



Rono v Rotich & another; Kenya Commercial Bank (Interested Party) (Environment and Land Case 56 of 2020) [2025] KEELC 18395 (KLR) (17 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18395 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 56 OF 2020
EO OBAGA, J
DECEMBER 17, 2025**

BETWEEN

GEOFFREY KIPTARBEI RONO PLAINTIFF

AND

JOHANA KOMEN ROTICH 1ST DEFENDANT

MILKA JEPKIRWA KORIR 2ND DEFENDANT

AND

KENYA COMMERCIAL BANK INTERESTED PARTY

JUDGMENT

1. By a plaint date 29th June, 2020, the Plaintiff sought the following reliefs against the Defendants:
 - a. A declaration that the transfer and registration of the 1st Defendant and subsequent transfer and registration of the 2nd Defendant as the owner of land parcel number Eldoret Municipality/Block 6/270 and all documents used in effecting such registration are unlawful, illegal, null and void and were procured by fraud and in contravention of the law.
 - b. An order directing the land Registrar (Uasin Gishu County) to cancel the certificate of lease issued to the 2nd Defendant over land parcel number Eldoret Municipality/Block 6/270 and rectify the register for the said parcel of land by cancelling the 2nd Defendant's name as the owner of the parcel of land and substituting therein the Plaintiff's name as the owner thereof.
 - c. An order directing the Interested Party to discharge the lease certificate over that parcel of land known as Eldoret Municipality/Block 6/270 and release the certificate of lease to the Land Registrar for cancellation.



- d. A declaration that the agreement dated 5th February, 2015 between the 1st Defendant and the 2nd Defendant and any other third party over the sale of the Plaintiff's land parcel number Eldoret Municipality/Block 6/270 is unlawful, illegal, null and void and ineffectual against the Plaintiff.
 - e. An order directing the 2nd Defendant's eviction from land parcel number Eldoret Municipality/Block 6/270.
 - f. An order of permanent injunction permanently restraining the 2nd Defendant from re-entering into, trespassing upon and/or otherwise interfering with the Plaintiff's land parcel number Eldoret Municipality/Block 6/270.
 - g. General damages from the time the 1st Defendant became registered as the owner of the suit land to date.
 - h. Exemplary damages.
 - i. Cost of this suit.
 - j. Any other relief as the court may deem fit and just to grant.
2. At the centre of this suit is a property known as Eldoret Municipality/Block 6/270 measuring 0.0450 hectares (suit property). The suit property had been allotted to Isaack Kiptarus Kipkosgei (Kipkosgei) on 21st May, 1990. Kipkosgei paid the stand premium and rent which was required in the allotment letter and a certificate of lease was issued to him on 24th October, 1990.
 3. Kipkosgei sold the suit property to Benjamin Kuto (Kuto) and David Kiptanui Kamarei (David). On 11th July, 1994, Kuto and David sold the suit property to the Plaintiff. The sale agreement between Kuto and David on the one part and the Plaintiff on the other part was drawn by S. K. Lel Advocate. The original certificate of title was left at the offices of S. K. Lel Advocate but it disappeared mysteriously after Mr. Lel of S. K. Lel Advocate went out of the country for further studies.
 4. The Plaintiff later discovered that the suit property had been purportedly transferred by Kipkosgei to the 1st Defendant who in turn sold it to the 2nd Defendant who charged it to the Interested Party.
 5. The Plaintiff called the original owner Kipkosgei who denied ever selling the suit property to the 1st Defendant. He stated that he sold the suit property to Kuto and David and that he surrendered the original certificate of lease to them.
 6. The Plaintiff also called Kuto who testified that they purchased the suit property from Kipkosgei who was the registered owner. They sold the suit property to the Plaintiff on 11th July, 1994. They surrendered the original certificate of lease to the firm of S. K. Lel who drew the sale agreement.
 7. The advocate who drew the agreement between Kuto, David and Plaintiff Mr. Lel Kipyego testified that he is the one who drafted the sale agreement. He stated that the original certificate of lease was left in his office but it disappeared under mysterious circumstances.
 8. The advocate Mr. Christopher Mitei who is purported to have signed the transfer from Kipkosgei to the 1st Defendant denied ever signing the alleged transfer. He stated that the signature on the transfer was not his. He stated that though the stamp used in the transfer appeared to be his, it was smaller than the one he uses in his office.
 9. The 1st Defendant did not testify in this case. The 2nd Defendant testified that on 5th February, 2015, she entered into a sale agreement with the 1st Defendant for the purchase of the suit property at a



consideration of Kshs.11,500,000/=. She paid a cash deposit of Kshs.1,500,000/= upon execution of the agreement. The balance was cleared after she obtained a loan from the Interested Party.

