Njaimwe v Ngugi & 3 others (Civil Appeal 313 of 2019)
[2025] KECA 1979 (KLR) (21 November 2025) (Judgment)

Neutral citation: [2025] KECA 1979 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 313 OF 2019

DK MUSINGA, W KARANJA & K M'INOTI, JJA

NOVEMBER 21, 2025

BETWEEN

ANNAH MUTHONI NJAIMWE ..... APPELLANT

AND

PHILIP KIRICCHU NGUGI ..... 1ST RESPONDENT

THE CHIEF LAND REGISTRAR ..... 2ND RESPONDENT

MARGARET NYAMBURA NGUGI ..... 3RD RESPONDENT

GEORGE WAWERU NGUGI ..... 4TH RESPONDENT

(Being an appeal from the entire judgment Environment and Land Court at Nairobi (Okong'o, J.) delivered on 30th April 2019 in ELC Case No. 380 of 2014)

JUDGMENT

1. Before this Court is an appeal from the judgment of the Environment and Land Court at Nairobi (Okong'o, J.) delivered on 30th April 2019 in ELC Case No. 380 of 2014.

2. The background to this appeal is that the appellant, Annah Muthoni Njaimwe, filed suit, to wit, ELC Civil Case No. 380 of 2014, against Philip Kirichu Ngugi, the Chief Land Registrar, and Margaret Nyambura Ngugi (appearing herein as the 1st to 3rd respondents respectively), seeking a permanent injunction to restrain them from interfering with parcel L.R No. 7785402 (hereinafter referred to as "the suit property"), or in the alternative, an order for eviction of the 1st and 3rd respondents from the suit property. George Waweru Ngugi (the 4th respondent) appeared in the said proceedings as an Interested Party.

3. The appellant contended that in 2009 she lawfully purchased the suit property from the estate of the late Ngugi Gaturo, (hereinafter referred to as "the deceased"), through his widow, Margaret Nyambura

Ngugi, (the 3rd respondent), who at the time of the said transaction had presented to her a certificate of confirmed grant in respect of the late Ngugi's estate. She asserted that she paid Kshs. 3.5 million as purchase price; that she was issued with a certificate of title; and that she took possession through a caretaker and also fenced the suit property.

4. The appellant further contended that the 1st respondent unlawfully entered the suit property, refused to vacate, and prevented her from accessing it thus precipitating the filing of the suit seeking a permanent injunction andor an order for eviction of the 1st and 3rd respondents from the suit property.

5. In their defence and counterclaim dated 12th May 2014 and which was subsequently amended on 26th September 2017, the 1st, 3rd and 4th respondents denied the appellant's ownership claim of the suit property and asserted that the registration of the appellant as the owner was fraudulent. They contended that upon the deceased's demise on 12th September 1997, the 3rd respondent petitioned for Grant of Letters of Administration Intestate in respect of the deceased's estate at the Chief Magistrate's Court at Kiambu, vide Succession Cause No. 80 of 1998. The 3rd respondent brought the petition in her capacity as one of the two widows of the deceased. The grant was issued in her favour on 8th June 1998 and was later confirmed on 28th June 1999. As per the schedule of distribution, the suit property was distributed entirely to the 3rd respondent.

6. However, after the confirmation of grant, the 4th respondent, who is a son of Mary Njambi, the 1st wife of the deceased, took out summons for revocation of the said grant vide Nairobi High Court Succession Cause No. 2704 of 1999. The High Court set aside the grant issued to the 3rd respondent vide orders made on 3rd April 2000 and on 18th May 2001, Succession Cause No. 2704 of 1999 was transferred to the Kiambu Chief Magistrates' Court for determination of the mode of distribution of the deceased's estate. Vide judgment delivered on 7th September 2004, the said court made orders as to the distribution of the deceased's estate. With respect to the suit property, the court directed that 0.12156Ha be distributed to George Waweru Ngugi (the 4th respondent) on his behalf and in trust of Jane Wanjiru, Rosemary Wangui and John Gaturo (all representing the house of Mary Njambi who pre- deceased the deceased). The remaining portion of 0.18234Ha was to be distributed to Margaret Nyambura Ngugi (the 3rd respondent) as a life interest.

