

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E035 OF 2022 (OS)

**IN THE MATTER OF AN APPLICATION BY AGNES WANJIRU
WAINAINA SUING AS THE PERSONAL REPRESENTATIVE OF
PAUL WAINAINA GITEMBEI
PLAINTIFF**

VERSUS

**JOSEPH KIOME NDUNGU 1ST DEFENDANT
LAND REGISTRAR, RUIRU 2ND
DEFENDANT
THE HON. ATTORNEY GENERAL 3RD DEFENDANT**

JUDGMENT

1. By a Plaint dated 2nd November 2022 and amended on 18th January 2023 the Plaintiff filed suit against the defendant seeking a revocation of the title number RUIRU EAST/JUJA EAST BLOCK 2/1486 in the 1st Defendant's name and reinstating the title in the name of PAUL WAINAINA GITEMBEI (Deceased). It is the Plaintiff's case that the suit property was initially registered in the name of the deceased who purchased it from Juja Farms Ltd but the 1st Defendant unlawfully registered it in his name without following due process.
2. Despite being served with the Plaint and Summons to enter appearance, the 1st Defendant did not enter appearance or file any

defence. As a result, the Plaintiff filed a Request for Judgment against the 1st Defendant.

3. The 2nd Defendant entered appearance and filed a Statement of Defence dated 1st February 2023 denying the Plaintiff's claim.
4. The suit was subsequently set down for hearing on 20th November 2025 when the plaintiff and her witness testified. The 2nd Defendant did not attend court and their case was marked as closed.

PLAINTIFF'S CASE

5. The Plaintiff testified as PW1. She stated that she was the administrator of the estate Paul Wainaina (deceased) who was her late husband. She relied on her witness statement dated 20.1.23. She informed that court that sometime in 1977, her late husband balloted for a plot among the plots that were being sold by Juja Farm Ltd. He was allocated a 3 -acre shamba and a $\frac{1}{4}$ acre plot and he was issued with a share Certificate no. 722 dated 25.9.1977. He was then given vacant possession of the land and he cleared the same and commenced farming activities. He carried out the said farming activities on the suit property until 2003 when he died.
6. It was the Plaintiff's evidence that the deceased never sold the suit property to anyone and she only discovered that it had been transferred to the 1st defendant when they conducted an official search at the time when they wanted to sell the residential $\frac{1}{4}$ acre plot. She told the court that despite being registered as the owner of the suit property, the 1st Defendant had never laid claim to it and

the land was still vacant. She prayed that the title in the 1st defendant's name be cancelled and the same be reinstated in the name of Paul Wainaina Gitembei (Deceased).

7. In support of her evidence the plaintiff produced the following documents:

- i) A copy of the title for land parcel number RUIRU EAST/JUJA EAST BLOCK 2/1486 marked as Plaintiff's exhibit 1.
- ii) A copy of the green card in respect of land parcel number RUIRU EAST/JUJA EAST BLOCK 2/1486 marked as Plaintiff's exhibit 2.
- iii) The Grant of Letters of Administration in respect of the estate of Paul Wainaina Gitembei marked as Plaintiff's exhibit 3.

8. The Plaintiff called her son Peter Mwaura Wainaina as PW2. He testified that he was aware that his late father had purchased a parcel of land from Juja Farm Limited. He stated that after his late father retired in 1995, he cleared the sisal that had been planted on the suit property and planted beans and other crops. He carried out the said farming activities upto the time of his demise in 2003.

9. He corroborated the plaintiff's evidence that his late father never sold the suit property to the 1st Defendant or anybody else as he had intentions of relocating his family from Nyahururu to Juja. He told the court that his late father had constructed a temporary structure on the $\frac{1}{4}$ acre plot. He stated that they only discovered

that the suit property was registered in the name of Joseph Kiome Ndungu(1st Defendant) upon conducting an official search when they wanted to sell the ¼ acre plot. They then reported the matter to the Police. The 1st Defendant was summoned by the police but he was unable to explain how he had obtained the title to the suit property. His sister subsequently placed a caution on the suit property on 9.7.2013. He said they still have the original title in his late father's name and he visits the shamba from time to time. He confirmed that when he last visited it in November 2024, it was still vacant.