10. The 2nd Defendant stated that she conducted her due diligence and confirmed that the title was in the name of the 1st Defendant. She further went to the Land Registry where she confirmed that the original owner was Kipkosgei who had transferred the land to the 1st Defendant.
11. The 2nd Defendant stated that the 1st Defendant took her to the suit property where she found people washing cars. When the car washers moved out, she fenced the suit property. On 3rd June, 2019 she received a call from a person who identified himself as the Plaintiff. She arranged to meet the Plaintiff in a Hotel in Eldoret. The Plaintiff allegedly informed her that whoever sold her the suit property was not the owner.
12. The Plaintiff allegedly demanded some money from her to leave pursuing the matter but she was adamant. The Plaintiff who claimed to be working for the Deputy President then left in a huff only for her to be served with pleadings in this case. She stated that the Plaintiff had tried to extort money from the 1st Defendant.
13. The Interested Party through its credit manager James Mureithi Mwaniki stated that on 16th June, 2016 the 2nd Defendant approached the bank for a facility. The security was to be the suit property whose title was in the 2nd Defendant's name. The 2nd Defendant provided a copy of title. The bank conducted a search which confirmed that the 2nd Defendant was the registered owner.
14. The 2nd Defendant swore an affidavit confirming that she was not married and as such there was no need for spousal consent. On 31st May, 2016 a charge was created over the suit property. The 2nd Defendant paid all the requisite charges and in compliance with the charge document, the bank disbursed money to the 2nd Defendant.
15. The interested Party stated that the Plaintiff's claim is a misguided attempt to arbitrarily deprive the bank of the security. The bank states that the Plaintiff has never taken possession of the suit property and that he has not discharged the burden bestowed upon him under Section 107 of the *Evidence Act*.
16. The Plaintiff filed his submissions dated 4th February, 2025. The Defendants filed their submissions dated 25th February, 2025. The Interested Party filed submissions dated 21st February 2025.
17. The Plaintiff submitted that he had established the particulars of fraud attributed to the Defendants. There was no sale agreement between the 1st Defendant and Kipkosgei. The transfer from Kipkosgei to the 1st Defendant was not signed by Kipkosgei. The photograph which was affixed to the transfer was not that of Kipkosgei. The advocate who is alleged to have witnessed the transfer denounced the signature on the document. The 1st Defendant who was the central person in the transfer of the land to the 2nd Defendant did not come to testify. The Plaintiff relied on the case of *Vijay Morjaria –vs- Hulashiba Nansigh Darbar & Another (2000) eKLR* where it was 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 pleading. 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 alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”.



18. The Plaintiff submitted that the 1st Defendant did not acquire a good title which was capable of being passed to the 2nd Defendant. The Plaintiff relied on the case of *Munyu Maina –vs- Hiram Gathitha Maina Civil Appeal No. 239 of 2009* where it was held as follows:

“We have stated that when a registered proprietor’s root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including and all interest which would not be noted in the register”.

19. The Plaintiff further submitted that the 2nd Defendant was not an innocent purchaser for value and that she did not adduce evidence to show that she had paid the purchase price including all other statutory fees. He relied on the case of *Katende –vs- Habidar & Co. Limited (2008) 2 EA 173* as quoted by the Court of Appeal in application No. 291 of 2013 *Weston Gitonga & 10 others -vs- Peter Gikanga and Another (2017) eKLR* where it was held 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:

- a. He hold a certificate of title;
- b. He purchased the property in good faith;
- c. He had no knowledge of the fraud;
- d. He purchased for valuable consideration;
- e. The vendor had apparent valid title;
- f. He purchased without notice of any fraud;
- g. He was not party to any fraud”.

20. The Plaintiff submitted that he is entitled to Kshs.5,000,000/= general damages as he has been kept out of his property for over 10 years. Finally the Plaintiff submitted that the charged title should be discharged and the same cancelled as it was obtained fraudulently.

