



**Bandi v Land Registrar Kakamega & another (Environment and Land Miscellaneous Case E039 of 2025) [2026] KEELC 199 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 199 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E039 OF 2025  
A NYUKURI, J  
JANUARY 21, 2026**

**BETWEEN**

**JIM MATIA BANDI ..... APPLICANT**

**AND**

**LAND REGISTRAR KAKAMEGA ..... 1<sup>ST</sup> RESPONDENT**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before court is a Notice of Motion dated 27<sup>th</sup> May 2025 filed by the applicants seeking the following orders;
  - a. The restrictions lodged on land parcel Numbers Lugari/Likuyani Block 1 (Vihiga) 137, Lugari/Likuyani Block 1 (Vihiga) 246 & Lugari/Likuyani Block 1 (Vihiga) 240 by the 2<sup>nd</sup> respondent be removed.
  - b. The orders issued herein be served upon the Land Registrar, Kakamega County for compliance.
  - c. Costs of the application be provided for.
2. The application was supported by the affidavit sworn by the applicant on 27<sup>th</sup> May 2025. The applicant's case is that he is the registered proprietor of parcel Nos. Lugari/Likuyani Block 1 (Vihiga) 137, 246 and 240 but that without any lawful justification and in contravention of his right to own property, the respondent, claiming that the same were public land, placed restrictions on his property without giving him opportunity to be heard or any reasons for doing so, contrary to Articles 40 and 47 of the *Constitution* of Kenya. That the suit properties were part of parcel No. Lugari/Likuyani 3403/2, which originally belonged to one Jamal Mohammed who sold them to Vihiga Farmers Company Limited where the applicant was a shareholder and received the said property being his share.



3. That in Kakamega Civil Case No. 344 of 1988 Vihiga Farmers Company Limited v Attorney General, the trial court entered a consent judgment for Vihiga Farmers Company Limited to the effect that judgment was entered as prayed for in the plaint jointly and severally against the defendant. That the respondents' actions are unlawful. He attached title deeds; plot allocation particulars of Vihiga Farmers Company Limited; decree in Kakamega HCC NO. 344 of 1988; minutes of the Board of Vihiga Farmers Co. Ltd at the Chief's office and letter from the County Commissioner.
4. The application was opposed by the 2<sup>nd</sup> respondent. Jackson Kaptum, the 2<sup>nd</sup> respondent's investigator swore a replying affidavit dated 1<sup>st</sup> October 2025. He deposed that on 20<sup>th</sup> July 2020 the Commission received a report from residents of St. Monica and Ivugwi Community in Likuyani Subcounty that the applicant had engaged in illegal and fraudulent acquisition of public land as follows;
  - a. Lugari/Likuyani Block 1 (Vihiga) 137- riparian land set aside for a water dam
  - b. Lugari/Likuyani Block 1 (Vihiga) 207 – set aside for a market
  - c. Lugari/Likuyani Block 1 (Vihiga) 240 – set aside for a cattle dip
  - d. Lugari/Likuyani Block 1 (Vihiga) 246- set aside for dispensary.
5. That on receipt of the report, the Commission commenced investigations and requested for relevant documents from relevant Government departments including the County Survey office, Land Registrar and National Archives. That preliminary investigations revealed that the suit properties were illegally and irregularly acquired by the applicant as the same had been reserved for public utilities. Further that investigations revealed that at the time of allocation of the suit property, Vihiga Farmers Company Limited had 252 shareholders and among them was the applicant who was allocated Plot Nos. Lugari/Likuyani Block 1 (Vihiga)/11 and Lugari/Likuyani Block 1 (Vihiga) 119 equivalent to his purchased shares. He maintained that therefore the claim for other plots was irregular, uncalled for, fraudulent and without basis. He stated that investigations were almost complete but that they are still collecting further documents and recording statements from persons of interest who may have facilitated the illegal grabbing of public land with a view to taking action against the applicant. That therefore the Commission has reasonable grounds to place restrictions on the suit property pending the outcome of the investigations. He attached minutes, correspondence and the report of Vihiga Farmers Co. Ltd
6. In a rejoinder the applicant filed supplementary affidavit dated 3<sup>rd</sup> December 2025 wherein he stated that the 2<sup>nd</sup> defendant's investigations were in violation and contempt of the decree in Kakamega Civil Case No. 344 of 1988 Vihiga Farmers Company Limited v Attorney General. Further that the 2<sup>nd</sup> respondent is estopped from interfering in the affairs of Vihiga Farmers Company Ltd and that no documents were filed by the 2<sup>nd</sup> respondent to show that the suit properties were reserved for public utilities.
7. The application was canvassed by way of written submissions. On record are submissions filed by the applicant dated 3<sup>rd</sup> December 2025 which the court has duly considered.
8. The court has carefully considered the application, response, rejoinder, annexures and submissions. The only issue that arise for the court's determination is whether the respondents are justified to place restrictions on the suit properties.
9. Section 76 of the [Land Registration Act](#) vests in the Land Registrar the power to restrict a title for purposes of compulsory acquisition, to prevent fraud or improper dealing or for any sufficient cause either with or without application of any person.



10. Article 40 (1) and (6) of the *Constitution* of Kenya provides legal protection of property ownership only in respect of lawfully acquired property. Therefore, a person seeking to enforce their right to own property under Article 40 of the *Constitution*, bear the duty to demonstrate lawful acquisition of the same.

11. Section 26 of the *Land Registration Act* provides for conclusiveness and indefeasibility of title as follows;

“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.

