



REPUBLIC OF KENYA



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**Ndiritu v Gichiri & 8 others (Environment and Land Appeal E003 of 2024)
[2025] KEELC 7682 (KLR) (10 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7682 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E003 OF 2024**

JA MOGENI, J

NOVEMBER 10, 2025

BETWEEN

NAFTALI IRUNGU NDIRITU APPELLANT

AND

PAUL NJOROGE GICHIRI 1ST RESPONDENT

JANE WANGUI NGUGI 2ND RESPONDENT

JOHN MUORIA WAIHAKA 3RD RESPONDENT

MARGARET WANJIRU GATHONI 4TH RESPONDENT

SAMUEL MUNGAI WANJA 5TH RESPONDENT

**PETER CHEGE GATHUNGU, JAMES KAMAU KUNGU, KENNEDY GITONGO
NGUGI SING ON BEHALF OF: KIBICHIKU WITHEITHIE SELF-HELP
GROUP 6TH RESPONDENT**

IRENE MUTHONI GATHI 7TH RESPONDENT

FLORENCE WANJIKU MUIGAI 8TH RESPONDENT

**ELIUD KIARIE NJENGA T/A PINK PROPERTIES DEVELOPERS 9TH
RESPONDENT**

*(Being an Appeal from the Judgement of the Hon. J.A Agonda, Principal
Magistrate, in Ruiru CM ELC No. 6 of 2019 delivered on 28th November 2023)*

JUDGMENT

1. The Appellant herein had been sued as the 2nd Defendant in the Principal Magistrate's Court vide Plaintiff dated 19/12/2022 where the Respondents who were the Plaintiffs were claiming ownership of



the parcels of land known as Plot No. 10 & 11 as excised from Ruiru East/Juja East Block 2/11924 be transferred and be registered in the name of the 1st Plaintiff/Respondent; Plot No. 6 & 7 as excised from Ruiru East/Juja East Block 2/11924 be transferred and registered in the name of the 4th Plaintiff; Plot No. 4 as excised from Ruiru East/Juja East Block 2/11924 be transferred and be registered in the name of Margaret Nyambura Muoria; Plot No. 5 as excised from Ruiru East/Juja East Block 2/11924 be transferred and registered in the name of 5th Plaintiff and Florah Gatwiri Mbaya; an order for permanent injunction against 1st and 2nd Defendants, their agents or representatives restraining them from transmitting, entering, wasting or alienating any part of Ruiru East/Juja East Block 2/11924; an order directing the Executive Officer, Ruiru to execute the transfer documents and application for Land Control Board Consent on behalf of the 1st Defendant and costs and interest at Court rates.

2. At the same time the 2nd, 6th and 7th Plaintiffs filed their Amended Plaint dated 29/09/2023. They prayed for an order for specific performance directed to the 1st Defendant compelling the 1st Defendant to perform his various obligations under the agreements with the Plaintiffs; an order directing the Land Registrar, Ruiru to cancel the 2nd Defendant's Title to the suit property Ruiru East/Juja East Block 2/11924 and an order that the same be registered in the names of the Plaintiffs; an order for permanent injunction against the 1st and 2nd Defendants, their agents or representatives barring them from transmitting, entering, wasting, or alienating any part of suit property Ruiru East/Juja East Block 2/11924; an eviction order for the 1st and 2nd Defendants and the third parties from suit property Ruiru East/Juja East Block 2/11924; damages for breach of contract and costs and interest at Court rates.
3. The 1st Defendant never entered appearance and thus did not participate in the Court proceedings.
4. The 2nd Defendant filed a Statement of Defence dated 13/04/2022 denying all averments from the Plaintiffs save for the descriptive nature of the parties. He stated that he was the rightful owner of the suit property, Ruiru East/Juja East Block 2/11924 having bought it from the 1st Defendant for a consideration. That the particulars of breach and or fraud were according to him far-fetched. He also stated that the Plaintiffs' purported action against the 2nd Defendant is no suited and he prayed for the suit to be dismissed with costs to the 2nd Defendant.
5. The case was heard and on 28/11/2023 the trial Court presided by Hon JA Agonda (PM), found for the Plaintiffs and against the 1st and 2nd Defendant with costs to the Plaintiffs to be paid by the 1st Defendant.
6. The Appellant, being dissatisfied with the entire Judgement, has now filed the present Appeal based on the following grounds in his Memorandum of Appeal:
 1. The Learned Magistrate erred in fact and in law by determining that the 1st to 8th Respondents were the lawful owners/proprietors of the property known as RUIRU EAST/JUJA EAST BLOCK 2/11924 in the absence of a valid transfer and sale to them by the previous owner/proprietor.
 2. The Learned Magistrate erred in law and in fact by disregarding the mandatory provisions of Section 6 of the Land Control Board, Cap. 302, invalidating any and all transactions in land that did not have the requisite Consent to transfer from the Land Control Board.
 3. The Learned Magistrate erred in law and in fact in arrogating upon herself the jurisdiction to determine this dispute whilst the Respondents had willingly contracted that all disputes arising from their dealings would be wholly and finally settled through arbitration.
 4. The Learned Magistrate erred in both law and fact in failing to make a determination on all the issues raised before her, with the reasons thereof, upon each separate issue canvassed before



