



Muriuki & another v Ngugi & 3 others (Environment and Land Case 21 of 2020) [2025] KEELC 8348 (KLR) (1 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8348 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 21 OF 2020
CA OCHIENG, J
DECEMBER 1, 2025**

BETWEEN

NAPHTALY KUNYIHA MURIUKI 1ST PLAINTIFF

MARY NJERI KUNYIHA 2ND PLAINTIFF

AND

DAVID NDIRANGU NGUGI 1ST DEFENDANT

PETER KAMAU MUNENE 2ND DEFENDANT

LAND REGISTRAR, NAIROBI 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. The Plaintiffs commenced this suit vide a plaint dated 3rd February 2020. They contended that they are shareholders of Thome Farmers No.1 Limited having purchased their share in the company as tenants in common in equal shares from Mr. Gabriel Ngugi Mahia who had balloted Plot No. 335, and upon issuance of a share certificate, they were allocated entry number 772 in the said Company's register of members on 31st July 1989 and took possession of the suit land, now known as Nairobi / Block 110/928. Further, that while attempting to register themselves as owners, they discovered that the suit land had been fraudulently registered to the 1st Defendant on 28th August 2015 as a direct recipient from the Government of the Republic of Kenya, which was holding the land in trust for them as shareholders of Thome Farmers No. 1 Limited. They contended that they have also acquired adverse possession rights over the suit land by virtue of occupying it openly, uninterruptedly for over twelve (12) years.
2. They hence sought for judgement against the Defendants for orders that:



1. Declaration that the 1st Defendant obtained the title to Land Reference Number Block 110/928 fraudulently.
 2. A grant of injunction restraining the second defendant and or his servants, workers or agents from transferring, disposing, alienating, charging, mortgaging, leasing, occupying, taking possession, entering and or trespassing on the suit property until this suit is heard and determined.
 3. Declaration that the successive registration of David Ndirangu Ngugi and Peter Munene Kamau as proprietors of Land Reference Number Nairobi/Block 110/928 on 28th August 2015 and 8th November 2017 respectively were both fraudulent and unlawful.
 4. Directing the Land Registrar, Nairobi Land Registry to delete the names of David Ndirangu Ngugi and Peter Munene Kamau from the register of Land Reference Number Nairobi/Block 110/928 and in their place register the names of the Plaintiffs, Naphtaly Kunyiha Muriuki and Mary Njeri Kunyiha as proprietors in common in equal shares.
 5. Directing the Defendants to pay aggravated and exemplary damages.
 6. Cost of the suit be paid by all the Defendants jointly and severally.
 7. Any other order this Court may deem fit and just.
3. The 1st Defendant did not file a defence despite being duly served.
 4. The 2nd Defendant entered appearance through Muthuri & Company Advocates but he did not file a defence.
 5. The 3rd and 4th Defendants filed a Statement of Defence denying allegations levelled against them in the plaint.

Evidence

6. The 1st Plaintiff testified as PW1 and adopted his witness statement as his evidence in chief. He averred that together with his wife the 2nd Plaintiff, they were shareholders of Thome Farmers No. 1 Limited having purchased their shares as tenants in common from one Gabriel Ngugi Mahia (now deceased) who had balloted Plot Number 355 and issued with a Share Certificate No. 794 on 28th July 1979 and entered as entry No. 772 in the Company's register of members. It was his testimony that having purchased the said land, they were entered in the member's register in place of the seller and were issued with a Share Certificate No. 1205 on 31st July 1989. Subsequently, they took possession through cultivation and built their home and moved therein, in the year 2000 thus they have been in continuous and open occupation to date.
7. He testified that in 2018, they instructed a law firm to assist them to obtain a lease to the suit property, which upon registration became Nairobi Block 110/928. He explained that they were first issued with a clearance letter from Thome Farmers No. 1 Limited's Lawyer which their advocate forwarded to the Principal Secretary, Ministry of Lands and upon followed up for about five (5) months. Further, that their lawyer was informed by the Records Office that the file could not be traced physically. It was his further testimony that upon conducting a search, the lawyers discovered that the plot had been purportedly registered to the 1st Defendant on 28th August 2015 as a direct recipient from the government of the Republic of Kenya, which was holding the property in trust for them as shareholders of Thome farmers No. 1 Limited. It was his testimony that the search did not disclose payment of



stamp duty. Further, that the 1st Defendant was not a shareholder at Thome Farmers No. 1 Limited and that he proceeded to sell the suit land at half the market value to the 2nd Defendant.

8. He averred that they applied for registration of a caution prohibiting any dealings on the suit property, which was registered on 25th June 2019. He produced the Plaintiffs' bundle of documents dated 3rd February 2020 as P. Exhibits Nos 1-17 and a supplementary list dated 8th July 2024 as Exhibits No. 18-26.
9. In cross-examination, by Counsel for the 2nd and 3rd Defendants, he reiterated his evidence in chief and stated that he was given a Clearance Certificate in 2018 but he did not apply for a title deed because he was not in a hurry as he was in occupation of the suit land. Further, that when he did, he was told it had been issued to someone else thus he sued the 3rd and 4th Defendants because he had all the documents in respect of the suit property and they issued the title deed to someone else.
10. The 1st and 2nd Defendants did not participate in the suit while the 3rd and 4th Defendants closed their case without calling any witnesses.

