

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC CASE NO E021 OF 2025

AGNES JERUTO KIGEN.....PLAINTIFF

VERSUS

MUSA MAIYO.....1ST DEFENDANT
LAND REGISTRAR, NAKURU.....2ND DEFENDANT
THE ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. By a Plaint dated 29th January, 2025, the Plaintiff herein sued the Defendants seeking the following orders:
 - a) *A declaration that the Plaintiff is the legal allottee of plot No. 102 now registered at Nakuru Lands Registry as Land Parcel No. Nakuru Municipality Block 15/727.*
 - b) *An order for cancellation of the Certificate of Lease for land parcel No. Nakuru Municipality Block 15/727 issued to the 1st Defendant.*
 - c) *An order for the rectification of the Land Register by the Nakuru Land Registrar to rectify the records being held at the Land Registry in respect of land parcel No. Nakuru Municipality Block 15/727 to reflect the registered owner as the Plaintiff.*
 - d) *In the alternative, an order that the Plaintiff has acquired rights by adverse possession over the parcel of land (Nakuru Municipality Block 15/727) and should be registered as such.*

- e) The Deputy Registrar of the Honorable Court does execute all necessary documents to facilitate registration of the Plaintiff as the proprietor of land parcel Nakuru Municipality Block 15/727.*
- f) An order be issued directed at the Land Registrar, Nakuru to issue a certificate of lease in the name of the plaintiff.*
- g) An order for costs.*

PLAINTIFF'S CASE

2. PW1, Agnes Jeruto Kigen, adopted her witness statement dated 29th January 2025, and produced a list of documents dated the same date as Pex Nos. 1 to 24. It was her evidence that she stays in Kiamunyi in Nakuru County and a secretary at the Ministry of Labour.
3. PW1 testified that she applied for allotment of the suit land, and was duly issued with an allotment letter dated 4th May 1999 offering her an unsurveyed plot No. Nakuru Municipality 102. She stated that she accepted the offer vide a letter dated 17th October 2000, and paid the requisite fees as per the allotment letter and was issued with a receipt dated 23rd October 2000.
4. It was PW1's testimony that the suit land was subsequently surveyed and the Registry Index Map was amended which culminated to a new No. Nakuru Municipality Block 15/727, which she has been in possession of since 2000.

5. According to PW1, in 2005, she noticed that there some strangers surveying the land which necessitated her visit to land registry to find out the status of her plot and found out that there were two files in respect of the same parcel of land which she is in possession of. It was her evidence that she built a perimeter wall and a house, which she has rented out.
6. PW1 further testified that the Land Registrar summoned the 1st Defendant to appear before him and produce all the necessary documents, he did not comply.
7. Further that in 2006 the Commissioner of Lands wrote a letter to the Land Registrar Nakuru seeking a copy of the 1st Defendant's lease forwarding letter, and vide the Registrar's letter dated 17th May 2006 indicated that they did not have it in their possession.
8. PW1 testified that she has never seen the 1st Defendant's documents and that she was supposed to be given a lease but there was a realization that there was a similar file in the 1st Defendant's name. PW1 testified that she has been in occupation of the suit parcel for the last twenty-years and urged the court to grant the orders as prayed in the plaint with costs.
9. PW2, Esterbell Eyre Nabwire Orembo, adopted her witness statement dated 29th January 2025, and testified that she is a retired Civil Servant and was the Plaintiff's colleague at the District Commissioner's office in Nakuru.

10. PW2 testified that she applied for allocation of land together with the Plaintiff and they got allotment letters. She testified that the Plaintiff is in possession of the suit land since she got the letter of allotment and has never seen the 1st Defendant on the suit property. It was her testimony that she received a lease certificate from the government and that the Plaintiff is her neighbour.

PLAINTIFF'S SUBMISSIONS

11. Counsel for the Plaintiff filed submissions dated 28th October, 2025, and identified the following issues for determination:
 - a) *Whether the plaintiff is the original allottee of the suit property hence entitled to be registered as sole proprietor of the same?*
 - b) *Whether the certificate of lease, being held by the 1st defendant is valid and indefeasible, therefore capable of being protected by law?*
12. On the first issue, counsel submitted that the Plaintiff is the original allottee of the suit property having been allotted the same by the Government of Kenya. Counsel further submitted that the Plaintiff was issued with an allotment letter on 4th May, 1999 and accepted the offer vide an acceptance letter dated 17th October, 2000, and paid the requisite fees as per a receipt dated 23rd October, 2000.

13. Mr. Langat submitted that the suit property was surveyed and the registry index map amended which gave rise to NAKURU MUN. BLOCK 15/727. Counsel submitted that the Defendant neither entered appearance nor tendered evidence to justify the root of his title hence, the Plaintiff's evidence has not been challenged.

14. On the second issue, counsel submitted that based on the evidence adduced in court including letters dated 4th May 2006, 17th May 2006 and 22nd September 2005, it is clear that the certificate of lease was obtained illegally by the 1st Defendant. Counsel submitted that the Ministry of Lands through the Land Registrar confirmed that the letter forwarding the 1st Defendant's lease was not in their records.

15. Counsel relied on Article 40 of the Constitution of Kenya, Section 26 of the Land Registration Act and the following cases: **Funzi Development Ltd & Others vs County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR, Telposta Pension Scheme Registered Trustees vs Inter-countries Importers and Exporters Limited and 5 others, Civil Appeal No 293 of 2016, Republic vs Minister for Transport & Communication & 5 others Ex Parte Waa Ship Garbage Collector & 15 others Mombasa HCMCA No 617 of 2003 [2006] 1 KLR (E&L) 563 and Dina Management Ltd vs County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)**, and urged the court to grant the prayers as sought in the Plaint with costs.