the Court, and stated only 3 issues, in contravention of the provisions of Order 21 Rules 4 & 5 of the Civil Procedure Rules.

5. The Learned Magistrate erred in law and in fact in not finding that the Appellant was a bona fide purchaser for value and his rights are recognised and protected by the law.
 6. The Learned Magistrate erred in law and in fact in failing to determine what remedies were available to the Appellant upon the unlawful deprivation of his property.
 7. The Learned Magistrate erred in law and in fact in admitting the evidence of a Respondent who was not present in Court to testify and be cross-examined on her testimony, thereby depriving the Appellant the right of rebuttal of the one-sided testimony.
 8. The Learned Magistrate erred in law and in fact in entertaining the case of additional Respondents (as Plaintiffs) who were un-procedurally and unlawfully enjoined as parties in the suit.
 9. The Learned Magistrate erred in law and in fact in making a finding that the Appellant's acquisition of the Suit Property was fraudulent without strict proof of the said fraud, and based her presumptuous conclusion on suspicions and unproven emotions contrary to the law of evidence.
 10. The Learned Magistrate completely misdirected herself by basing her findings on sympathies and morality, in utter disregard of the law.
7. Reasons Wherefore the Appellant prays that:
- a. The Appeal be allowed.
 - b. The Judgement and Decree of the Subordinate Court (Hon. Agonda, Principal Magistrate) delivered on the 28th day of November, 2023 be set aside and, in its place, the Hon. Court be pleased to dismiss the Respondents' case (ELC 6 OF 2019) with costs.
 - c. The costs in this Appeal and in the Subordinate Court be met by the Respondents.
8. The Appeal was disposed of by way of written submissions, wherein the Appellant and the Respondents complied and filed their submissions which I shall summarize as herein under.

Appellant's Submissions

9. The Appellant, vide his submissions dated 23/04/2025 summarized the factual background of the matter thus framing his issues for determination as follows:
 - i. The Learned Trial Magistrate erred in proceedings with a matter in which she had no jurisdiction.
 - ii. The Learned Magistrate erred in law and in fact in not finding that the Appellant was a bona fide purchaser for value and his rights are recognised and protected by the law.
 - iii. The Appellant as a bona fide purchaser for value. That the Learned Magistrate erred in law and in fact in making a finding that the Appellant's acquisition of the suit property was fraudulent without strict proof of the said fraud, and based her presumptuous conclusion on suspicions and unproven emotions contrary to the law of evidence.



