



**Gachanja v Wambaa & 3 others (Environment and Land Appeal
E057 of 2024) [2025] KEELC 8350 (KLR) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E057 OF 2024
JM ONYANGO, J
NOVEMBER 24, 2025**

BETWEEN

DAVID WANJOHI GACHANJA APPELLANT

AND

TERESIA WANJIRU WAMBAA 1ST RESPONDENT

LAND REGISTRAR KIAMBU 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

**STANLEY MBURU KIREMA, TIMOTHY KIREMA MBURU AND MOSES
KARONGA (SUED AS ADMINISTRATORS OF THE ESTATE OF JANE
WANJIKU MBURU- DECEASED) 4TH RESPONDENT**

JUDGMENT

1. This appeal arises from the judgment and decree of Hon. C.K Kisiangani P.M in Ruiru CMELC Case No. E068 of 2022 delivered on 23rd May 2024 in which the learned trial magistrate issued an order for cancellation of the Appellant’s title, restoration of the register in the name of the Teresiah Wanjiru Wambaa, the 1st Respondent as the registered owner and rectification of the abstract of the title in its original position as at 7th April 1999. She also directed that the 4th Respondent refunds the Appellant the sum of Kshs. 5,600,000 that was paid by the Appellant to the deceased Jane Wanjiku without any interest.
2. A brief background of the case is necessary to put the appeal into perspective. David Wanjohi Gachanja, the Appellant herein who was the Plaintiff in the case in the lower court filed suit against the Teresiah Wanjiru Wambaa (1st Respondent)vide a plaint dated 22nd April 2022. The Plaint was subsequently amended on 3rd October 2023 to include the administrators of the estate of Jane Wanjiku as the 2nd Defendant (4th Respondent in the appeal). The 1st Respondent filed a statement of Defence dated



- 24th May 2022 which was later amended on 17th November 2023. Through her Amended Defence and Counterclaim, the 1st Respondent brought in the 2nd and 3rd Respondents as defendants in the Counterclaim.
3. In the Amended Plaintiff the Appellant averred that he purchased land parcel number Ruiru West Block 1/1610 (suit property) from one Jane Wanjiku Mburu after following due process and despite the Appellant being the registered owner of the suit property, the 1st Respondent had trespassed on the Appellant's land and started claiming ownership thereof.
 4. The Appellant sought a declaration that he is the lawful owner of the suit property, having purchased the same for valuable consideration. He prayed for a permanent injunction to restrain the 1st Respondent from interfering with his quiet possession and peaceful enjoyment of the suit property. He further prayed that should the court find any defect in the title of Jane Wanjiku Mburu, an order be made that any loss suffered by the Appellant as a result of the actions of or defects in title of Jane Wanjiku Mburu be paid by the 4th Respondent including the refund of the purchase price of Kshs. 5,600,000 together with interest from the date of payment at court rates.
 5. The 1st Respondent filed a Defence and Counterclaim which was amended on 17th November 2023 and further amended on 28th November 2023. She denied the Appellant's claim and stated that she was the second owner of the suit property having bought it from one Kariuki Kanina in 1999. She denied having sold the suit property to Jane Wanjiku Mburu in 2019 and stated that she was out of the country when the purported sale took place. She averred that she had lost her title deed and identity card while travelling in a matatu on 20th January 2019 and that an identity card had been manufactured by a lady who impersonated her, forged her signature and sold the suit property to Jane Wanjiku Mburu.
 6. She averred that when she returned to Kenya in 2022, she learnt that her land had been transferred to another person. She then filed a formal complaint at Ruiru Police Station. She maintained that she was the lawful owner of the suit property.
 7. In her Counterclaim she challenged the title issued to Jane Wanjiku Mburu stating that the said title was not clean as it was fraudulently obtained and therefore the said Jane Wanjiku Mburu did not pass a good title to the Appellant. She averred that the Land Registrar who was sued as the 2nd Defendant in the Counterclaim had no powers to allow the transfer and registration of the title in favour of Jane Wanjiku Mburu and that he had fraudulently transferred the land to Jane Wanjiku Mburu using manufactured documents.
 8. She prayed that the Appellant's suit be dismissed and for a declaration that the suit property belongs to her exclusively. She also prayed for a permanent injunction restraining the Appellant from trespassing on or interfering with her ownership and occupation of the suit property. She further prayed for general and punitive damages against the 4th Respondent.
 9. The Appellant filed a Reply to the 1st Respondent's Further Amended Defence and Defence to the Counterclaim dated 17th November 2022. He denied the 1st Respondent's claims and maintained that he had valid title to the suit property having purchased the same for value without notice of any fraud.
 10. In response to the Counterclaim, he stated that the same was incurably defective and misconceived as it was drafted in contravention of Order 7 and 8 of the Civil Procedure Rules. He denied that his title was tainted with fraud and maintained that he had no notice of fraud or any defect in title and that he was an innocent purchaser for value.
 11. The 2nd and 3rd Respondents filed a Defence to the Counterclaim dated 17th November 2022. They denied the allegations made in the Counterclaim and prayed that the suit against them be dismissed.



