



**Mwema v Ngunjiri & another (Environment and Land Case E104 of 2023)
[2025] KEELC 18565 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18565 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E104 OF 2023
MN KULLOW, J
DECEMBER 19, 2025**

BETWEEN

VERONICAH NDUNGE MWEMA PLAINTIFF

AND

PETER GITONGA NGUNJIRI 1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 2ND DEFENDANT

JUDGMENT

1. Before this Court for determination is this suit commenced by way of a Plaint dated 25th August 2023. In the Plaint, the Plaintiff has sought for the following orders: a declaration that she is the lawful owner of land parcel known as Plot No. C 2608 Embakasi; permanent injunctive orders restraining the Defendants from trespassing upon or interfering with the suit property; an order for vacant possession; general damages; and costs of the suit.
2. The Plaintiff's case, as pleaded in the Plaint, is that she is the lawful and bona fide proprietor of land parcel known as Plot No. C 2608, situated within Embakasi, Nairobi, being land originally owned by the 2nd Defendant, Embakasi Ranching Company Limited (the suit property). She averred that she purchased the suit property in the year 1999 from Kawethei Investment Company, which had acquired the land from the 2nd Defendant, and that following the purchase, the plot number was changed from P 927 to C 2608, thereby vesting absolute ownership in her.
3. It was further averred by the Plaintiff that after taking possession of the suit property, she fenced it, undertook developments and agricultural activities thereon, and enjoyed quiet and uninterrupted possession for several years. The Plaintiff contended that in or about the year 2020, the 1st Defendant, without any lawful justification, entered upon the suit property and commenced construction thereon, actions which she termed as acts of trespass.



4. She further alleged that the entry and occupation by the 1st Defendant was facilitated by the 2nd Defendant, which fraudulently re-allocated the suit property to the 1st Defendant and issued him with a different plot number despite having previously sold and transferred the land to her. According to the Plaintiff, the said acts amounted to fraud and collusion, resulting in her unlawful dispossession and violation of her proprietary rights.
5. In response, the 1st Defendant filed a Statement of Defence in which, save for matters expressly admitted, he denied all the allegations contained in the Plaint. He admitted only the descriptive averments relating to the parties and denied that the Plaintiff is the lawful owner of the suit property. The 1st Defendant contended that he is the lawful and registered proprietor of the land, which he identified as Plot No. V.17074, now registered as Nairobi/Block 136/10999, having been issued with a Certificate of Lease by the Nairobi District Land Registry on 29th March 2019. He further denied the allegations of trespass and asserted that his ownership was lawful and valid.
6. The 1st Defendant further averred that he purchased the suit property from the 2nd Defendant in the year 2017, following which he took possession and has been in open, continuous, exclusive and uninterrupted occupation of the land. He denied the Plaintiff's claim that she purchased the property earlier or that any valid transfer was effected in her favour, terming those allegations as false and misleading.
7. The 1st Defendant also denied all allegations of fraud and particulars of trespass pleaded against him, maintaining that he was a bona fide purchaser for value without notice and that he carried out all transactions diligently and lawfully. He therefore prayed that the Plaintiff's suit be dismissed with costs and further challenged the jurisdiction of this Court to entertain the matter.

Hearing & Evidence

a. Plaintiff's Case

8. The matter proceeded for hearing on 19th May 2025, with the Plaintiff, Veronicah Ndunge Mwema, testifying as PW1. She adopted her written witness statement dated 5th October 2023, together with her list of documents, as her evidence in chief. PW1 testified that she purchased the suit property in 1999 from Kawethei Investment Company, which had earlier acquired the land from the 2nd Defendant, Embakasi Ranching Company Limited. She stated that the property was initially known as Plot No. P 927 and that upon completion of the transfer and payment of all requisite fees, the land was registered in her name and assigned the new plot number C 2608.
9. PW1 further testified that after acquiring the suit property, she took possession, fenced it, carried out developments including construction of a pit latrine, and engaged in agricultural activities, while making regular visits to the land. She stated that in or about the year 2020, she discovered that the 1st Defendant had entered the suit property and commenced construction thereon.
10. Upon confronting him, the 1st Defendant claimed to have purchased the land from the 2nd Defendant and produced documents bearing a different plot number, which PW1 asserted demonstrated a fraudulent re-allocation of her land. PW1 testified that a site visit conducted in the company of officials from the 2nd Defendant and a surveyor confirmed that the suit property belonged to her and had been irregularly re-allocated to the 1st Defendant. She further stated that despite the surveyor's report placing any dealings on the land on hold, the 1st Defendant proceeded to complete construction on the suit property.