- iv. The Learned Magistrate erred in law and in fact by disregarding the mandatory provisions of Section 6 of the Land Control Board, Cap. 302, invalidating any and all transactions in land that did not have the requisite Consent to transfer from the Land Control Board.
 - v. The Learned Magistrate erred in law and in fact in entertaining the case of additional Respondents (as Plaintiffs) who were un-procedurally and unlawfully enjoined as parties in the suit.
 - vi. The Learned Magistrate erred in law and in fact in admitting the evidence of a Respondent who was not present in Court to testify and be cross-examined on her testimony, thereby depriving the Appellant the right of rebuttal of the one-sided testimony.
 - vii. The Learned Magistrate erred in both law and fact in failing to make a determination on all the issues raised before her, with the reasons thereof, upon each separate issue canvassed before the Court, and stated only 3 issues, in contravention of the provisions of Order 21 Rules 4 & 5 of the Civil Procedure Rules.
10. On the first issue for determination, he placed reliance on the case of Owners Of Motor Vessel (Lilian) V Caltex Oil (Kenya) Ltd. [1989] 1KLR and Anarita Karim V Republic No. 2 [1979] KLR and averred that the Trial Court unilaterally and without either justification, explanation or reasoning, clothed itself with non-existent jurisdiction, the Court acted ultra vires the law and rendered its decision an illegality. He submitted that the Agreement for Sale dated 1/04/2015 under paragraph 13 of the said agreement, the parties contracted that all disputes emanating from the said transaction would be settled through the decision of an Arbitrator, whose decision would be final and binding, and the only recourse to the Courts would be for enforcement of the Award in accordance with Sections 35 & 36 of the *Arbitration Act*. Therefore, for Court to preside over this matter yet it had no jurisdiction renders the decision null and void.
 11. Further it was his submission that the agreement comes well over a year after the transfer of the Suit Property to the Appellant, thus according to the Appellant the Vendor had no capacity/title to transfer to either him or any other party.
 12. On the second issue he submits that the Appellant is the registered proprietor of the parcel of land known as RUIRU EAST/JUJA BLOCK 2/11924 since he submitted his two Affidavits and he was not subjected to any cross-examination and the Affidavits were admitted to the Court record. That no evidence was adduced by any of the Respondents alleging any infringement on the process used by the Appellant to acquire the title. Further that the 1st to 8th Respondents are not known to the Appellant and that the Respondents only dealt with the 9th Respondent giving rise to their grievances. He relied on the cases of Stephen Kilonzo v Hellen Wangari & Another, [2012] eKLR, Lawrence Mukiri vs Attorney General & 4 Others [2013] eKLR and submitted that he is a bona fide purchaser for value. He also referred Section 26(1) of the *Land Registration Act* on sanctity of title and he placed reliance on WW vs Severin Kinyanjui Njoroge & Another [2021] eKLR.
 13. On the third issue he submitted that the Respondents outside the generalized and unsubstantiated allegation that the registration of the Appellant as proprietor was fraudulent – did not adduce any evidence in support of their allegations. It was his submission that this Court cannot presume fraud where no tangible evidence exists and all that has been thrust before it is mere conjecture and beliefs. Beliefs are not evidence in law. He placed reliance on the cases of Demutilla Nanyama Pururmu v Salim Mohamed Salim [2021] eKLR, Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, Kinyanjui Kamau vs George Kamau [2015] eKLR and Ngugi v Kamau & Another (Environment & Land Case 36 of 2020) [2022] KEELC 2261 (KLR) (23 June 2022) (Judgment).



- He also drew the Court's attention to the provisions of Sections 109 and 112 of the Evidence Act. He concluded by observing that the Learned Magistrate, therefore, grossly erred in both law and fact in cancelling the Appellant's bona fide title to the Suit Property.
14. Further, the Appellant submitted that all sales and dispositions of agricultural land (or such land as is restricted by the law) are incomplete until both the Vendor and the Purchaser appear before the Land Control Board and obtain its written Consent for the transfer, in compliance with Section 6 of the Land Control Act, Cap. 302.
 15. Therefore, according to the Appellant, the absence of the Respondents from the alleged transactions, there was never any lawful sale or transfer of any land. Further that the agreement between the 1st to 8th Respondents with the 9th Respondents provided for refund by the 9th Respondent in case of default and so the 1st to 8th Respondents are bound by the said agreement and Courts cannot rewrite the contract for the parties. He relied on the cases of *South Nyanza Sugar Co. Ltd v Leonard O. Arera* [2020] eKLR, and *Pius Kimaiyo Langat vs. Co-operative Bank of Kenya Ltd* (2017) eKLR.
 16. On the fourth issue it was the Appellant's submission that the Hon. Trial Court acted contrary to the law by entertaining the claims of Respondents who were un-procedurally enjoined in the suit in contravention of Order 1 Rule 10 of the Civil Procedure Rules. In this case, the Learned Magistrate entertained the cases of Respondents numbers 6 through to 8 who were added into the suit without a formal application being made, but by means of an Amended Plaintiff. He relied on the case of *Harpal Singh Semhi & 4 Others v Zehrabanu Janmohammed & 3 Others; Sports Registrar & 9 Others* [2020] eKLR.
 17. According to the Appellant he submits on the fifth issue that the Learned Magistrate adopted the testimony of the 2nd Plaintiff's testimony without her being in Court for cross-examination and unilaterally closed the case. That this was prejudicial to the Appellant, and is a gross error in law. Since it is the law that the evidence of any witness must be interrogated through cross-examination and by admitting the evidence of a party who was not present in Court for interrogation was contrary to myriad laid down and established principles of natural justice and so this rendered the entire trial a farce.
 18. On the seventh issue, the Appellant made reference to Order 21 Rules 4 & 5 and submitted that the Learned Magistrate restricted herself to only 2 issues for determination, to wit: whether the Respondents were the legitimate owners of the Suit Property and whether the Appellant acquired good title. According to the Appellant in doing so the Hon Magistrate reduced the very weighty issues raised in the Submissions and Defence to the periphery.
 19. He further stated that the Hon Magistrate did not address the issue of jurisdiction or Court's power to re-write contracts for parties before it, and the judgement is limited to the contentious questions of facts as it understood them. The question of jurisdiction having been raised, it was incumbent upon the Court to make a reasoned determination thereof.
 20. On their part, the Appellants filed their submissions dated 23/4/2025 which I have considered.