12. The suit was set down for hearing and both parties testified and called their witnesses. The trial magistrate then delivered her judgment in which she directed that the Appellant's title be cancelled and the register be restored to its position as at 7th April 1999. She also ordered the 4th Respondent to pay the Appellant the sum of Kshs. 5,600,000 being the purchase price he paid to Jane Wanjiku Mburu -Deceased.
13. It is this judgment that prompted the instant appeal in which the Appellant cited 18 grounds of appeal which can be condensed into 7 grounds as follows:
 - i. That the learned trial magistrate erred in holding that the 1st Respondent had established fraud, illegality, irregularity and/or defect in title of Jane Wanjiku Mburu with no evidence at all.
 - ii. That the learned trial magistrate erred in failing to uphold the principle of innocent purchaser for value without notice of any fraud and and/or illegality thereby allowing the 1st Respondent's counterclaim;
 - iii. That the learned trial magistrate erred in holding that the administrators of the estate of Jane Wanjiku Mburu failed to prove the root of their title.
 - iv. That the learned trial magistrate erred in holding that DW2 had proved that the 1st Respondent did not sign the transfer form that was used to transfer the land between the 1st Respondent and the 4th Respondent.
 - v. The learned trial magistrate erred in holding that the 1st Respondent had proved that she was in England at the time of the sale between herself and Jane Wanjiku Mburu.
 - vi. The learned trial magistrate erred in awarding the Appellant only a refund of the purchase price without interest contrary to the agreement between the parties.
 - vii. That the learned trial magistrate erred in failing to uphold the indefeasibility of the Appellant's title.
14. The appeal was canvassed through written submissions and the Appellant, 1st, and 4th Respondents filed their respective submissions as directed by the court.

Appellant's Submissions

15. In his submissions dated 30th January 2024, learned counsel for the Appellant submitted that the Appellant had proved the root of his title. He submitted that the Appellant testified that once he identified the plot he wanted to purchase, he conducted due diligence by visiting the said plot, conducting an official search to establish the ownership, and talking to the neighbors to confirm that Jane Wanjiku Mburu owned the plot.
16. It is only after he had confirmed the ownership of the plot that he entered into a sale agreement with Jane Wanjiku. The said agreement was prepared by the firm of C. Kimanthi & Co Advocates. He adduced evidence that he paid the purchase price in instalments, obtained spousal consent and paid stamp duty. He thereafter lodged the transfer documents at the Ruiru Lands office and he was issued with a certificate of lease.
17. The Appellant produced a green card indicating that the suit property was registered in his name. He thereafter obtained a change of user from a single dwelling to residential multi-dwelling units and obtaining the necessary approvals from the County Government of Kiambu.