21. The Defendants submitted that the Plaintiff has not demonstrated that he has a cause of action against them. They submitted that whereas Kipkosgei said that he sold the suit property to Kuto, there is David who emerged as second purchaser in the agreement. The Defendants submitted that David and Kuto had no land to sell to the Plaintiff as the land was not registered in their names.

22. The Defendants submitted that it was curious that the Plaintiff purchased land on 11th July, 1994 but never took possession. When title document got lost at the offices of his lawyer, he kept checking until when the advocate who had gone abroad for further studies returned. The loss of title was reported in 2019 at Kitale and not where the title got lost.

23. The Defendants further submitted that the Plaintiff has not proved particulars of fraud attributed to them. They relied on the case of *Central Kenya Ltd –vs- Trust Bank Limited & 4 others (1996) eKLR*.

24. The Defendants submitted that even if the title of the 1st Defendant is tainted, the 2nd Defendant was a bonafide purchaser without notice of any defect in title. They relied on the case of *Katende (Supra)*. Additionally, the Plaintiff relied on the definition of a bonafide purchaser in the case of *Dina*



Management Ltd –vs- County Government of Mombasa & 5 others where the Supreme Court held as follows:

“The Black’s Law Dictionary 9th Edition defines a 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”.

25. The Interested party submitted that it was a bonafide chargee which relied on the results of the official search conducted which showed that the suit property was registered in the name of the 2nd Defendant.
26. The Interested Party relied on the case of Lawrence P. Mukiri –vs- Attorney General & 4 others (2013) eKLR where it was held that a third party who acquires an interest in land after due diligence is protected unless fraud is attributable to them. It was submitted that the bank was not involved in the fraud. The bank also relied on the case of Arthi Highway Developers Ltd –vs- West End Butchery Ltd & 6 others (2015) eKLR and Kenya Women Microfinance Bank Ltd –vs- Martha Mwangi Kamau (2021) eKLR which both held that a financial institution which grants a loan based on a valid search report should not be penalized due to subsequent claims of fraud it was unaware of.
27. The bank relied on Section 79(3) of the Land Act which protects a lender’s charge unless it is proven that the lender acted fraudulently or negligently. Finally, the bank submitted that if the court finds that the title was fraudulently obtained, it should be indemnified under Section 83 of the Land Registration Act which provides for compensation where fraud or mistake in the land register causes loss to an innocent party.
28. I have carefully considered the evidence adduced by the parties herein. I have also considered the submissions by the parties. The issues which fall for determination are as follows;
 - i. Whether the Plaintiff purchased a lawful interest from Kuto and David.
 - ii. Did the 1st Defendant have a good title which he was capable of passing to the 2nd Defendant.
 - iii. Was the 2nd Defendant a bonafide purchaser for value without notice.
 - iv. What is the fate of the charge which was registered by the Interested Party.
 - v. Is the Plaintiff entitled to the reliefs sought?

(1) Whether the Plaintiff purchased a lawful interest from David and Kuto

29. The evidence which was adduced is that David and Kuto purchased the suit property from Kipkosgei. Kipkosgei gave the purchasers the original certificate of lease in order for them to pursue transfer. Before David and Kuto could register a transfer in their names, they sold the suit property to the Plaintiff. They handed over the certificate of lease to the Plaintiff who gave it to his lawyer Mr. Lel Kipyego.
30. The Plaintiff called Kipkosgi who confirmed that he had sold the suit property to Kuto and David. There is no requirement that a person who has lawfully purchased a property cannot sell it to another before the same is registered in his name. The original purchaser having confirmed that he sold the suit property to Kuto who decided to incorporate David as co-owner was free to sell it to the Plaintiff even if they had not registered it in their names. I therefore find that the Plaintiff purchased a lawful interest for David and Kuto. The mere fact that Kipkosgei stated in his evidence that he sold the suit property to Kuto does not invalidate the agreement which incorporated David’s name, as co-owner



when it came to sale of the suit property to the Plaintiff. It is Kuto who knew why he incorporated the name of David in the agreement. Otherwise there is no question on whether Kipkosgei sold the suit property to Kuto.

DIVISION - ii. Did the 1st Defendant have a good title which he was capable of passing to the 2nd Defendant?