7. In essence, therefore, the 1st and 4th respondents' contention was that the appellant did not acquire a good title because the 3rd respondent's grant of letters of administration which she used to sell the property had been revoked in 2000. They contended that as per the fresh orders of distribution issued on 7th September 2004, the suit property devolved to both the 3rd and 4th respondents and that the 3rd respondent had been ordered to surrender the revoked grant and title documents but did not. They contended that the since the appellant did not acquire valid title, her attempted eviction of tenants on the suit property was unlawful and further that she could not sustain a claim in trespass.

8. At trial, the appellant testified as PW1. The gist of her testimony was that she carried out a search confirming that the suit property was registered in the name of the deceased, and that her advocates verified the confirmation of the grant presented by the 3rd respondent as genuine. She contended that she was a bona fide purchaser for value without notice, and insisted that any fraud was attributable to the 3rd respondent. She urged the court to protect her registered title under the *Land Registration Act* and sought eviction of the respondents or compensation equivalent to the property's market value.

9. The 4th respondent testified as DW1. He presented evidence of the revocation of the grant in 2000 and the fresh distribution in 2004 which awarded the property to the 3rd and 4th respondents jointly. He testified that the 3rd respondent disobeyed court orders by refusing to surrender the revoked grant and title. On his part, the 1st respondent, who testified as DW2, stated that the suit property contained

ten residential houses from which rent had long been collected and that it was vandalized by goons allegedly acting at the appellant's behest. Collectively, the 1st and 4th respondents reiterated that the appellant's title was fraudulent, void, and incapable of conferring any rights.

10. The trial court vide judgment delivered on 30th April 2019 held that the appellant's title was incurably defective because it was founded on a revoked grant. It held that once the 3rd respondent's grant was annulled in 2000, she lost all legal capacity to deal with the suit property. According to the court, the fresh distribution made in 2004 which had never been overturned vested interest in the property in the 3rd and 4th respondents and required surrender of all earlier titles. The 3rd respondent's act of withholding the revoked grant and proceeding to sell the suit property in 2009 was held to be a blatant defiance of court orders. Relying on Macfoy v United Africa Co. Ltd (1961) 3 All E.R 1169, the court held that nothing can be built on nothing, and, therefore, the appellant's title collapsed automatically as a nullity.

11. Regarding the indefeasibility of the title acquired by the appellant, the court rejected this argument, holding that indefeasibility cannot extend to a title created through illegality. Citing Henry Muthee Kathurima v Commissioner of Lands & Another (2015) eKLR, the court reaffirmed that the doctrine of indefeasibility is expressly limited by Article 40(6) of *the Constitution* which does not protect unlawfully acquired property rights.

12. The court also rejected the appellant's plea that she was a bona fide purchaser for value without notice, holding that the doctrine only protects purchasers against unregistered equitable interests and cannot validate a transaction grounded on a void grant. Even if she had acquired some interest, it could not defeat the 4th respondent's legal entitlement under the distribution orders made in 2004.

13. Regarding the appellant's claim of trespass, the court held that the appellant had no valid possession and therefore could not sustain a trespass claim; that the respondents as heirs and lawful beneficiaries of the estate of the deceased had a legitimate right to occupy the suit property until final distribution, and that their entry could not be deemed unlawful.

14. Accordingly, the court dismissed the appellant's claim in its entirety, finding that she had failed to prove lawful ownership or trespass. It allowed the respondents' counterclaim; declared that the appellant's registration as unlawful and fraudulent; ordered the Chief Land Registrar to cancel the appellant's entries and revert the property to the estate of the deceased; restrained the appellant from interfering with the property; and awarded costs of both the suit and counterclaim to the 1st and 3rd respondents.