10. After the close of the Plaintiff's case the Plaintiff's counsel filed her submissions which I have considered in arriving at my decision.

ANALYSIS AND DETERMINATION

11. Having considered the pleadings and evidence on record, the main issues for determination are whether the Plaintiff has proved her case on a balance of probabilities and whether she is entitled to the reliefs sought.
12. It was the Plaintiff's uncontroverted evidence that her late husband purchased the suit property from Juja Farm Limited and he was issued with share certificate No. 722 dated 25th September 1977. He was subsequently registered as the owner of land parcel number RUIRU EAST/JUJA EAST BLOCK 2/1486 on 6.11.1989. However, four days later on 10.11.1989, the suit property was

transferred to Joseph, Ndungu Kiome, the 1st Defendant in unclear circumstances.

13. The Plaintiff and her witness were categorical that the deceased never sold the land to the 1st Defendant as he cultivated the land upto the time of his demise in 2003. It was also their testimony that the deceased had intended to relocate his family from Nyahururu to Juja. He would not have expressed such intentions if he had sold the suit property.
14. The plaintiff's case is that the 1st Defendant's title was obtained unlawfully.
15. Although the circumstances under which the 1st Defendant was registered as the owner of the suit property are not clear, the fact that the plaintiff still holds the original title issued to the deceased and that she is still in possession of the suit property leads me to the conclusion that the transfer to the 1st Defendant was obtained unlawfully and his title is therefore impeachable under Section 26 of the Land Registration Act.
16. Section 26 of the Land Registration Act section 26(1) (b) of the Land Registration Act provides as follows:

"26(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 grounds 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 un-procedurally or through a corrupt scheme.

17. In the case of **Elijah Makeri Nyangwara v Stephen Mungai Njuguna & Another 92013) eKLR** Munyao J explained the import of section 26(1) (b) of the Land Registration Act as follows:

“First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”

18. Additionally in the case of **Ngari & Another v Ochengo & Ogut (Third Party) ELC Case No. E002 of 2023**, the court held that although the Torrens system protects title, such protection does not extend to titles obtained through fraud, corruption, misrepresentation, illegality or unprocedural means.

19. Based on the above provision of the law and the principle in the above cited decisions, it is my finding that the 1st Defendant does not hold a good title and the suit property belongs to Paul Wainaina Gitembei (Deceased).
20. I will now proceed to determine whether the plaintiff is entitled to the reliefs sought in her Plaint. In her Amended Plaint the Plaintiff seeks a declaratory order that the Defendant's action of registering the suit property in his name was unlawful. She also seeks an order of revocation and cancellation of land title number RUIRU EAST/JUJA EAST BLOCK 2/1486 in the 1st Defendant's name and an order that the title to the suit property be reinstated in the name of Paul Wainaina Gitembei (deceased). Additionally, the Plaintiff prays for damages for loss of use together with costs of the suit.
21. Having arrived at the finding that the Plaintiff is the lawful owner of the suit property, she is entitled to the reliefs sought save for damages which were not substantiated.
22. The upshot is that the Plaintiff has proved her case on a balance of probabilities and I enter judgment for the Plaintiff and make the following final orders:

a) A declaration is hereby issued that the registration of the 1st Defendant as the owner of land parcel number RUIRU EAST/JUJA EAST BLOCK 2/1486 was unlawful.

b) The title for land parcel number RUIRU EAST/JUJA EAST BLOCK 2/1486 in the name of Joseph Kiome Ndungu is hereby revoked and cancelled.

c) The Land Registrar, Ruiru is hereby directed to rectify the register by removing the name of Joseph Kiome Ndungu and reinstating the name of Paul Wainaina Gitembei (deceased).

d) The costs of the suit shall be borne by the 1st Defendant.

Dated, signed and delivered virtually at Thika this 22nd day of January 2026.

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**J. M ONYANGO
JUDGE**

In the presence of:

1. Miss Cherotich for the Plaintiff
2. No appearance for the Defendant

Court Assistant: Hinga