18. Counsel further submitted that the Appellant had demonstrated that he was a bona fide purchaser for value without notice of any fraud. It was his submission that the sale agreement between the Appellant and Jane Wanjiku Mburu contained express warranties at clauses 15.1-15.9 that there were no adverse claims against the suit property regarding ownership, boundary easements or any other claims and that the vendor had the legal capacity to dispose of it. It is also not in doubt that the Appellant paid valuable consideration for the suit property in the sum of Kshs. 5,600,00.
19. It was counsel's submission that the Appellant obtained an indefeasible title in terms of section 26 of the *Land Registration Act* and the 1st Respondent had not pleaded any particulars of fraud against him in her Counterclaim. Indeed, in her evidence she stated that the Appellant was not party to any fraud.
20. Counsel relied on the case of *Tarbana Company Limited v Sehmi & 7 Others Civil Appeal 463 of 2019 (2021) KECA 76 KLR (8 October) (Judgment)* where the court held that the means of determining whether the Appellant's title was indefeasible and not subject to challenge is spelt out in section 26 of the *Land Registration Act* and what was required was to determine if the Appellant was involved in the process through which the 4th Respondent obtained title.
21. In the said case the court found that the Appellant had not played any role in the irregular acquisition of the title and held that the appellant was a bona fide purchaser for value and therefore his title could not be challenged.
22. Counsel submitted that the 1st Respondent failed to prove fraud as she attributed the fraud to an unnamed lady who is said to have impersonated her.
23. Counsel contended that the 1st Respondent failed to prove fraud against Jane Wanjiku Mburu as the agreement dated 26th September 2019 between her and Jane Wanjiku Mburu was prepared by the firm of Thuku & Associates Advocates who represented her and filed a Defence for her in the lower court. He wondered why the 1st Respondent never raised any complaint against the said firm of advocates for preparing a sale agreement in her name without her knowledge.
24. He also faulted the firm of Thuku & Associates for intentionally failing to send the said sale agreement to the document examiner to prove that the signature thereon did not belong to the 1st Respondent.
25. Counsel further dismissed the 1st Respondent's claim that she had travelled to England at the time the sale agreement dated 26th September 2019 was signed as the 1st Respondent did not produce her passport to show that it had an exit stamp.
26. Counsel submitted that the administrators of Jane Wanjiku Mburu produced letters to show that the firm of Nyaswenta & Company Advocates acted for the 1st Respondent and received money on her behalf which means that she participated in the sale transaction and received money from Jane Wanjiku Mburu.
27. Counsel submitted that the 1st Respondent had not produced any evidence that she applied for a new title deed and the loss of her title deed was never gazetted by the Land Registrar in accordance with section 33 of the *Land Registration Act*.
28. Additionally, on the question of fraud, counsel submitted that the 1st Respondent did not prove any fraud against Jane Wanjiku Mburu as she maintained that the fraud was committed by an unnamed lady who impersonated her.
29. He faulted the trial magistrate for relying on the evidence of DW2, the Forensic Document Examiner, to prove that the 1st Respondent's signature was forged as there was no evidence that the documents



examined by him were the ones used to transfer the suit property to Jane Wanjiku Mburu. He submitted that in his evidence DW2 stated that he did not know whether the transfer form that had been sent to him was the one at the Lands Registry as it was unclear, incomplete and the same was not dated or sealed.

30. He placed reliance on the case of Christopher Ndaru Kagina & Another v Esther Mbandi Kagina & Another (2016) eKLR for the proposition that expert evidence is opinion evidence which should be analyzed with caution and tested against known facts as it is the primary factual evidence which is of greatest importance.
31. Counsel pointed out that from the evidence on record, it was clear that by the time the document examiner prepared his report on 16th March 2023, the 1st Respondent had not obtained a copy of the Transfer Form that was used to transfer the suit property from the 1st Respondent to Jane Wanjiku as the 1st Respondent made an oral application on 26th May 2023 to have the Land Registrar summoned to produce the said Transfer document.
32. With regard to the alleged forgery of the 1st Respondent's identity card, counsel submitted that the 1st Respondent never produced the identity card that was allegedly forged since the documents that were used to effect the transfer were never produced by the Land Registrar. He pointed out that the copy of the Identity card filed by the 1st Respondent on page 5 of her list of documents was similar to the copy of the identity card produced by the administrators of the estate of Jane Wanjiku Mburu thus disproving the theory that her identity card was forged.
33. Counsel faulted the trial magistrate for shifting the burden of proof to the Appellant to prove the allegations by the 1st Respondent. He submitted that whereas the 1st Respondent filed a counterclaim in which she denied that she signed the sale agreement or received the purchase price, she produced copies of cheques confirming payment but she never denied that Gladwell Wathaiya acted for her nor did she deny that the firm of Nyaswenta received any money on her behalf. It was his submission that the burden ought to have shifted to the 1st Respondent to prove that she did not receive any money by calling both Nyaswenta and Gladwell Wathaiya advocates to confirm that they did not act for her.
34. In conclusion, counsel submitted that the 1st Respondent had failed to prove fraud against the Appellant. He had equally failed to prove that Jane Wanjiku Mburu was involved in any fraud as she maintained that the fraud was perpetrated by an unknown lady who impersonated her and therefore Jane Wanjiku Mburu was an innocent purchaser for value without notice.