15. The appellant was dissatisfied with the entire decision of the trial court and filed this appeal, contending that the learned judge erred in law and in fact by, inter alia: failing to appreciate that her acquisition of the title was legal, procedural, and supported by the documents on record; failing to find that the 2nd respondent lawfully and properly transferred the property to her; failing to find that there was no evidence implicating the 2nd respondent in wrongdoing in processing the appellant's title; failing to find that no proof was adduced to show that the appellant was party to any fraud or misrepresentation; ignoring the fact that she paid valuable consideration of Kshs. 3,500,000; failing to hold that the appellant relied on a certificate of confirmation of grant issued in Succession Cause No. 80 of 1998 which gave the 3rd respondent absolute ownership; showing bias by overlooking that the 4th respondent fraudulently filed for revocation in a different cause; failing to find that the revocation order was never registered against the title to put third parties on notice; failing to hold that at the time of purchase the appellant and the 2nd respondent were unaware of the revocation; failing to find that the fresh grant issued in 2004 was never registered against the title; and failing to hold that the grant presented to the appellant clothed the 3rd respondent with capacity to sell.

16. The learned judge is also faulted for failing to find that the appellant was a bona fide purchaser for value and not a trespasser; failing to vest in the appellant the 0.18234 hectares representing the 3rd respondent's life interest which had been sold to her; misapplying the principle that interests in land only pass upon registration which acts as notice to the world; wrongly imputing fraud on the 3rd respondent instead of the 4th respondent; giving undue weight to the evidence of the 4th respondent who was not a substantive party but nonetheless granted him a relief; failing to show what mistake the 2nd respondent committed in transferring the land when he had no notice of revocation; misinterpreting the doctrine of bona fide purchaser and the law of trespass; wrongly holding that the suit property devolved solely upon the 4th respondent instead of recognizing the 3rd respondent's share already sold to her; and failing to consider the pleadings, evidence, and submissions of the appellant, thus resulting in fundamental misdirection both in fact and in law.

17. At the hearing of this appeal, the appellant was represented by learned counsel Ms. Nyabuto, while the 1st and 4th respondents were represented by learned counsel Mr. Njenga. There was no appearance for the 2nd and 3rd respondents despite service with a hearing notice. Both advocates made oral highlights of their respective clients' written submissions.

18. Ms. Nyabuto, highlighting the appellant's written submissions, maintained that the appellant lawfully acquired title to the suit property. She contended that the sale agreement between her and the 3rd respondent complied with section 3(3) of the *Law of Contract Act* which requires contracts for sale of immovable property to be in writing, signed, and witnessed. In support of this position, she cited Hanington Malingi Tanji v. Katana Pekeshe & 7 Others [2013] eKLR, where the court stressed the mandatory nature of such agreements.

19. Regarding the allegation of fraud which was pleaded in the counterclaim, it was contended that no fraud was proved against the appellant. The provisions of section 23(1) of the repealed Registration of Titles Act and section 26(1) of the *Land Registration Act* were invoked for the argument that a registered title is absolute and indefeasible unless fraud or misrepresentation to which the proprietor is a party is shown. Reliance was also placed on Esther Ndegi Njiru & Another v. Leonard Gatei [2014] eKLR, where it was held that a registered proprietor's title is prima facie evidence of ownership and can only be challenged on the basis of fraud, misrepresentation, or where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme. Further reliance was placed on Elijah Makeri Nyangwara v. Stephen Mungai Njuguna & Another, Eldoret ELC No. 609B of 2012, where the court emphasized that fraud must be specifically pleaded, proved, and directly connected to the proprietor. Since no such proof was adduced, the appellant asserted that her ownership of the suit property was beyond challenge.

20. The appellant also asserted that prior to the purchase she confirmed the ownership of the land through official searches and conducted a physical inspection. She was satisfied that the property belonged to the deceased, and upon requesting proof of the 3rd respondent's authority to sell, she was shown a grant and a certificate of confirmation of grant issued in Kiambu Succession Cause No. 80 of 1998. On that basis, counsel maintained that her client was an innocent purchaser for value, who acted in good faith and is therefore protected by law.