b. Defendant's Case

11. On the defence side, the 1st Defendant, Peter Gitonga Ngunjiri, testified as DW1. He adopted his written witness statement dated 13th November 2023, together with the documents annexed thereto, as his evidence in chief. DW1 testified that he is the lawful and registered owner of the suit property known as Nairobi/Block 136/10999, which he stated was previously identified as Plot No. V.17074 and also referenced as C 2608. He testified that he purchased the property from the 2nd Defendant, Embakasi Ranching Company Limited, in the year 2017, following which the land was transferred to him after complying with all procedural requirements.
12. DW1 further testified that he was issued with a Certificate of Lease by the Nairobi District Land Registry on 29th March 2019, and that at the time of purchase and registration, there were no encumbrances, cautions, or competing claims over the suit property. He stated that he has been in open, continuous, exclusive, and uninterrupted possession of the land since 2017, during which period he carried out substantial developments including construction of a residential house, erection of a perimeter wall and gate, and planting of trees. DW1 denied all allegations of fraud and trespass leveled against him by the Plaintiff, asserting that he is a bona fide purchaser for value without notice and urged the Court to dismiss the Plaintiff's suit with costs.

Submissions

a. The Plaintiff's Submissions

13. The Plaintiff filed written submissions in which she reiterated that she is the bona fide purchaser for value of the suit property, having acquired it in 1999, and that the subsequent allocation and registration in favour of the 1st Defendant amounted to fraud and trespass. Counsel submitted that the evidence demonstrated a case of double allocation by the 2nd Defendant and urged the Court to apply the doctrine of first in time, first in right.
14. Reliance was placed on, inter alia, *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR on the doctrine of estoppel, *Gitwany Investment Limited v Tajmal Limited & 3 Others* [2006] eKLR, and *Maalim v Alio & Another* [2024] KEELC 3944 (KLR) on priority of competing interests. It was further submitted that the Plaintiff had proved fraud and trespass on a balance of probabilities and that the Certificate of Lease held by the 1st Defendant was therefore null and void.
15. On the applicable law, the Plaintiff submitted that the principles governing grant of injunctive relief, as set out in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, had been satisfied, arguing that she had established a prima facie case, demonstrated irreparable harm, and that the balance of convenience tilted in her favour. Counsel also cited *Salim v Cooperative Bank of Kenya Ltd & 2 Others* [2024] KEELC 852 (KLR) on fraud in land transactions. The Plaintiff framed the issues for determination as whether the 1st Defendant exercised due diligence before purchase, whether fraud was established, whether the Plaintiff was entitled to the reliefs sought, and who should bear the costs of the suit. She urged the Court to allow the suit as prayed and award costs to her.

b. The Defendant's Submissions

16. The 1st Defendant filed written submissions in which he urged the Court to dismiss the Plaintiff's suit in its entirety. Counsel submitted that the 1st Defendant is the lawful, registered, and indefeasible proprietor of Title No. Nairobi/Block 136/10999, having purchased the property from the 2nd Defendant in 2017 through a diligent and lawful process.



17. It was argued that the Plaintiff failed to prove her alleged ownership, having neither called witnesses from Kawethei Investment Company nor tendered conclusive evidence tracing a valid root of title. The 1st Defendant submitted that the evidence showed he conducted due diligence, paid all requisite fees, obtained clearance from the 2nd Defendant's surveyor, and was lawfully issued with a Certificate of Lease on 29th March 2019, after which he took possession and carried out substantial developments on the land.
18. On the law, the 1st Defendant submitted that he met the threshold of a bona fide purchaser for value without notice, relying on *Katende v Haridar & Company Limited* [2008] 2 EA 173, and that his title was protected under Section 26 of the *Land Registration Act*. Counsel further argued that allegations of fraud must be specifically pleaded and strictly proved, citing *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR and *Kinyanjui Kamau v George Kamau* [2015] eKLR, and submitted that the Plaintiff had failed to discharge this burden.
19. It was contended that the Plaintiff did not meet the threshold for grant of injunctive relief as set out in *Giella v Cassman Brown & Co Ltd* [1973] EA 358, and that the balance of convenience favoured the 1st Defendant, who was in occupation and possession. The 1st Defendant identified the key issues as whether he was a bona fide purchaser, whether fraud was proved, whether the Plaintiff was entitled to the reliefs sought, and who should bear costs, and prayed that the suit be dismissed with costs.