Submissions

11. The Plaintiffs submitted that they have proved that they are the genuine purchasers of the suit property and have been in lawful occupation since purchase in 1989. They contend that the suit property was corruptly and wrongfully allotted to the 1st Defendant who has no history of registration as a member/ shareholder of Thome Farmers No.1 Limited or a purchaser from the said company or its shareholder. They insist that the suit property was not available for allocation to the 1st Defendant as Thome Farmers No.1 Limited had registered them as owners in their books. Further, that the transfer to the 2nd Defendant was tainted with fraud as due process was not adhered to. They further submitted that the 3rd and 4th Defendants had a role to play in the irregular allocation having issued the 1st Defendant with a title yet he had no clearance from Thome Farmers No. 1 Limited.
12. On their part, the 3rd and 4th Defendants submitted that a Certificate of Title is an end process and a person holding such title has to prove that the process culminating in issuance of that title was lawful, procedural and/or not tainted with irregularity and since the 1st Defendant did not tender any evidence to demonstrate how the suit land was registered in his name to enable him transfer his interest to the 2nd Defendant, the Plaintiffs' case remains uncontroverted. They further submitted that Thome Farmers No. 1 Limited, which is the custodian of its members' register confirmed through its advocates that the plaintiffs are the owners of the suit land. On the Plaintiffs' prayer for an award of aggravated and exemplary damages, they submitted that there is no basis for the claim, since the Plaintiffs confirmed that they have been in occupation and possession of the suit land since they purchased the same. They also submitted that there is no evidence that the 3rd Defendant effected the impugned registration arbitrarily or with motive to derive any benefit from the said action or to oppress the Plaintiffs. They insist that the Plaintiffs have confirmed that they have enjoyed the rights of a registered owner of land as they have been in possession, occupation and use of the suit land, since they purchased the same from the vendor. To support their averments, they relied on the following decisions: Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR; Munyu Maina v Hiram Gathiha Maina, Civil Appeal No.239 of 2009; James Njoroge Gitau V Lucy Chepkurui Kimutai (2018) eKLR and Ntuicusoi Ole Letiria v Ruth Ngonyo Kangethe [2019] eKLR.

Analysis and Determination

13. Upon consideration of the Plaintiffs' Defences, witness testimony, exhibits and submissions, the following are the issues for determination: Who is the registered proprietor of Plot Number 355 (Nairobi Block



110/928) and if the 1st Defendant and thereafter the 2nd Defendant acquired a proper title to it. Whether the Plaintiff is entitled to the Orders as sought in the Plaintiff.

Who is the registered proprietor of Plot Number 355 (Nairobi Block 110/928) and if the 1st Defendant and thereafter the 2nd Defendant acquired a proper title to it.

14. The Plaintiffs claim ownership to Plot Number 355 (Nairobi Block 110/928) by virtue of being shareholders of Thome Farmers No. 1 Limited. PW1 explained that they purchased their shares in the said company as tenants in common from Gabriel Ngugi Mahia (now deceased) who had balloted Plot Number 355 and was issued with a Share Certificate No. 794. It was his testimony they were entered in the member's Register of Thome Farmers No. 1 Limited in place of Gabriel Ngugi Mahia and thereafter issued with a Clearance Letter by the said Thome Farmers No. 1 Limited, clearing them to be issued with a Certificate of Lease. He claims that they later discovered that the 1st Defendant had been registered as owner of suit land which he subsequently transferred to the 2nd Defendant. The 1st and 2nd Defendants however never filed a Defence to controvert the Plaintiffs' averments.
15. The 2nd Defendant who is currently the holder of the title to the suit land which is under challenge by the Plaintiffs was expected to demonstrate the root of his title. On demonstrating root of the title, in the case of *Munyuo Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal stated inter alia:

“We state that when a registered proprietor 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 would not be noted in the register.”

16. In *James Njoroge Gitau v Lucy Chepkurui Kimutai* (2018) eKLR, Munyao Sila J held as follows:

“... What is before me is a straight contest over who between the plaintiff and the defendant ought to own the land. For either litigant to succeed, they need to demonstrate to me, the root of their title, and the root of their title must originate from the shares held at Kalenjin Enterprises.....I have absolutely no reason to doubt that register. The register shows the name of the plaintiff and assigns him the plot No. 7. This evidence is coming from the company itself, and cannot be taken lightly. It is the company which knows its members and which knows what land it has assigned to the members. If the company refutes that one is a member, then that person needs to rebut this, through cogent evidence.”