21. With regard to the effect of the confirmed grant and subsequent revocation orders issued in High Court Succession Cause No. 2704 of 1999, it was submitted that although orders were issued revoking the confirmed grant and redistributing the property, those orders were never registered against the title. It was contended that unregistered orders cannot affect third parties who purchase property in good faith since registration is what perfects transmission. For this proposition reliance was placed on Gichinga Kibutha v. Caroline Nduku [2018] eKLR, where the court emphasized the protection accorded to

registered titles under sections 24, 25, and 26 of the *Land Registration Act*. Further reliance was placed on Maria Jebet Arap Masoin & 2 Others v. Kipkoech Lagat & Another [2018] eKLR, which affirmed that transmission must be registered in order to confer enforceable rights on beneficiaries. According to the appellant, the respondents' failure to protect their interests through registration or the lodging of a caution amounted to laches. The decision of Benjoh Amalgamated Limited & Another v. Kenya Commercial Bank Limited [2014] eKLR, where this Court adopted the principle from The Lindsay Petroleum Co. v. Hurd (1874) LR 5 PC was cited for the argument that delay in asserting rights can defeat equitable relief.

22. Counsel further asserted that in Nairobi High Court Succession Cause No. 2704 of 1999, the court did not revoke the letters of administration that had been issued to the 3rd respondent but only set aside the confirmed grant of 28th June 1999. The matter was thereafter referred to the Chief Magistrate's Court in Kiambu, which distributed the estate on 7th September 2004 but declined to issue fresh letters of administration. According to counsel, the effect of this order was to confirm that the letters of administration issued to the 3rd respondent remained valid. Counsel stressed that setting aside the confirmed grant merely suspended distribution of the estate but did not invalidate the 3rd respondent's authority as administrator, which meant that she retained capacity to transfer the property.

23. Responding to a question from the Court whether a person who does not have a confirmed grant has capacity to sell a property, counsel answered in the affirmative and made reference to section 93 of the *Law of Succession Act* which provides that any transfer of property by a person to whom representation has been granted remains valid despite any subsequent revocation or variation of the grant. On this basis, it was reiterated that the 3rd respondent had a valid interest in the suit property which she lawfully transferred to the appellant.

24. In further response to another question posed by the Court, counsel acknowledged that the 3rd respondent, as per the distribution made in 2004, held a life interest in the suit property which she could not sell or transfer.

25. In conclusion, counsel contended that the sale of the suit property to her client was protected by law; that she was placed in the legal position of a bona fide purchaser for value without notice; and that the impugned judgment which reverted the property to the estate was erroneous and ought to be set aside.

26. The 1st and 4th respondents on their part through written submissions which were highlighted by Mr. Njenga contended that the appellant relied on a revoked grant to acquire the disputed property, which rendered the transaction null and void. They maintained that the 3rd respondent had initially obtained letters of administration on 18th June 1998 which were confirmed on 28th June 1999. However, the 4th respondent successfully applied for revocation in Nairobi Succession Cause No. 2704 of 1999, and the court set aside the confirmed grant on 3rd April 2000. The matter was later transferred to the Kiambu Chief Magistrate's Court, where the trial magistrate ordered cancellation of transfers that had been made pursuant to the revoked grant, and directed the administrator to surrender any titles that may have been issued therebefore. A fresh grant was issued on 24th September 2004 vesting the suit property in the 3rd respondent jointly with the 4th respondent, who were to hold part of it in trust for other beneficiaries. The1st and 4th respondents, therefore, maintained that by the time the appellant purchased the land in 2009, the 3rd respondent had no legal capacity to sell it.

27. The respondents contended that the appellant could not claim to have acquired good title because one could not transfer a better title than he possessed. They relied on Michael Muchoki Njeri & Another v Stellamaris Ndunge Masila & 6 Others [2017] eKLR, wherein the Court held that once a grant had been revoked, a beneficiary could not dispose of estate property. They further asserted that the

3rd respondent's actions in purporting to sell the property were in defiance of clear court orders, and any such actions were a nullity. To support this position, they cited Kenya Tea Growers Association v Francis Atwoli & 5 Others [2012] eKLR which affirmed that disregard of court orders undermines the rule of law; Clarke & Others v Chadburn & Others [1985] 1 All ER (P.C) 211 which held that any act done in defiance of a valid court order is a nullity and of no legal effect; and Judicial Service Commission v Speaker of the National Assembly & 8 Others [2014] eKLR, where the Court emphasized that obedience to court orders is fundamental and disobedience vitiates subsequent actions. They also relied on Central Bank of Kenya & Another v Ratilal Automobiles Limited & Others, Civil Application No. 247 of 2006, wherein this Court reaffirmed that acts undertaken in violation of court orders are unlawful and invalid.

