



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gikama v County Government of Nairobi & 2 others (Environment and Land Case 1262 of 2013) [2025] KEELC 8448 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8448 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND CASE 1262 OF 2013**  
**CA OCHIENG, J**  
**DECEMBER 4, 2025**

**BETWEEN**

**NANCY NYAMBURA GIKAMA ..... PLAINTIFF**

**AND**

**THE COUNTY GOVERNMENT OF NAIROBI ..... 1<sup>ST</sup> DEFENDANT**

**JOHN WACHIRA NDUNGU ..... 2<sup>ND</sup> DEFENDANT**

**JANE KARWENJU ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff commenced this suit vide a plaint dated 18<sup>th</sup> October 2013 and amended on 14<sup>th</sup> May 2018. It is her case that she purchased Plot Number A2 -716 Kayole hereinafter referred to as the 'suit plot', from one Lucy Njeri Mwangi, that had been allocated by the 1<sup>st</sup> Defendant. Subsequently, she developed it but later learnt that the 2<sup>nd</sup> Defendant has been unprocedurally registered as owner and the 3<sup>rd</sup> Defendant is attempting to evict her.
2. She hence seeks the following Orders:
  - a. That the Plaintiff herein be declared as the bona fide owner of the Plot Number A2-716 Kayole.
  - b. That the Plaintiff be registered as the proprietor of Plot Number A2 -716 Kayole.
  - c. Costs of this suit.
3. The suit is opposed by the 1<sup>st</sup> Defendant vide its amended statement of defence. It avers that according to its records, the 2<sup>nd</sup> Defendant has complied with the requirements for allotment of the suit plot which includes the payments of ground rent, rates, survey fees, beacon certificate and stand premium.



4. The record indicates that interlocutory judgement was entered against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on 17<sup>th</sup> November 2024 for failure to enter appearance or file a defence.
5. The matter proceeded for hearing where it is only the Plaintiff who tendered evidence.

### **Evidence of the Plaintiff**

6. The Plaintiff testified as PW1. She adopted her witness statement as her evidence in chief. She testified that on 10<sup>th</sup> September 2017, she purchased plot No. A2-716 Kayole from one Lucy Njeri Mwangi for Kshs.250,000/= and that they signed an agreement to that effect on the same date. Further, that the Vendor then handed over to her all the documentation pertaining to the suit plot, as its new owner of which she took possession and began preparing for development.
7. She claimed that on two separate occasions, she had gone to pay land rates to the 1<sup>st</sup> Defendant when she was informed that the file with documentation pertaining to the suit plot was missing and in 2012, she discovered that the suit plot had been registered in the name of the 2<sup>nd</sup> Defendant and her inquiries on the changes from the offices of the 1<sup>st</sup> Defendant did not yield any assistance. Further, that on 25<sup>th</sup> July 2012, she was summoned by the Chief and asked to stop the construction she was undertaking on the suit plot despite showing him her ownership documents.
8. She produced her documents contained in her list of documents dated 14<sup>th</sup> May 2018 which include Sale Agreement dated 10<sup>th</sup> September 2007, letter of allotment, beacon certificate, annual rent receipts and a letter dated 25<sup>th</sup> July 2013 as Exhibits 1 to 5.
9. In cross-examination by Counsel for the 1<sup>st</sup> Defendant, PW1 stated that Lucy Njeri Mwangi whom she bought the suit plot from had a Letter of allotment dated 18<sup>th</sup> January 1994. Further, that she paid stand premium of kshs.8, 000/= and ground rent of kshs.1,600/= and has receipts to that effect from Nairobi City Council. She insisted that before purchase from the vendor, she conducted a search. Further, that the Vendor then took her to the 1<sup>st</sup> Defendant's offices in Dandora where she was asked to pay money indicated in the Letter of Allotment and she did.
10. The 1<sup>st</sup> Defendant did not call any witness in evidence.

### **Submissions**

11. The Plaintiff submitted that she proved her case on a balance of probability and that her evidence is not challenged by the 1<sup>st</sup> Defendant. To this end, she relied on the case of Rono v Lomsons Enterprises (Civil Case 5 of 2019) [2024] KEHC 6249(KLR) (31 May 2024) Judgement.
12. On its part, the 1<sup>st</sup> Defendant urged the court to examine the root of the Plaintiff's claim for ownership, adding that her reliance on the Sale Agreement dated 10<sup>th</sup> September 2007 and the Letter of Allotment dated 18<sup>th</sup> January 1994 is not enough as the alleged Letter of Allotment is not in its records and it is not evidence of ownership or confer interest in land. Further, the Court is urged to note the Plaintiff failed to avail evidence of payment of consideration and transfer documents. The 1<sup>st</sup> Defendant also cited the case of Emfil Limited v Registrar of Titles Mombasa & 2 others [2014] eKLR to submit that the Plaintiff failed to adduce evidence on the allegations of fraud on its part, yet the burden of proof still lay with her to prove her case on a balance of probabilities. To buttress its averments, the 1<sup>st</sup> Defendant also relied on the case of Susan Mumbi v Kefala Grebedhin; (Nairobi HCC NO. 332 OF 1993; Caroline Awinja Ochieng & Another v Jane Anne Mbithe Gitau & 2 others [2015] eKLR and Gladys Wanjiru Ngacha v Teresa Chepsaat 4 & 4 Others HC Civil Case No. 182 of 1992; [2008] eKLR