12. Thus, registration of title confers indefeasible and absolute ownership of land to the registered proprietor. This notwithstanding, a title may be challenged on account of having been obtained through fraud, want of procedure, illegality or corruption, whether or not the registered proprietor was party thereto. Thus, a title without proof of lawful acquisition cannot be accorded legal protection.

13. In the case of *Dina Management Limited v County Government of Mombasa & 5 Others* (Petition No. 8 (E010) of 2021 (2023) KESC 30 KLR, the Supreme Court of Kenya held that a title can be invalidated if it is demonstrated that the same was not procedurally or lawfully acquired.

14. In the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held as follows:

“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.”

15. It is trite law that allegations of fraud must be specifically pleaded and strictly proved. It is also trite that the standard of proof for fraud in civil cases is higher than the standard of proof required in ordinary civil matters but slightly lower than the standard of proof required in criminal cases of beyond reasonable doubt.

16. In the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR the court stated that:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. see *Ndolo vs Ndolo* (2008)1KLR (G & F) 742 wherein the court stated that “.. we start by saying that it



was the Respondent who was alleging that the will was a forgery and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases..” In case where fraud is alleged it is not enough to simply infer fraud from the facts.”

17. In the instant case, the applicant has demonstrated that he is the registered proprietor of the suit properties by presenting his titles. He stated that he acquired the same by virtue of his membership of Vihiga Farmers Co. Ltd. He produced the register of Vihiga Farmers Co. Ltd. The 2<sup>nd</sup> respondent also produced the register of Vihiga Farmers Limited and maintained that what lawfully belongs to the applicant are parcel Nos. 11 and 119 and that Title Nos. 137, 240 and 246 were reserved for various public utilities.
18. The fact that the applicant was allocated plot numbers 11 and 119 as his share of Vihiga Farmers Company Limited is confirmed by the information in the registers provided by both parties. In addition, the fact that the three disputed plots were reserved for public utilities including a dam, market, dispensary and cattle dip is indeed confirmed by the applicant’s own evidence as shown in the register of Vihiga Farmers Company Limited and the minutes dated 13/01/2002 by the Board of Vihiga Farmers who purportedly amended the allocation list of 27/4/1989 as per the alleged recommendations of the AGM held on 21/10/2000. The alleged amendment does not show the basis for cancelling the use of the three suit properties as public utilities and allocating them to the applicant or the manner of acquisition by the applicant of the same. The applicant himself did not state how he acquired the suit properties or if he purchased them, because the only plots allocated to him on the basis of his membership of Vihiga Farmers Company Ltd were only Plot Nos. 11 and 119 as shown in the register.
19. However, most importantly, allocation of plots to a community consisting of a reasonably large number people like the case of Vihiga Farmers Company Limited where land said to be measuring 1000 acres was subdivided and shared to 252 shareholders, leading to survey and titling thereof in or around 2013, that process had to comply with the laws in force at that time in regard to Survey and planning (*Survey Act* and Physical Planning Act). It is inevitable that for 252 households sharing 1000 acres, will need social amenities like markets and dispensaries, which points to the important aspect of planning and sustainable development. This meant that where there was an intended variation of the allocation which involved public utilities, the requirement for approval of survey plans/ subdivision by the Director of surveys and Director of Physical planning was to be met. This is in line with several provisions but more particularly section 33 (1) (b) of the *Survey Act* and section 41 of the repealed Physical Planning Act.
20. In addition, for environmental purposes, riparian land is public land as provided for in Article 62 (1) (i) (l) of the *Constitution* of Kenya as read with section 2 of the *Land Act* which define riparian reserve as land adjacent to the ocean, sea, rivers, dams and water courses. Section 12 (2) of the *Land Act* prohibits allocation of public land "that is along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas, riparian and the territorial sea as may be prescribed.” Therefore, riparian land is public land and cannot be allocated to private individuals.
21. There was no approval by the Director of surveys and Director of Physical Planning and or demonstration that the Vihiga Farmers Company Limited Board’s recommendations and amendments granting the applicant the three suit properties complied with the law. Besides, the allocation of the riparian land was contrary to tenets of environmental protection and conservation



and also against the law. In short, the applicant seeks legal protection for titles registered in his name but which were meant for public utilities to serve the former shareholders of Vihiga Farmers Company Limited. His argument that the respondents should keep off the activities of Vihiga Farmers Company Limited even when public utilities are misallocated is misguided as public utilities provided in the subdivision were a necessary requirement for subdivision and became public goods and were no longer the property of Vihiga Farmers Company Limited. Therefore, it is clear that the applicant's acquisition and registration as proprietor of the suit properties was unlawful. It will therefore be unlawful, and against the tenets of sustainability to extend legal protection to his titles.

22. In the premises, I am satisfied that the applicant has failed to demonstrate lawful acquisition of the suit properties to warrant legal protection by this court. The applicant did not provide a green card for the court to ascertain when restrictions were placed on the suit property. The 2<sup>nd</sup> respondent explained that they needed time to conclude investigations and pursue legal proceedings against the applicant. In my view the respondents have demonstrated that there is reasonable and lawful justification for placing restrictions on the titles of the suit properties as the applicant's acquisition thereof was unlawful.
23. For the above reasons, I find no merit in the application dated 27<sup>th</sup> May 2025 which I hereby dismiss with costs to the 2<sup>nd</sup> respondent.
24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 21<sup>ST</sup> DAY OF JANUARY, 2026**

**A. NYUKURI**

**JUDGE**

In the presence of

Mr. Lubanga for the applicant

Mr. Kibet for the 2<sup>nd</sup> respondent

No appearance for the 1<sup>st</sup> respondent

Court Assistant: Delphine