28. Regarding the appellant's claim of being an innocent purchaser for value, the respondents contended that due diligence was not properly undertaken. They emphasized that a grant was a court- issued document whose validity could only be ascertained from the court itself and not from the land registry. According to the 1st and 4th respondents, the appellant's reliance on searches at the registry without confirming the grant's authenticity amounted to negligence. The respondents cited Suleiman Rahemtulla Omar & Another v Musa Hersi Fahiye & 5 Others [2014] eKLR, as applied in Falcon Global Logistics Co. Ltd v Management Committee of Eldama Ravine Boarding Primary School [2018] eKLR, to assert that the doctrine of bona fide purchaser required proof of honest intention, good faith, valuable consideration, absence of notice of fraud, and reliance on a valid title. They also relied on Katende v Haridar & Company Ltd [2008] 2 EA 173 wherein the Court of Appeal in Uganda set out the criteria for establishing bona fide purchaser status, and contended that the appellant failed to meet those requirements because the 3rd respondent never had valid title to pass. Further reliance was placed on Arthi Highway Developers Ltd v West End Butcheries Ltd & 6 Others [2015] KECA 816 (KLR) where this Court emphasized that protection of innocent purchasers applied only against equitable interests and not against legal interests already vested by a court.

29. In conclusion, the 1st and 4th respondents maintained that the 3rd respondent fraudulently and illegally purported to sell the property and that the title acquired by the appellant was impeachable under section 26(1)(a) and (b) of the *Land Registration Act*. They emphasized that fraud vitiated everything, and even if the appellant was not directly involved, the title remained invalid since it was rooted in a revoked grant. They further argued that the 4th respondent's legal interest in the suit property which was conferred by the court in 2004 superseded any claim by the appellant. They contended that the learned judge did not err in any way in the impugned judgment and urged this Court to dismiss the appeal and affirm the cancellation of the appellant's title.

30. As this is a first appeal, it is our duty to analyze and re-assess the evidence on record and reach our own conclusions in the matter. It was put more appropriately in Selle -vs- Associated Motor Boat Co. [1968] EA 123, thus:

> " An appeal to this Court from a trial by the High 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. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif vs. Ali Mohamed Sholan (1955), 22 E. A. C. A. 270)."

31. We have considered the record, the submissions by counsel and analyzed the judgment of the Environment and Land Court. In our view, this appeal crystallizes on the following issues: whether the appellant acquired good title to the suit property; whether the appellant was a bona fide purchaser for value without notice; and whether the appellant's title was indefeasible under section 26(1) of the *Land Registration Act*.

32. As regards the first issue, the central issue in our view is whether the 3rd respondent who sold the suit property to the appellant had capacity to convey a valid title to her, given that the grant on which she relied had been set aside. The record shows that the 3rd respondent had on 8th June 1998 obtained letters of administration in Kiambu Succession Cause No. 80 of 1998 which were confirmed on 28th June 1999. However, the confirmed grant was set aside by the High Court (Visram, J.) (as he then was) in Nairobi Succession Cause No. 2704 of 1999, and the matter was later remitted to Kiambu Chief Magistrate's Court, where on 7th September 2004 the estate was redistributed and orders were issued for cancellation of transfers based on the revoked grant. The 3rd respondent was left only with a limited life interest in part of the suit property, while the 4th respondent was allocated the rest to hold in trust for himself and other beneficiaries. Therefore, by the time of the purported sale to the appellant in 2009, the 3rd respondent no longer had a confirmed grant conferring absolute ownership of the suit property to herself, nor did she have authority to dispose of the property since a life interest does not, in itself, carry with it powers of alienation.

33. It is trite law that once a grant is revoked or set aside, any acts founded upon it are void and incapable of conferring good title. In the circumstances herein, it is clear to us beyond any peradventure that subsequent to the nullification of the grant that had conferred the suit property to the 3rd respondent, the appellant could not purport to rely on it in the sale transaction between herself and the 3rd respondent. In other words, the confirmation of the grant ceased to have any force of law, and any acts premised upon it were, in our view, a nullity ab initio. The 3rd respondent did not have any good title pursuant to the said confirmed grant which she could pass to the appellant.