Analysis and Determination

21. I have considered the Appeal, Record of Appeal, legal authorities and find that the issues for determination are:
 - i. Whether the trial Court had jurisdiction over the matter?



- ii. Whether the Appellant is a bonafide purchaser for value of property Ruiru East/Juja Block 2/11924 for value without notice of defect;
 - iii. Whether the learned Magistrate erred in finding that the Appellant was not the rightful owner of property Ruiru East/Juja Block 2/11924.
 - iv. Whether this appeal is merited;
 - v. Who should bear costs of the appeal?
22. This being a first appeal, this Court is guided by the principle that it is its duty to re-analyse the case and draw its own independent conclusion as was held by the Court of Appeal in *Yasmin Rashid Ganatra & Tariq Abdul Rashid (Suing as legal representatives of Rashid Juma Kassam) v Gulzar Abdul Wais* [2015] KECA 342 (KLR) that;
- “In a first appeal we proceed by way of re-hearing as I have already indicated. I do however pay some deference to the trial Judge’s findings of fact and are deliberately slow to disturb them. That is not to say I am necessarily bound by such findings and we may, in appropriate cases, depart therefrom.”
23. On the issue of Jurisdiction, the starting point is that property rights in Kenya are protected by both *the Constitution* and Statute. However, under Article 40(6) of *the Constitution* such protection is not available with respect to land that has been unlawfully acquired. It states as follows;
- “The rights under this article do not extend to any property that has been found to have been unlawfully acquired.”
24. The process of determining whether or not the land was unlawfully acquired is through the due process of the law and hence the original and appellate jurisdiction provided under Article 162 ((2) (b) read together with Section 13 of the *Environment and Land Court Act* which mandates this Court inter alia to determine title and issue appropriate remedies under Subsection 7 which include among other things declarations and costs.
25. Section 26 of the Registered *Land Act* sets out the manner in which title may be impugned. It states as follows;
- “(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.”