1st Respondents' Submissions

35. Learned counsel for the 1st Respondent gave a brief background of the case and submitted that the most important issue that the court needed to determine was whether Jane Wanjiku Mburu had acquired a defective title or not. She pointed out that the 4th Respondent deliberately failed to call Stanley Mburu Kirema who could have identified the person who sold the suit property to his late wife Jane Wanjiku Mburu.
36. Counsel identified the following issues for determination:
 - i. Whether the appeal was an afterthought or not
 - ii. Whether the 1st Respondent discharged her burden of proof
 - iii. Whether the Appellant and 4th Respondent discharged their burden of proof
 - iv. Did Jane Wanjiku Mburu acquire a good title?



- v. Can a subsequent title override an existing title?
- vi. Whether 1st Respondent is entitled to the reliefs sought
37. On the first issue, counsel submitted that it was perplexing that the Appellant filed an appeal after getting an award in his favour. He submitted that it was even more perplexing since the 4th Respondent had not filed any appeal contesting the award. He submitted that the conclusions raised by the Appellant in his submissions were not supported by evidence.
38. Regarding the burden of proof, counsel submitted that the 1st Respondent discharged her burden of proof on a higher preponderance of probability than the Appellant and her co-Respondent.
39. It was counsel's submission that the 1st Respondent had through the evidence of the Forensic Document Examiner demonstrated that her signature on the transfer documents was forged and that her photograph on the Identity card used during the transfer was doctored. He added that the 1st Respondent had adduced evidence to the effect that her title and ID got lost in January 2019 and she only learnt the title had been transferred to someone else after she visited the Lands office in March 2022.
40. Counsel submitted that the 1st Respondent had demonstrated that the late Jane Wanjiku Mburu was aware of or involved in the forgery as the firm of Thuku who were acting for her in the transaction advised her that the transaction was suspicious but she opted to proceed with it and instructed another law firm.
41. Counsel pointed out that the caution registered by Jane Wanjiku on 20th September 2020 was withdrawn on 28th April 2021 before the transfer was executed on 27th May 2021 and the suit property was transferred to her on 2nd June 2021. She subsequently sold the suit property to the Appellant in July 2021. It was counsel's submission that these transactions were hurriedly done because Jane was engaged in forgery.
42. He contended that the Appellant did not qualify to be considered as an innocent purchaser for value as he did not carry out sufficient due diligence. He also failed to question why Jane was selling the suit property soon after she acquired it.
43. On whether the 4th Respondent discharged their burden of proof, counsel submitted that they failed to do so as they did not prove that the 1st Respondent is the one who sold the suit property to Jane Wanjiku Mburu.
44. Counsel further submitted that the 4th Respondent did not prove that the transfer documents produced by the 1st Respondent were genuine nor did she produce other transfer documents to disprove the fact that these were the documents used during the transfer of suit property to Jane Wanjiku Mburu.
45. He submitted that the trial court could not be faulted for holding that the transfer documents were forged as the evidence of the Forensic Document Examiner was not shaken by the 4th Defendant. She faulted the 4th Respondent for failing to call Stanley Mburu Kirema as a witness yet he was present during the impugned transfer of the suit property to Jane Wanjiku Mburu.
46. It was counsel's submission that the Appellant failed to prove that he is was an innocent purchaser for value as there were many suspicions incidents which he failed to question. He submitted that on the other hand, the 1st Respondent was able to demonstrate the steps she took when she lost her title and ID and the trial court cannot be faulted for upholding her uncontroverted evidence.