ANALYSIS AND DETERMINATION

16. The issue for determination is whether the Plaintiff has proved that she is entitled to the orders sought in the Plaint dated 29th January, 2025. The court notes that the Plaintiff's claim is undefended.

17. In the case of **Propwa Company Limited Vs Justus Nyamo Gatondo & another [2020] eKLR**, the court held as follows:

“The fact that the evidence is not challenged does not entirely mean that the Court will not interrogate the evidence tendered by the Plaintiff. The Court still has an obligation to interrogate the Plaintiff's evidence and determine whether the same is merited to enable the Court come up with logical conclusion as ex-parte evidence is not automatic prove of a case on the required standard. The Plaintiff has to discharge the burden of proof. See the case of Kenya Power & Lighting Company Limited... Vs...Nathan Karanja Gachoka & another [2016] eKLR, the Court stated: -

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”

18. PW1 tendered her evidence and gave the background of how she applied for allocation of the suit land which was subsequently allocated to her vide an allotment letter dated 4th May 1999 which she produced as an

exhibit in court. She further produced an acceptance letter dated 17th October 2000 and paid the requisite fees of Kshs.12,580, vide a receipt dated 23rd October 2000. It is also on record that the Registry index map was amended giving the unsurveyed plot No. 102 Nakuru, Plot No. Nakuru Municipality Block 15/727.

19. The Plaintiff also produced letters from the Commissioner of Lands and the Land Registrar on the two files in their registry for the same parcel of land. It is important to note that the Commissioner of Lands requested for a forwarding letter of the 1st Defendant's lease of which the Land Registrar stated that they did not have it in their records, but after the Plaintiff followed up persistently the documents resurfaced. It was the Plaintiff's evidence that the Land Registrar suspected fraud and placed a restriction on the suit parcels of land.
20. The Plaintiff has been in possession of the suit land since 2000, and stated that she built a perimeter wall together with a house, which she has rented out. PW2 also corroborated the Plaintiff's evidence that they were allocated the parcels of land together and that she got her lease certificate. It was her evidence that the Plaintiff is her neighbour who has been in occupation since allotment in the year 2000. She also stated that she has never seen the 1st Defendant.
21. It is unfortunate that the 1st Defendant who was served with summons to enter appearance did not come to court to shed light on how he got the lease certificate for the suit land which the Plaintiff claims to have been

allocated to her. This would have been an opportunity to explain the root of his title which is in question.

22. When a root of a title is questioned, the parties involved, or who are claiming ownership of the suit land must satisfy the court that the title they are holding or their claim is genuine as was held in the case of in **Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others** (2016) eKLR, as follows:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or certificate of lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

23. There were queries as to the authenticity of the 1st Defendant's lease from the Land Registrar and the Commissioner of Lands' letters. These were red flags which should have been of concern.
24. Similarly, in the case of **Funzi Development Ltd & Others vs. County Council of Kwale, Mombasa Civil Appeal No. 252 of 2005 [2014] eKLR**, the court held that a registered proprietor acquires an absolute and indefeasible title if the allocation was legal, proper and regular and that a court cannot on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.
25. The elements of a good root of title were recently listed by the Court of Appeal in the case of **Presbyterian Foundation vs Kibera Siranga Self Help Group Nursery School [2025] eKLR** as follows: (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question; (b) it must contain a recognizable description of the property; and, (c) it must not contain anything that casts any doubt on the title.
26. In the case of **Munyu Maina vs. Hiram Gathiha Maina (Civil Appeal 239 of 2009) [2013] KECA 94 (KLR) (10 December 2013) (Judgment)**, the court stated that:

“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. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant's testimony."

27. From the start, the 1st Defendant's acquisition of the suit land was in question from the allotting authority as explained by the Plaintiff and corroborated by the letters produced in court.

28. The Plaintiff has explained the origin of the ownership of the suit land, however, the 1st Defendant did not come to court to give evidence on how he acquired the suit property.

29. Section 24 (a) of the Land Registration Act, 2012 provides:

24. Subject to this Act:

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

30. Section 25 (1) provides:

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

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

(a) -----

(b) -----

31. Section 26 (1) provides:

(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.

32. Section 80 of the Land Registration Act gives courts powers to rectify a title in case of a mistake. The section provides as follows:

“(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default”.

33. I have considered the pleadings, the evidence on record, the submissions by counsel and find that the plaintiff has proved her case against the Defendants and therefore issue the following specific orders:

- a) A declaration is hereby issued that the Plaintiff is the legal allottee of plot No. 102 now registered at Nakuru Lands Registry as Land Parcel No. Nakuru Municipality Block 15/727.*
- b) The Land Registrar Nakuru is hereby directed to cancel the Certificate of Lease for land parcel No. Nakuru Municipality Block 15/727 issued to the 1st Defendant, and rectify the records being held at the Land Registry in respect of land parcel No. Nakuru Municipality Block 15/727, to reflect the Plaintiff's name as the registered owner.*
- c) The Land Registrar, Nakuru to issue a certificate of lease in the name of the plaintiff, upon payment of the requisite fees.*
- d) Each party shall bear their own costs.*

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF DECEMBER 2025.

M. A. ODENY

JUDGE