17. On validity of title, Section 26 of the [Land Registration Act](#) stipulates that:

“Certificate of title to be held as conclusive evidence of proprietorship

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.”
18. In this instance the Plaintiffs demonstrated how they were shareholders of Thome Farmers No. 1 Limited having purchased their shares as tenants in common from one Gabriel Ngugi Mahia (now deceased) as evident in the Sale Agreement dated the 21st July, 1989 who had balloted Plot Number 355 and issued with a Share Certificate No. 794 on 28th July 1979 and entered as entry No. 772 in the Company's register of members. Looking at the documents produced as exhibits, it is evident that the Plaintiffs' were entered into the member's register in place of Gabriel Ngugi Mahia and were issued with a Share Certificate No. 1205 on 31st July 1989. From perusal of the Deed of Indemnity, I note it confirms that the lawyer for Thome (1), messrs Dorcas Ayoma Nanjero Advocate, issued a clearance to the Plaintiffs to obtain title for Plot No. 355 in Thome Farmers No. 1 Nairobi, that is also Land Reference No. Nairobi/ Block 110/928, which is the suit land.
 19. None of the Defendants have disputed that the Plaintiffs are currently in possession of the suit land, have cultivated it, built their home thereon and have occupied it continuously and openly. Further, the 2nd and 3rd Defendants did not controvert the Plaintiffs averments. From the various correspondence between the respective advocates including demand letters to the Defendants, it emerges that the Plaintiffs have pursued their title over a period of time.
 20. In *Dina Management Ltd v. County Government of Mombasa & 5 Others*, Pet. No. E010 of 2021, the Supreme Court stated that:

“...where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”
 21. While in the case of *Alberta Mae Gacci v Attorney General & 4 Others* (2006 (eKLR)), the Court held that:

“Cursed should be the day when any crooks in the street of Nairobi or any town in this jurisdiction using forgery, deceit or any kind of fraud would acquire a legal and valid title deceitfully, snatched from a legal registered innocent proprietor. Indeed, cursed would be the day when such a crook would have a legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration....”
 22. From the facts as presented while relying on the legal provisions I have cited and associating myself with the decisions quoted, I find that since the 2nd Defendant has failed to demonstrate, the root of his title, noting that the alleged vendor (1st Defendant), was not its rightful owner, I find that his title was acquired illegally, unprocedurally and irregularly and should hence be cancelled in accordance with section 80 of the [Land Registration Act](#).
 23. In the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* (2015) eKLR the Court of Appeal outlined the principles on when a party can be deemed to be a bona fide



purchaser for value without notice, wherein they favourably cited the Uganda Court of Appeal Case of Katende V Haridar & Company Ltd, that described it as follows:

“a bonafide purchaser for value is 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 the following:

- a. He holds a certificate of Title
- b. He purchased the Property in good faith;
- c. He has no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

24. In applying the principles established in the aforementioned decisions to the circumstances at hand, I note that since the root of title held by the 1st Defendant was fettered, he did not in a capacity to transfer any land to the 2nd Defendant. I hence find that even if the 2nd Defendant did not defend this suit, he cannot be deemed as bona fide purchaser for value without notice.

Whether the Plaintiff is entitled to the Orders as sought in the Plaintiff.

25. The Plaintiffs sought for various orders in the Plaintiff, which are enumerated above. I note the prayer for injunction has since been spent. On the prayer for aggravated and exemplary damages, I wish to make reference to the case of Mikidadi v Khaigan and Another [2004] eKLR, where the Court held that:

“Exemplary damages are only to be awarded in limited instances namely. (a) oppressive arbitrary or unconstitutional action by servants of government. (b) Conduct calculated by the defendant to make him a profit which may well exceed the compensation payable to the plaintiff, or (c) Cases in which the payment of exemplary damages is authorized by statute.”

26. In this instance, I note the Plaintiffs confirm they have been in possession of the suit land since the year 2000, wherein they have cultivated thereon, built their home and have been in continuous and open occupation to date. Since they did not tender any evidence that the Defendants have interfered with their possession and the only issue was the acquisition of their title to the suit land, while associating myself with the decision cited, I will decline to grant them any award for exemplary and aggravated damages.
27. On costs, since the Plaintiffs are the inconvenienced parties, I find that they are entitled to the same.
28. It is against the foregoing that I find that the Plaintiffs have proved their case on a balance of probability and will proceed to enter judgement in their favour in the following terms:
- i. Declaration be and is hereby issued that the 1st Defendant obtained the title to Land Reference Number Block 110/928 fraudulently.



- ii. Declaration be and is hereby issued that the successive registration of David Ndirangu Ngugi and Peter Munene Kamau as proprietors of Land Reference Number Nairobi/Block 110/928 on 28th August 2015 and 8th November 2017 respectively were both fraudulent and unlawful.
- iii. The Land Registrar, Nairobi Land Registry be and is hereby directed to delete the names of David Ndirangu Ngugi and Peter Munene Kamau from the register of Land Reference Number Nairobi/Block 110/928 and in their place register the names of the Plaintiffs, Naphtaly Kunyiha Muriuki and Mary Njeri Kunyiha as proprietors in common in equal shares.
- iv. Cost of the suit is awarded to the Plaintiffs to be borne by the 1st and 2nd Defendants.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Njeri Kiagayu for Plaintiff

Court Assistant: Joan