47. On whether Jane acquired a good title, counsel submitted that she did not, as the person who transferred the title to her was an imposter. It was his contention that having acquired a bad title from an imposter she could not transfer a good title to the Appellant.
48. On whether the Appellant's title should be upheld, counsel relied on the case of *Jennifer Nyambura v Humphrey Mbaka Nandi* (2013) eKLR for the proposition that a person with a superior title can challenge the title of one who is in de facto possession. She argued that a title cannot overlap another title and that for a title to validly exist, all preceding titles must be legally extinguished.
49. Counsel concluded by urging the court to uphold the judgment of the lower court as the Appellant's prayer for a refund had been granted and the 4th Respondent had not filed any appeal against the judgment.

4th Respondent's Submissions

50. Learned counsel for the 4th Respondent joined issue with the Appellant's submissions and identified the following issues for determination
 - i. Whether the estate of Jane Wanjiku Mburu proved the root of her title;
 - ii. Whether DW2 proved that the 1st Respondent did not sign the transfer between Jane and herself when there was no evidence that he examined the transfer document lodged at Ruiru Land Registry;
 - iii. Whether the 1st Respondent proved that she was in England at the time of the sale transaction between herself and Jane Wanjiku Mburu;
 - iv. Whether the 1st Respondent established fraud, illegality and defect in Jane Wanjiku Mburu's title.
51. On whether the administrators of the estate of Jane proved the root of her title, counsel submitted that the 4th Respondent produced the documents in their List and bundle of documents dated 6th March 2024 including a sale agreement dated 26th September 2019 between the 1st Respondent and Jane Wanjiku Mburu for the sale of the suit property for the sum of Kshs. 2,800,000.
52. It was his submission that the 4th Respondent demonstrated that the said sale agreement was attested by Gladwell Wathaiya, an advocate in the form of Thuku & Associates. They also produced the National Identity card of the 1st Respondent and evidence of payment of the purchase price by Jane Wanjiku Mburu to the 1st Respondent through the firm of Nyaswenta & Associates Advocates.
53. Counsel submitted that the 1st Respondent did not prove the allegations of fraud against the 4th Respondent or anyone at all as she merely alleged that a figureless person had impersonated her.
54. Regarding the evidence of DW2 that the 1st Respondent's signature was forged, counsel faulted the trial magistrate for concluding that there was forgery when DW2 admitted that he did not go the Ruiru Land Registry nor ask for certified copies of the Transfer documents that were used in the transfer in order to compare the signature on the said documents with the known signature of the 1st Respondent.
55. He submitted that DW2 admitted that the transfer document that was sent to him was not dated or sealed and it was unclear which means it was not of much use in proving that the 1st Respondent's signature on the transfer form was forged.
56. Reliance was placed on the case of *Stephen Kinini Wang'ondou v The Ark Limited* (2016) eKLR when Justice Mativo held that expert evidence being opinion evidence should be assessed in the context of all



- other evidence and it should not trump all other evidence. It was counsel's submission that the expert evidence did not meet the threshold of being influential in order to prove forgery.
57. The fact that the Land Registrar did not produce the documents from the Land Registry further weaken the probative value of the said evidence.
 58. Counsel also pointed out that despite her allegation that she did not transfer of the suit property to Jane Wanjiku Mburu, the 1st Respondent initially instructed the firm of Thuku & Associates that had supposedly drawn the impugned sale agreement to act for her.
 59. In her testimony she admitted that she knew the said law firm as she used to go there for legal services. He submitted that it was laughable for the advocates who drew the sale agreement to purport to discredit the 1st Respondent's signature. It is the said firm that instructed the Forensic Document Examiner (DW3) and failed to send him a copy of the sale agreement that was prepared by their firm. Also notable is the fact that the 1st Respondent never reported the firm of Thuku & Associates or Nyaswenta & Associates for acting on her behalf without her instructions.
 60. On the 1st Respondent's allegation that she was in England at the time of the transaction, counsel submitted that the 1st Respondent did not produce her passport to show that it had an exit stamp nor did she specify the date when she left the country.
 61. He submitted that the 1st Respondent swore an affidavit dated 17th November 2022 stating that she was residing in Kiambu County in the Republic of Kenya which contradicts her allegation that she was working in England.
 62. Counsel relied on the case of *Nag'ang'a & 12 Others v Kahi* (2024) KEELC 7067 for the proposition that he who alleges must prove. Counsel submitted that the 1st Respondent having pleaded fraud against the 4th respondent had failed to prove it. He faulted the trial magistrate for arriving at the finding that the 1st Respondent had proved her case without sufficient evidence.