34. In addition, the Chief Magistrate's Court at Kiambu, while distributing the deceased's estate, ordered the 3rd respondent to surrender back to court the original certificate of confirmed grant issued to her on 28th June 1999. The record reflects that the 3rd respondent did not comply with the said orders. She instead went ahead to sell the suit property to the appellant without even acknowledging the 0.12156Ha share distributed to the 4th respondent and other beneficiaries. The principle that acts undertaken in defiance of court orders are nullity, in our view, further undermined the 2009 sale between the appellant and the 3rd respondent. The 3rd respondent's failure to surrender the revoked grant and her decision to dispose of the property contrary to the distribution orders made in 2004 amounted to deliberate defiance, thereby rendering the transaction void.

35. The appellant has attempted to rely on the provisions of section 93 of the *Law of Succession Act* to sanctify the sale of the suit property to her. Section 93 (1) provides as follows:

> " All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act, by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act."

36. This provision, in our view, does not licence an administrator to dispose of immovable property before confirmation of grant, and does not override express statutory prohibitions or binding court orders. In our view, the said provision operates to protect third parties where a duly authorized personal

representative transacts and the grant is later varied or revoked, but it cannot validate a sale which the Act forbids, or one made after a confirmed grant has already been set aside. The appellant's argument that section 93 permitted disposal before confirmation was therefore totally flawed. It is worth pointing out that section 55 of the *Law of Succession Act* prohibits the distribution or division of the capital assets of the deceased before the grant is confirmed. We would also add that section 93(1) cannot override Article 40(6) of *the Constitution* which expressly provides that protection of the right to property does not extend to any property that is found to have been illegally acquired.

37. Regarding the appellant's reliance on the doctrine of bona fide purchaser for value without notice, this Court has previously clarified that the doctrine cannot sanitize a defective root of title. In Arthi Highway Developers Ltd v West End Butcheries Ltd & 6 Others (supra), this Court stated that protection of innocent purchasers applies only against unregistered equitable interests and not against legal interests already vested. In the circumstances herein, since the 3rd respondent's authority had been extinguished vide orders issued by the court and the property re-distributed, no valid title was available to pass, and the appellant could not claim protection under this doctrine.

38. We reject the appellant's invocation of the doctrine of bona fide purchaser, which is premised on the basis that the respondents did not cause the registration of the setting aside orders of the confirmed grant against the title. In this regard, we fully concur with the views expressed by the 1st and 4th respondents that a grant is a court-issued document whose validity can only be ascertained from the court itself and not from the land registry. Accordingly, the appellant's reliance on searches at the land registry without confirming the grant's authenticity from the court amounted to negligence.

39. Lastly, on the issue of the indefeasibility of the appellant's title, we note that the principle of indefeasibility under section 26(1) of the *Land Registration Act* and Article 40(6) of *the Constitution* is subject to the exception that titles unlawfully or unprocedurally obtained are not protected. In Henry Muthee Kathurima v Commissioner of Lands & Another (supra), this Court held that indefeasibility does not shield titles rooted in illegality. The Court held thus:

> "We have considered the provisions of Section 26 of the *Land Registration Act* in light of the provisions of Article 40 (6) of *the Constitution* and it is our considered view that the concept of indefeasibility of title is subject to Article 40 (6) of *the Constitution*. Guided by the provisions of Article 40 (6) of *the Constitution*, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that title to the property was unlawfully acquired."

40. Similarly, in Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] eKLR, the Court held thus:

> "...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein."

41. In Funzi Island Development Limited & 2 others v County Council of Kwale & 2 others [2014] KECA 882 (KLR), this Court held thus:

> "... a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot, on the basis of indefeasibility

of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title."

42. In the circumstances, the appellant cannot be said to have legally acquired title to the suit property as the said title originated from a revoked grant and was issued in defiance of distribution orders. The said title fell within the category of impeachable titles.

43. All in all, we are not persuaded that the trial court erred in declaring the appellant's title a nullity and subjecting the property to the distribution orders made in 2004. Consequently, this appeal is without merit and is hereby dismissed with costs to the 1st and 4th respondents.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

Deputy Registrar.