26. From the above provisions it is clear that a title may be impugned on grounds of fraud or misrepresentation to which the person is a party or where the title has been acquired illegally, unprocedurally or through a corrupt scheme.
27. The case of the Plaintiffs was based on fraud as pleaded at paragraph 8 of the Plaint. It was their case that the 1st Respondent had sold their land without their knowledge and contrary to the agreement made between themselves and the 1st Defendant on diverse dates starting from 2012.
28. This suit instituted through the Plaint dated 19/12/2022 the Respondents herein claimed that at all times they entered into a contract for sale of portions of the suit property between themselves individually and the 1st Defendant. The Plaintiffs signed onto the agreements between 2012 to 2015 when the 1st Defendant committed to process the title deeds for each of them. Upon signing the Sale Agreement most Plaintiffs took possession and settled on their portions of the suit property for Ruiru East/Juja East Block 2/11924.
29. They however realized when they carried out a search that the 1st Defendant had instead transferred the entire suit property to the 2nd Defendant and they then placed a caution against the land to halt further alienation and dealings.
30. The Plaintiffs claim that the 1st Defendant acted fraudulently by forging and dispossessing them of their property and illegally transferring it to the 2nd Defendant. They also pleaded that the 2nd Defendant acted negligently and fraudulently by failing to conduct due diligence to ascertain ownership prior to his alleged purchase of the suit property. They therefore sought for a cancellation of title to the 2nd Defendant and confirmation that they are the genuine proprietors of the suit property having fully paid the 1st Defendant for it through a sale agreement which was not negated or rescinded.
31. The Appellant in his Statement of Defence at the lower Court averred that he was the registered owner of the suit property having purchased it through a sale agreement dated 31/07/2014 from one Eliud Kiarie Njenga who is the registered owner. He thus acquired an indefeasible title to it and was protected by Section 26 of the *Land Registration Act*. It was his testimony that upon conducting due diligence by his Lawyer he confirmed that the suit property was registered to the 1st Defendant although he did not produce any search to support this claim.
32. That upon payment of Kshs. 1,300,000 as the purchase price, the suit property was transferred to him and he was issued with a title deed and therefore he is an innocent purchaser for value with a genuine title. He testified that if the Plaintiffs were claiming proprietary rights, they should have placed a caution on the suit property so that no transactions should have taken place.
33. He thus sought for lifting of the caution that was placed on the suit property after he purchased it.
34. The Appellant had testified that he purchased the land from the 1st Defendant whom he had been introduced to by someone known as Njuguna and he told the Court that he did not know the 1st Defendant and he was not able to call him as a witness since he did not know where he was.
35. He stated that he did attend the Land Control Board Meeting but he did not have the Consent Form, the Transfer Form neither did he have evidence that stamp duty was duly paid. Having been issued with a title deed, he wanted to subdivide and sell the land but was served with the Judgment of the Court stopping him.
36. This being a first Appeal, the Court is bound to re-evaluate the entirety of the evidence placed before the trial Court and arrive at its own independent conclusion, while bearing in mind that it never saw nor heard the witnesses or observed their demeanors of the witnesses, as the trial Court did. This was



the holding made by the Court in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, where the Court held as follows:

“... this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses, and should make due allowance in this respect ...”

37. Further, in the case of *Mbogo & Another vs. Shah* [1968] E.A. 93, the Court proclaimed as follows:

“[A] Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.”

38. This Court being guided as above, will now re-evaluate and re-consider the available evidence before the trial Court, juxtapose it with the Grounds of Appeal, while bearing in mind that as first Appeal, the Court is allowed to consider both facts and law as provided by Section 65 of the [Civil Procedure Act](#).

39. The Court having carefully evaluated the evidence in the Subordinate Court finds that it is not in doubt that the Appellant holds a title to the suit property. The Respondents called into question the title held by the Appellant and it then became imperative for the Appellant to prove the root of his title. See the case of *Munyu Maina Vs. Hiram Gathiha Maina* [2013] eKLR, held as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

40. From the evidence presented to the Honorable Magistrate, the actions of the 1st Defendant point to the fact that he was already decided that the title must come out in his name and that despite the Plaintiffs having paid him the full purchase price and despite the 1st Defendant having issued the Plaintiffs with Plot Certificate Nos. 14, 15, 16, 17 and 18 (see PExh 10) he still registered the title in his own name.

41. He then conveniently vanished and then transferred the suit property to the 2nd Defendant as shown through PExh.2 and PExh. 4. Searches by the Plaintiffs of 17/10/2012 and 28/09/2018 showed that the land despite having been sold to the 1st Defendant by one Nancy Wangari Mambo through Pink Properties Developers which he used to defraud the Plaintiffs he now transferred the suit property to the 2nd Defendant on 31/07/2014.

42. The actions of the 1st Defendant/Respondent from the evidence showed that he had all the intentions to have the suit property transferred to himself through hook or crook despite the circumstances because he already connived a scheme of transferring it to the 2nd Defendant.



