subsequently to the 2<sup>nd</sup> Defendant. She relied on the Supreme Court's decision in *Dina Management Limited vs. County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) to submit that based on the holding on the said suit and in line with the provisions of Sections 26 (1) of the Lands Registration Act of 2012, it was clear that the Defendants' title and possession of the suit property herein was illegal and therefore the Title held by the 2<sup>nd</sup> Defendant should be cancelled and reverted back to the original legitimate proprietor, Douglas Kuria Githende alias Kuria Githende (the deceased), as the same was never legally defeated by the subsequent illegal and fraudulent entries. Reliance was placed on Section 25(1) of the *Land Registration Act*.
19. In the end, the Plaintiff urged the court to grant the prayers sought in the suit.

#### **Determination.**

20. I have reviewed and considered the uncontroverted evidence of the Plaintiff, which was precise and to the point, in support of her claim. The Plaintiff being the legal representative of her father the original registered proprietor of the suit land LR. No. 3777/806, did not call any witness but came out as a believable witness who was backed by documentary evidence that were not contested since the Defendants never entered appearance nor filed any pleadings despite substituted service.
21. The Plaintiff's evidence in summary was that she was the Legal Representative of the estate of her deceased father, Douglas Kuria Githende who was the legal proprietor of Land parcel No. LR 3777/806, the suit land herein, having been registered as such on the 17<sup>th</sup> November 1995 as per the Title Deed herein produced as Pf exh 2.
22. That the land remained the family home, where she and her seven siblings grew up, throughout her father's lifetime and where both her parents were buried as per her father's wishes. That she had even built her father's tomb. That it had been when they were out of the Country studying that one of her siblings, now deceased, took advantage of their absence and together with the 1<sup>st</sup> Defendant, formed "Hyden Homes" who eventually evicted them, demolished the graves and transferred the land to the 2<sup>nd</sup> Defendant.
23. The Plaintiff contended that the subsequent transfer to the Defendants was fraudulent as her father never sold the land to anyone. She therefore sought to challenge these transactions and to reclaim the family home where her parents are buried.
24. I find the issue for determination as being whether the Plaintiff is entitled to the orders sought in her undefended claim against the Defendants.
25. The provisions of Section 24(a) of the *Land Registration Act* No. 3 of 2012 outlines the interests and rights of a registered proprietor as follows;  

‘the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....’
26. Section 25(1) of the *Land Registration Act* also stipulates that ;  

‘The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as



provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...’

27. The law is very clear on the position of a holder of a title deed in respect of land. 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 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 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

28. It is therefore clear from the above provisions that title can be impeached under Section 26(1) (a) of the Act wherein it is found that it had been acquired through fraud and/or misrepresentation. Now since the Plaintiff had challenged the Title held by the Defendants, she had to led evidence to prove her allegation.

29. The Plaintiff’s evidence had been that the transfer from her father at entry No. 2 to 12 of the title document, were through fraud and without the deceased’s consent/knowledge. She argued that in this regard all the subsequent dealings, including the transfer to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, were based on an illegal process, making their title liable for cancellation.

30. I have considered the certificate of title herein produced as P/exh 2 and I note that the deceased Douglas Kuria Githende was registered to the suit land LR 3777/806, on the 17<sup>th</sup> November 1995. That he died on the 10<sup>th</sup> February 2008. The suit land was transferred to Joseph Kinuthia Kuria on the 12<sup>th</sup> July 1996 during the deceased’s lifetime and thereafter charged to Housing Finance Company Kenya limited on the 22<sup>nd</sup> July 1996 still during the deceased’s life time.

31. The question to ask ourselves is how it was possible that the deceased, despite the land having been transferred to Joseph Kinuthia Kuri in 1996 who subsequently charged it to Housing Finance Company Kenya limited on the 22<sup>nd</sup> July 1996, continued to exercise possession and proprietary rights on it until his death wherein he was buried on the same land oblivious of the transfer on the register? This line of questioning, I find is central to the Plaintiff’s proof of fraud.

32. The Supreme Court in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) was a landmark decision which established that a title deed is not conclusive evidence of ownership if its root is illegal or unprocedural.

33. In the said Judgement, the Supreme court had held as follows:

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, HE Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co (1993) Ltd, who in turn could pass to the appellant.



Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of *the Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.”

34. The fact that the transfer and charge occurred while the deceased was alive (1996) is central to the Plaintiff's proof of fraud as she argued that by her father the deceased having lived on the land until 2008, had used it, and was buried there, proving that he was unaware of the transfer on the register and therefore further proving that there had been no consent.
35. Secondly, that the transfer document in 1996 must have been a forgery, as the deceased continued to exercise possession and proprietary rights until his death wherein he had been buried on the suit land, for which the Defendants proceeded to demolished the graves therein.
36. The Supreme court in the Dina Management Ltd (supra) having held that a title or lease was an end product of a process whereby if the process that was followed prior to the issuance of the title did not comply with the law, then such a title cannot be held as indefeasible in essence meaning that that a later-registered title acquired legally from a lawful process can defeat an earlier-registered title that originated from an illegal allocation.
37. Given the proven or uncontroverted claims of fraud, illegal acquisition, eviction, and the especially egregious act of demolishing graves on the family's ancestral land, the Plaintiff has made out a strong basis for being awarded general damages, which are meant to compensate the estate for the non-pecuniary losses, pain, and suffering caused by the Defendants' unlawful actions.
38. In the end, I find in favour of the Plaintiff's undefended suit which is herein allowed with the following orders.
  - i. It is herein declared that the entries Nos. 2 to 12 entered between the 12<sup>th</sup> of July 1996 and 5<sup>th</sup> February 2014 on the Certificate of Title of the parcel of land registered as LR. No. 3777/806 are fraudulent and void.
  - ii. It is further declared that the transfer of parcel number 3777/806 to the 1<sup>st</sup> Defendant on the 29<sup>th</sup> of January 2009 and the 2<sup>nd</sup> Defendant on the 5<sup>th</sup> of February 2014 was fraudulent and void.
  - iii. That Registrar of Titles shall within 30 days of this judgement cancel the fraudulent transfer registered on the 5<sup>th</sup> of February 2014 and revert parcel of land LR. No. 3777/806 to the name of Kuria Githende.
  - iv. The Defendants, their agents, representatives and/or any other person acting on their behalf shall forthwith vacate from the parcel of land registered as LR. No. 3777/806.
  - v. An order of a Permanent Injunction is herein issued restraining the Defendants, their agents, assigns, representatives and/or anyone acting on their behest from entering, trespassing, possessing, erecting structures and/or developing the piece of land known as LR. No. 3777/806 or disrupting the Plaintiff's beneficial rights over the subject piece of land.
  - vi. The Plaintiff is awarded General damages of Ksh. 2,000,000/= (two million shillings only)



- vii. Costs of the suit together with interest thereon at court's rate from the date of judgement until payment in full; and

It is so ordered.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND COURT – JUDGE**