Analysis and Determination

20. Upon consideration of the pleadings, the evidence on record and the submissions filed by the parties, the issues that arise for determination are:
 - a. Whether the Plaintiff has proved lawful ownership of the suit property known as Plot No. C 2608;
 - b. Whether the 1st Defendant trespassed onto the suit property; and
 - c. Whether the Plaintiff is entitled to the reliefs sought.
21. The Plaintiff's case is that she purchased the suit property in the year 1999 from Kawethei Investment Company, which had earlier acquired the land from the 2nd Defendant, Embakasi Ranching Company Limited. She testified that the land was initially identified as Plot No. P 927 and was later transferred to her and renumbered as C 2608, after which she took possession and exercised rights of ownership.
22. In support of her claim, the Plaintiff produced documents tracing the history of the suit property from the 2nd Defendant through Kawethei Investment Company to herself. She also relied on evidence showing that she took possession of the land, fenced it and carried out developments thereon prior to the dispute. The 1st Defendant's case is that he purchased the same land from the 2nd Defendant in 2017 and was subsequently issued with a Certificate of Lease in respect of Nairobi/Block 136/10999 in March 2019. He contended that he is a bona fide purchaser for value and denied any allegation of fraud or trespass.
23. The law on proof of ownership of land is settled. Section 26(1) of the *Land Registration Act* provides that a certificate of title shall be taken as prima facie evidence of ownership, subject only to challenge on grounds of fraud, misrepresentation, or illegal or unprocedural acquisition.
24. In *Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another* [2013] eKLR, the Court held that a title may be impeached where it is shown that it was acquired through fraud or through an illegal or unprocedural process. Where competing claims exist, the Court must interrogate the root of title.



25. This Court is guided by the reasoning in *Caroline Awinja Ochieng & Another v Jane Anne Mbithe Gitau & 2 Others* [2015] eKLR, that ownership of unregistered or informally registered land is established by tracing a consistent and unbroken chain of documentary evidence leading to a good root of title.
26. In the present case, the Plaintiff demonstrated that her interest in the suit property arose long before the alleged purchase by the 1st Defendant. The evidence shows that the 2nd Defendant had already disposed of the suit property to the Plaintiff and therefore lacked capacity to lawfully re-allocate the same land to the 1st Defendant.
27. The Court finds that the subsequent allocation and registration in favour of the 1st Defendant amounted to a double allocation, which could not defeat the Plaintiff's prior interest. Applying the principle of first in time, first in right, the Plaintiff's claim takes priority.
28. Trespass is defined in Black's Law Dictionary as an unlawful entry upon land belonging to another. Section 3 of the *Trespass Act* criminalises entry upon private land without the consent of the lawful owner.
29. In *Rhoda S. Kiilu v Jiangxi Water & Hydropower Construction Kenya Limited* [2019] eKLR, the Court held that trespass occurs where a person intrudes upon land in the possession of another without lawful justification, and that trespass is actionable per se.
30. The evidence before Court shows that the 1st Defendant entered the suit property and constructed permanent structures thereon without the Plaintiff's consent and despite notice of her claim. The Court therefore finds that the 1st Defendant trespassed onto the Plaintiff's land.
31. Having found that the Plaintiff is the lawful proprietor of the suit property and that trespass was proved, the Court is satisfied that the Plaintiff is entitled to the reliefs sought.

Final Orders

For the foregoing reasons, the Court finds that the Plaintiff has proved her case on a balance of probabilities. Consequently, the Plaint dated 25th August 2023 succeeds and judgment is entered for the Plaintiff against the Defendants as follows:

- a. A declaration be and is hereby issued that the Plaintiff is the lawful and bona fide owner of the suit property known as Plot No. C 2608, Embakasi.
- b. A permanent injunction be and is hereby issued restraining the 1st and 2nd Defendants, whether by themselves, their servants, agents or any other person acting on their behalf, from entering, occupying, trespassing upon, constructing on, selling, transferring, alienating, or in any manner whatsoever interfering with the Plaintiff's quiet possession and proprietary rights over the suit property known as Plot No. C 2608, Embakasi.
- c. An order of vacant possession be and is hereby issued directing the 1st Defendant to vacate and hand over vacant possession of the suit property known as Plot No. C 2608, Embakasi, to the Plaintiff forthwith.
- d. In default of compliance with order (c) above, eviction orders shall issue and be enforced with the assistance of the Officer Commanding Station (OCS), Embakasi Police Station.



- e. Costs of the suit are awarded to the Plaintiff against the Defendants jointly and severally.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 19TH DAY OF DECEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Judgement delivered in the presence of: -

Mr. Kinuthia H/B for Mr. Kahugi for the Plaintiff

Ms. Ranoda for the Defendant

Philomena W . Court Assistant