31. Evidence has been adduced that Kipkosgei never sold his land to the 1st Defendant. The photograph and signature on the transfer was not that of Kipkosgei. The advocate before whom the transfer was purportedly executed denounced the signature on the transfer. There was no evidence that the 1st Defendant ever entered into a sale agreement with Kipkosgei. The Plaintiff having called witnesses including Kipkosgei and Christopher Mitei who denied being involved in the alleged sale, the Plaintiff had proved the fraud which was attributed to the 1st Defendant. This being the case, the 1st Defendant had no good title capable of being passed to the 2nd Defendant.

32. The Supreme Court in the case of Dina Management Ltd (Supra) stated as follows:

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, H. E. Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co. (1993) Ltd, who in turn could pass to the Appellant”.

33. Applying the principle in the Dina Management Ltd (Supra), this court having found that the title held by the 1st Defendant was fraudulently obtained, he had no good title capable of being passed to the 2nd Defendant. I therefore find that the 1st Defendant had no good title capable of being passed to the 2nd Defendant.

iii. Was the 2nd Defendant a bonafide purchaser for value without notice?

34. In the case of Katende (Supra) the criteria for determining whether one is a bonafide purchaser for value without notice of any defect were stated. In the instant case, the evidence adduced by the 2nd Defendant is that she went to the lands office where she confirmed that the 1st Defendant was the registered owner and that he had the suit property transferred to him by Kipkosgei. As a measure of precaution, the 2nd Defendant should have asked for a sale agreement between the 1st Defendant and Kipkosgei. She did not ask for this sale agreement. It is therefore clear that she did not ensure that the 1st Defendant had apparent good title.

35. When the Plaintiff was taken to the ground, she found business of car wash going on. She did not bother to ask who had allowed them to operate from there. The 2nd Defendant made a down payment of Kshs.1,500,000/= in cash on execution of the agreement. Though the 2nd Defendant was to apply for a loan from the KCB Bank to clear the balance, the title to the suit property was transferred to her a month after the sale agreement was signed. By 31st July, 2015 the 2nd Defendant had paid the 1st Defendant a total of Kshs.7,7000,000/=. It is not clear how the money was paid as the 1st Defendant acknowledged the money in an acknowledgment dated 31st July, 2015. The balance of Kshs.3,800,000/= was to be financed by KCB.

36. The 2nd Defendant charged the suit property on 31st May, 2016. There is no evidence how the balance was cleared. The manner in which the 1st and 2nd Defendant handled the transaction clearly showed that the title which he had was questionable. The 2nd Defendant cannot therefore be held to have been a bonafide purchaser for value without any notice of any defect in title.



37. The title of the 2nd Defendant was questioned. She had to demonstrate that its root was clean. This was not done. The 2nd Defendant did not satisfy the conditions set out in the case of Munyu Maina (Supra). I therefore find that the 2nd Defendant was not a bonafide purchaser for value without notice.

iv. What is the fate of the charge which was registered by the Interested Party?

38. The court has already found that the 1st Defendant had no good title to pass to the 2nd Defendant. The title had been fraudulently obtained by the 1st Defendant. The person to be protected is the Plaintiff who purchased the suit property for value but the 1st Defendant deprived him of his property through fraud. The 1st Defendant then passed on a bad title to the 2nd Defendant who in turn charged it to the Interested Party. I find that the charge registered by the Interested Party cannot stand. The Interested Party can pursue the 2nd Defendant for whatever loan is remaining.

v. Is the Plaintiff entitled to the reliefs sought?

39. It is clear that the Plaintiff has proved his case on a balance of probabilities. The 1st Defendant fraudulently had the suit property registered in his name on 15th July, 2014. The Plaintiff has been kept off his property for over 11 years. The property is in a prime area within Eldoret city. There was no valuation done which would have been a guide on the probable general damages to be awarded. The Plaintiff did not indicate if he had any intentions of developing the suit property given the period he took from the time he purchased it to the time the 1st Defendant fraudulently took it. I will therefore assess general damages of two million shillings (Kshs.2,000,000/=). I therefore enter judgment for the Plaintiff against the Defendants in terms of prayer (a) (b) (c) (d) (e) (f) and (i) in addition to general damages of two million shillings (Kshs.2,000,000/=). The general damages shall attract interest at court rates from the date of the judgment until payment in full.

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 17TH DAY OF DECEMBER, 2025

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HON. E. O. OBAGA

JUDGE

In The Presence Of:

Mr. Mathai for Plaintiff.

Ms. Chepngetich for Mr. Chirchir for Interested Party.

Mr. Oduor for Defendants

Court assistant – Steve Musyoki