## Analysis and Determination

13. Upon consideration of the Plaintiff, 1<sup>st</sup> Defendant's amended Defence, testimony of the witness, exhibits and rival submissions, the only issue for determination is who is the proprietor of Plot Number A2 -716 Kayole.
14. The Plaintiff claimed that she purchased the suit plot from one Lucy Njeri Mwangi who had in turn been allocated the said land by the 1<sup>st</sup> Defendant. She also alleged that she discovered that the 1<sup>st</sup> Defendant fraudulently registered the 2<sup>nd</sup> Defendant as proprietor of the said parcel and currently the 3<sup>rd</sup> Defendant is threatening her with eviction.
15. As earlier mentioned, interlocutory judgement was entered against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants but I opine that it was incumbent upon Plaintiffs to still prove her claim. On its part, the 1<sup>st</sup> Defendant contends that the Plaintiff failed to demonstrate ownership of the title to the suit plot, therefore she cannot be declared as the owner.
16. The Plaintiff contends that her case is unchallenged because the 1<sup>st</sup> Defendant did not tender any evidence. In the case of *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the court stated that;

“It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest”.
17. The Plaintiff alleges that the 1<sup>st</sup> Defendant fraudulently registered the suit plot to the 2<sup>nd</sup> Defendant. In *Emfil Limited v Registrar of Titles Mombasa & 2 others* [2014] eKLR, the Court of Appeal stated that;

“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities.”
18. I note the suit plot is not registered. In *Beatrice Wambui Maina v Embakasi Ranching Company Ltd & another* [2022] eKLR, the court stated that;

“The court is alive to the fact that there are circumstances where a property in dispute has no title. This does not however mean that no rights can accrue therefrom. In such circumstances the court will set out to establish whether the documentary evidence establishes an unbroken chain leading to the root of the title as persuasively stated by Onguto J in the case of *Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR”.
19. In this instance, the Plaintiff has PW1 produced a handwritten Sale Agreement dated the 10<sup>th</sup> September, 2007, Letter of Allotment in the name of Lucy Njeri Mwangi dated the 18<sup>th</sup> January, 1994, Beacon Certificate dated the 7<sup>th</sup> July, 1994 and two receipts. PW1 did not produce a transfer from the vendor to herself nor proof that she paid for the said transfer. There was also no acknowledgement of payment of the purchase price. During cross examination PW1 confirmed that when she went to pay rates, she was told the suit plot was in another person's name and not Lucy Njeri Mwangi. Further, that the plot was claimed by two persons. She claimed to have undertaken a search to confirm suit plot belonged to Lucy Njeri Mwangi but did not avail a copy of the said search. She further claimed that she paid monies to the City Council of Nairobi indicated in the Letter of Allotment but did not avail the receipts in Court. In re examination, she clarified that both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants claimed the suit



plot. On perusal of the receipts which were produced by the Plaintiff, I note they are both dated the 18<sup>th</sup> June, 2007 and are in respect of payment of S/Premium and Annual Rent. It is worth noting that the Plaintiff as PW1 claimed that after she purchased the suit plot, the vendor took her to the Nairobi City Council office in Dandora where she was meant to pay certain monies indicated the said Letter of Allotment. To my mind there is an anomaly as how could the Plaintiff have paid monies in the vendor's name before executing the Sale Agreement on the 10<sup>th</sup> September, 2007.

20. I note the 1<sup>st</sup> Defendant in its amended Defence confirmed that they allotted the suit plot to the 2<sup>nd</sup> Defendant. Further, that as per their records, the 2<sup>nd</sup> Defendant complied with the requirements for allotment of the suit plot which included payment of the Ground Rent, Rates Survey Fees, Beacon Certificate and Standard Premium Respectively.
21. It is trite that where there are competing titles or letter of allotment, the burden of proof was upon the Plaintiff to demonstrate the root of her title. However, from the evidence tendered above, I find that she has failed to demonstrate it. Further, the 1<sup>st</sup> Defendant that was the allotting authority confirmed that as per their records, it is the 2<sup>nd</sup> Defendant who is the owner of the suit plot.
22. In the case of *Waas Enterprises Ltd v City Council of Nairobi & Another*, (2014) eKLR, it was stated that that:

“The law to my understanding is that once the suit property has been allotted to someone it is not available to another person unless the allotting body cancels the allotment. This is supported by the case of *Rukaya Ali Mohamed vs. David Gikonyo Nambacha & Another Kisumu HCCA No. 9 of 2004* where Warsame J. [as he then was] stated that, “...once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.” It is therefore my opinion the suit property was not available at all for the 2<sup>nd</sup> defendant because by the time the licence was issued to the 2<sup>nd</sup> defendant, an allotment letter had already been issued to the plaintiff. To my understanding since the 2<sup>nd</sup> defendant has been in the suit property illegally, she is a trespasser. ”

23. From the pleadings including evidence tendered before Court, while associating myself with decisions cited, I find that the Plaintiff has not demonstrated the root of her title nor proved how she acquired the suit plot that was already allotted to the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant. To my mind, it was incumbent upon the Plaintiff to avail the vendor to demonstrate how she acquired the suit plot which she in turn sold to her.
24. At this juncture, I find that the Plaintiff did not prove her case on a balance of probability and I will proceed to dismiss it with costs to the 1<sup>st</sup> Defendant only.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms.Waweru for Plaintiff



Ms .Wafula for Orende for 1<sup>st</sup> Defendant

Court assistant: Joan