Analysis And Determination

63. I have carefully considered the Memorandum and entire Record of Appeal as well as the parties' rival submissions and the following issues arise for determination:
 - i. Did the 1st Respondent prove that the Appellant's title was tainted with fraud illegality or irregularity?
 - ii. Did Jane Wanjiku Mburu have a good title to pass to the Appellant?
 - iii. Was the Appellant a bona fide purchaser for value without notice?
 - iv. Did the Appellant prove his case against the 1st Respondent and if so, was he entitled to the reliefs sought?
 - v. Did the 1st Respondent prove her counterclaim
 - vi. Was the 1st Respondent entitled to the reliefs sought?
64. The principles governing the court's role were on appeal were articulated in the case of *Selle & Another v Associated Motor Boat Company Limited* (1968) E.A 123 and reaffirmed in *James Odera T /A A.J Odera & Associates v John Patrick Machira T/A Machira & Co Advocates* (2013) eKLR where the Court of Appeal held that a first appeal bears the character of a retrial. The first appellate court has the solemn duty of re-examining and re-evaluating the evidence on record and determining whether conclusions arrived at by the trial court should stand and to give reasons either way. This obligation is



to be discharged carefully bearing in mind that the trial court had the distinct advantage of observing the witnesses as they testified and assessing their credibility.

Whether the 1st Respondent proved that the Appellant's title was tainted with fraud, illegality or irregularity

65. I will now proceed to determine each of the issues identified above starting with the question as to whether the 1st Respondent proved that the Appellant's title was tainted with fraud, illegality or irregularity.

66. In the case of *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* (2000) eKLR the court held as follows :

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

66. Additionally, in the case of *Arthi Highway Developers Ltd V West End Butchery Limited & West End Butchery Limited & 6 Others* (2015) eKLR, the Court of Appeal in considering the issue of fraud observed that :

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt..”

67. In her Further Amended Defence and Counterclaim dated 17th November 2023 the 1st Respondent averred at Paragraphs 8 and 9 as follows:

8. “The title obtained by the Plaintiff is subject to challenge as Jane Wanjiku Mburu, now deceased did not have a clean title and the capacity to transfer the land to the 1st Defendant herein since she obtained the same fraudulently, seeing as the Plaintiff lost the original title and it fell in unscrupulous hands who then manufactured the plaintiff's identity card, phot and forged her signature to facilitate the sale and transfer of the suit land.

9. The purchase for value of the suit land is tainted and influenced by fraud and a person without capacity cannot give legal ownership to the Plaintiff. As such the Plaintiff herein avers that the 1st Defendant does not have a proper title to the suit property as Jane Wanjiku Mburu could not have passed any better title than she herself had.

1. The 1st Defendant purchased the suit land with full knowledge of the fraudulent transaction and does not therefore have a clean title”

The 1st Respondent did not set out the particulars of fraud against the Appellant. The only particulars of fraud at paragraph 14 of the Counterclaim are against the 2nd and 3rd Respondents as follows:

14. Particulars Of Fraud

i. Purporting to effect transfer of land to Jane Wanjiku Mburu using fraudulently manufactured documents and inconsistent passport photos by the 2nd and 3rd Defendants.



- ii. Disregarding the illegitimate nature of the title in possession of one Jane Wanjiku Mburu and the fraudulent transfer of the title in favour of the 1st Defendant by the 2nd defendant.
- iii. Tampering with the Deed file at the Title's Registry by the 2nd and 4th Defendants
- iv. Registration of cautions and caveats by the 2nd Defendant upon request of the 4th Defendant against the Plaintiff's title without affording her notice."