43. The Learned Trial Magistrate found that the suit property belonged to the Plaintiffs. The Appellant thus appealed against this decision on grounds that he was entitled to the suit property since he was a bonafide purchaser for value.
44. On whether the Appellant was a bona fide purchaser for value of property Ruiru East/Juja East Block 2/11924 I would like to refer to the Supreme Court of Kenya in the celebrated case of Dina Management Limited v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR) where the Court held as follows on who a bona fide purchaser for value is:
- “90. The Black’s Law Dictionary 9th Edition defines a bona fide purchaser as:
- “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”
45. The Court of Appeal in Uganda in Katende v Haridar & Company Ltd [2008] 2 EA 173, defined a bona fide purchaser for value 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:
1. He holds a certificate of title;
 2. e purchased the property in good faith;
 3. he had no knowledge of the fraud;
 4. he purchased for valuable consideration;
 5. the vendors had apparent valid title;
 6. he purchased without notice of any fraud; and
 7. he was not party to the fraud.”
46. On the above seven grounds outlined to prove the claim to be a bona fide purchaser, the Appellant claimed that he was the registered owner having purchased it for valuable consideration. This Court has reviewed the Record of Appeal, and has the proof of payment for the suit property. Whereas the Appellant claims to have paid Kesh 1,300,000 having withdrawn the money from Equity Bank, there are no withdrawal slips nor payment receipts although there is an agreement dated 31/07/2014.
47. It is also on record that the 1st Defendant had sold the suit property to the Plaintiffs and had not rescinded the contracts for sale of the suit property. This being the case, the 1st Defendant had no title to pass to the Appellant in relation to the suit property having sold portions of the same to the Plaintiffs. The Appellant confirmed that the property was registered in the name of Eliud Kiarie Njenga and this was also captured in the sale agreement. The Appellant also confirmed he did not have evidence of other completion documents such as executed transfer forms, stamp duty and Land Control Board consent among others.
48. I am cognisant of the fact that the Learned Magistrate in her Judgement also took note of the above. While the Appellant claims he purchased the suit property his Lawyer having conducted due diligence



and without notice of any irregularity, it is now settled in law that how the title is acquired is as good as the process itself. The Supreme Court in the Dina Management case (supra) also cited with approval the Court of Appeal's case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR where it was held that:

“... 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...”

49. Going through the Record of Appeal and the documents produced at the lower Court, this Court finds that the root of title being claimed by the Appellant is questionable.

50. Similarly, the Court of Appeal in Samuel Kamere v Lands Registrar, Kajiado [2015] KECA 644 (KLR) held:

“...Without any documents to support the registration of the Appellant as the proprietor of the suit property, the Appellant failed to discharge the evidentiary burden of proof as required, and the only conclusion that we can reach on a balance of probabilities is that, since the Appellant has not proved or shown the root of his purported title, he could not acquire title to the suit property, which in any event, was incapable of passing to him upon the registration of the purported transfer...In short, the land acquisition process, as undertaken by the Appellant, was unsatisfactory and grossly inadequate, to the extent that he was misled into purchasing the suit property from imposters. The impugned transfer arose as a direct consequence of the laxity in the conduct of proper investigations to ascertain the rightful owner of the suit property. Like the trial Court, we are satisfied that, had the Appellant carried out thorough investigations into the ownership, as he was obligated to, he would have established that the Plaintiff was the rightful owner. We take the view that, the Appellant's misadventure was of his own making, and he cannot now turn around and claim that he acquired proprietary rights from imposters who were incapable of passing on such rights in the first instance...Accordingly, having failed to conduct a proper due diligence on the ownership of the suit property, or prove how he acquired his title we find that the Appellant has not demonstrated that he was a bonafide purchaser.”

51. I fully associate myself with these sentiments and find that the Learned Trial Magistrate did not err in finding that the Appellant failed to exercise due diligence, did not provide proper history of title and was such not a bona fide for value as claimed.

52. Additionally, the 1st Respondent was not called as a witness to testify on how he sold property he had already covenanted to the Plaintiffs. Therefore, the Appellant's title being impugned only means that a legal title could not have been passed to him. This was buttressed by the Supreme Court in the Dina Management case (supra) where it held that:

“... 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 ...”

53. I therefore find that the Learned Trial Magistrate arrived at a proper finding that the Appellant's title was not procedurally acquired and therefore illegal and irregular and the Appellant was not the rightful owner of property Ruiru East/Juja East Block 2/11924 and issued specific performance orders in view



of the portions acquired by the Defendants and for transfer to be executed of their respective portions in their names.

54. Consequently, this Appeal is therefore not merited. The Learned Trial Magistrate's Judgment in Ruiru CM ELC No. 6 of 2019 delivered on 28th November 2023 is hereby upheld.

55. The Appeal is dismissed with costs to the Respondents.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 10TH DAY OF NOVEMBER, 2025.

.....

MOGENI J

JUDGE

In the presence of:-

Mr. Mutuku for Appellant

Mr. Njagi for 1st and 2nd Respondents

3rd and 5th Respondents – Absent

Mr. Njagi for 6th and 8th Respondents

9th Respondent - Absent

Mr. Melita – Court Assistant