68. Although the 1st Respondent claimed that the Appellant's title was fraudulent, she did not plead any particulars of fraud against the Appellant. The particulars of fraud against the 2nd and 4th Respondents were also not proved as the documents presented to the Ruiru Land Registry during the transfer of the suit property from the 1st Respondent to Jane Wanjiku Mburu were not produced in court nor were they subjected to forensic examination by DW2.
69. In his testimony, DW2 categorically stated that the transfer form he examined was incomplete, unclear, undated and not sealed. He also stated that he did not visit the Ruiru Land Registry to get clearer copies of the transfer forms. How then could an inference be drawn that the documents DW2 examined were the ones used to transfer the suit property to Jane Wanjiku Mburu?
70. In the case of Christopher Ndaru Kagina v Esther Mbandi Kagina & another (2016 eKLR) the court observed as follows:

“The fundamental characteristic of expert evidence is that it is opinion evidence. To my mind, the weight to be given to expert evidence will derive from how that evidence is assessed in the context of all other evidence and the circumstances of the case including the real likelihood of the expert witness having been compromised or the real possibility of such witnesses using their expertise to mislead the court by placing undue advantage to the party in whose favour they offer the evidence. The court must be alert to such realities and act with caution while analyzing such evidence. Firstly, expert evidence does not trump all other evidence. It is axiomatic that judges are entitled to disagree with an expert. Expert evidence should be tested against known facts as it is primary factual evidence which is of the greatest importance. It is therefore necessary to ensure that expert evidence is not elevated into a fixed mathematical precision. Secondly, a judge must not consider expert evidence in a vacuum. It should not therefore be artificially separated from the rest of the evidence. To do so is a structural failing.”

71. Further, as was held in the case of Stephen Kinini Wang'ondou v The Ark Limited (2016) eKLR expert evidence being opinion evidence should be assessed in the context of all other evidence and it should not trump all other evidence. As was pointed out by counsel for the Appellant, the documents examined by the forensic expert were inconclusive as they did not emanate from the Ruiru Land Registry and DW2 confessed that he never visited Ruiru Land Registry to peruse the parcel file and confirm that the transfer forms he examined were signed by Teresia Wanjiru Wamabaa.
72. Additionally, the letter from Thuku & Associates Advocates forwarding the said documents to the document examiner categorically stated that their client did not sign the documents. It is therefore not surprising that the document examiner arrived at the conclusion that Tersia's signature was forged as he was already hamstrung.



73. The 1st Respondent's evidence that she lost her title deed in January 2019 but only reported to the police in 2022 also unbelievable given the importance of a title deed. Her evidence that she travelled to England in 2019 and returned to Kenya in 2022 is also not supported by any travel documents.
74. Additionally, it is not lost to me that the 1st Respondent has largely imputed fraud on the person who allegedly impersonated her yet she never reported the law firms of Thuku & Associates and Nyaswenta & Associates Advocates who were involved in the sale of the suit property and who must have dealt with this shadowy character. Viewed in totality, the 1st Respondent's evidence of fraud fell short of the required standard.

Whether Jane Wanjiku had a good title

75. Timothy Kirema Mburu who testified on behalf of the 4th Respondent as DW3 informed the court that Jane Wanjiku Mburu was his mother. He relied on his witness statement dated 2.10.23. He said he was aware that his late mother had purchased land from the 1st Respondent. He produced the documents in their List and bundle of documents dated 6th March 2024 including a sale agreement dated 26th September 2019 between the 1st Respondent and Jane Wanjiku Mburu for the sale of the suit property for the sum of Kshs. 2,800,000.
76. The said sale agreement was attested by Gladwell Wathaiya, an advocate in the firm of Thuku & Associates. He also produced the National Identity card of the 1st Respondent and copies of the bankers' cheques being the purchase price deposited by Jane Wanjiku Mburu with the firm Nyaswenta & Associates Advocates for onward transmission to the 1st Respondent.
77. The suit property was subsequently transferred to Jane Wanjiku Mburu who in turn sold it to the Appellant.
78. Although the 1st Respondent distanced herself from the sale agreement between Jane Wanjiku Mburu and herself, she did not call Gladwell Wathaiya Advocate firm of Thuku Advocate to come and confirm that the 1st Respondent never signed the said sale agreement. It is instructive to note that neither the Land Registrar nor the Document Examiner produced the transfer form and other completion documents used to transfer the suit property to Jane Wanjiku.
79. I have looked at the copy of the ID card produced by DW3 and it is the same as the one in the 1st Respondent's list of documents. With no evidence before the court to prove that the documents examined by DW2 were the ones presented at Ruiru Land Registry during the transfer of the suit property to Jane Wanjiku Mburu, DW's evidence is of very little probative value.
80. I have already held that the 1st Respondent did not prove the allegations of fraud to the required standard and therefore Jane acquired a good title which she subsequently transferred to the Appellant.

Whether the Appellant was an innocent purchaser for value without notice

81. The question that follows is whether the Appellant was an innocent purchaser for value without notice.
82. The Black's Law Dictionary 9th Edition defines 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”

83. The Court of Appeal of Uganda in *Katende v Haridar & Company Ltdd* (2008) 2 E.A 173 defined a bona fide purchaser 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. He purchased the property in good faith
3. He had no knowledge of the fraud
4. He purchased it for valuable consideration
5. The vendor had apparent valid title
6. He purchased without notice of any fraud
7. He was not party to the fraud.”

84. On the same issue the Court of Appeal in *Samuel Kamere v Land Registrar Kajiado Civil Appeal No. 28 of 2005* (2015) eKLR stated as follows:

“In order to be considered a bona fide purchaser for value they must prove that they acquired a valid and legal title. Secondly, they that they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly, that they paid valuable consideration for the purchase of the suit property.”

85. In the instant case, the Appellant adduced evidence to show that he followed the right procedure in acquiring his title. He conducted due diligence before he purchased the suit property from Jane Wanjiku Mburu. Apart from conducting an official search at the Land Registry, he visited the land and interviewed the neighbours who confirmed that the suit property belonged to Jane Wanjiku Mburu. Additionally, he holds a certificate of lease, he purchased the property in good faith, he had no knowledge of any fraud and he paid valuable consideration. The 1st Respondent also confirmed that he was not involved in any fraud. He is therefore a bona fid purchaser for value.

Whether the Appellant proved his case against the Respondents and whether he is entitled to the reliefs sought.

86. In his Complaint, the Appellant sought a declaration that he is the lawful and legally entitled owner of the suit property having purchased the same for valuable consideration. He also sought a permanent injunction to restrain the 1st Respondent from interfering with his quiet possession, peaceful enjoyment and ownership of the suit property.
87. In the alternative, he prayed that should the court find any defect in the title of Jane Wanjiku Mburu, an order be made that any loss suffered by him as a result of the actions and/or defect in title of Jane Wanjiku Mburu be paid by the 4th Respondent including the refund of the purchase price of Kshs. 5,600,000 with interest form the date of purchase at court rates.



88. In the final analysis the court has found that the Appellants hold a good title to the suit property as the 1st Respondent failed to prove the allegations of fraud in her counterclaim.
89. Consequently, the Appeal succeeds and the judgment delivered on 23rd May 2024 in Ruiru Cmelc No. E068 of 2022 is hereby set aside and substituted with following orders:
- a. A declaration is hereby issued that the Plaintiff is the lawful and legally entitled owner of the property known as Land Reference Number Ruiru West Block 1/1610 having purchased the same for valuable consideration.
 - b. A permanent injunction is hereby issued restraining the 1st Defendant by herself, her servants, agents and employees working under either them or any other third party not under the instructions of the Plaintiff from disturbing, entering into, trespassing, alienating, claiming ownership, and/or interfering with the Plaintiff's quiet possession, peaceful enjoyment and/or ownership of the parcel of land known and registered as Land Reference Number Ruiru West Block 1/1610 or any part thereof.
 - c. A permanent injunction is hereby issued restraining the 1st Defendant by herself, her servants, agents and employees working under either them or any other third party not under the instructions of the Plaintiff from expelling, interfering with, harassing, intimidating and/or otherwise threatening the Plaintiff on the Plaintiff's property known as Land Reference Number Ruiru West Block 1/1610 or any part thereof.
 - d. The 1st Defendant's Counterclaim is hereby dismissed.
 - e. The 1st Defendants shall bear the costs of the appeal and the suit in the lower court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24TH DAY OF NOVEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Mr. Irungu for the Appellant

Mr. Warui for the 4th Respondent.

No appearance for the 1st Respondent.

