



Kiguru & 2 others (As the Registered Trustees of Africa Christian Church & Schools) v Macharia & 2 others (Environment and Land Case 162 of 2017) [2026] KEELC 201 (KLR) (26 January 2026) (Judgment)

Neutral citation: [2026] KEELC 201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 162 OF 2017
MAO ODENY, J
JANUARY 26, 2026**

BETWEEN

**REV. JEREMIAH NGUMO KIGURU 1ST PLAINTIFF
REV, JULIUS KIMANI KINUTHIA 2ND PLAINTIFF
MRS EDITH WAITHIRA NGUGI 3RD PLAINTIFF
AS THE REGISTERED TRUSTEES OF AFRICA CHRISTIAN CHURCH &
SCHOOLS**

AND

**RHODA N. MACHARIA 1ST DEFENDANT
PHILIP THUKU GITHAIGA 2ND DEFENDANT
LAND REGISTRAR NAKURU 3RD DEFENDANT**

JUDGMENT

1. By a Plaint dated 11th April, 2017, amended on 13th February, 2023, and further amended on 25th January, 2024, the Plaintiffs herein sued the Defendants seeking the following orders:
 - a. Order directing the Nakuru Land Registrar to cancel the registration of the 1st Defendant's and subsequent transfer of the Title Number Molo South/Ikumbi Block 12/245 (Gacharage) to the 2nd Defendant and have the suit land registered in the names of the Plaintiffs.
 - b. Permanent injunction barring the Defendant either by himself, his agents, servants or in any manner howsoever from advertising, leasing, charging, selling, dealing with, conveying, charging, leasing, subdividing, encroaching on trespassing and/or remaining on land title no. Land title no. Molo South/Ikumbi Block 12/245 (Gacharage) and/or interfering with



the Plaintiffs and/or their agents legal, equitable interest and/or rights of quiet ownership, possession, occupation and enjoyment thereof.

- c. Mesne profits and general damages for unjust enrichment.
- d. Costs of and incidental to the suit and interest at court rates.
- e. Any other remedy as the Honourable Court may deem fit and applicable in the circumstances.

Plaintiffs' Case

2. PW1 Daniel Maina Ndirangu adopted his witness statement dated 11th April 2017, as his evidence in chief, and stated that he is the National Treasurer, the Plaintiff's Chairman and authorized to give evidence, vide a resolution which was filed in court.
3. PW1 told the court that Gacharage Co-operative Society, bought land known as Molo South Block 12 and that the Plaintiff member No. 231 balloted for plot No. 245 and was allocated one acre. PW1 produced an introductory letter dated 11th October 2016, a copy of the ballot, and an extract from the members' register as Pexb Nos. 1 to 3.
4. PW1 further testified that after balloting, the plaintiff leased the land to Jonathan Njoroge Kuria to take care of, and he is still on the land. Further, the Plaintiff sent him to the Lands Registry on 27th October 2016, to follow up on the issuance of the title to the suit land, where he was given a breakdown of the payments to be made, of which he made a transfer booked on the same date.
5. It was PW1's evidence that he was told to go back after one month, and when he went back to collect the title deed, he was informed that the application had been rejected and the title deed had been issued to Rhoda Nyambura Macharia on 16th January 2013. PW1 produced the application for registration, receipt and a copy of transfer as PExb 4, 5 and 6 respectively.
6. According to PW1, there was forgery, because when he went to pay for the transfer, he was allowed to pay only to reject the application later, and further that the 1st defendant is not a member of Gacharage Co-operative as he did not ballot for the land. PW1 testified that they have been in occupation of the land since they balloted and that he reported the matter to the Police Station, who told them to file a case in court. He claimed that the 2nd defendant's title is fake as he is not a member of Gacharage Co-operative Society and that the 2nd defendant could not have taken possession of the property since they are in possession. PW1 stated that they intend to put up a church and school on the property and urged the court to grant the orders as prayed in the Plaint.
7. Upon cross-examination by Mr. Terer, PW1 stated that the land is in Block 12, Molo South and that they have leased it to Jonathan Njoroge at an annual fee of Kshs. 10,000/=. He further stated that the tenant had been thrown out and when he reported the matter to the CID Molo, he was told to sue.
8. Upon cross-examination by Ms. Shirika, PW1 stated that he presented documents in October 2016 for registration at the Nakuru Land Registry, and that the 2nd defendant's title was registered on 6th September, 2016. PW1 admitted that the Land Registrar can either register or not register documents if there is a reason not to do so. PW1 further stated that someone had already lodged a transfer before him hence the rejection of his registration.
9. Upon re-examination by Mr. Kariuki, PW1 testified that he had demonstrated how the church got the land and presented documents from Gacharage Co-operative Society, but had not been shown how Rhoda acquired the property that she sold to the 2nd defendant, hence his statement that the title is not genuine.



10. PW1 testified that rejection was said to be based on existence of another title, and that they were the original shareholders of the larger portion and it took only a year to get back to the land after his worker was thrown out. PW1 testified that they are not in possession and that Gacharage deposited all the necessary documents at his office but the 1st defendant was not a shareholder.
11. PW2 Reverend Julius Kimani Kinuthia adopted his witness statement dated 13th February 2023, as his evidence in chief, and stated that he is a resident at Thika and a Trustee and General Secretary of the church. He produced the certificate of incorporation dated 12th November, 2020, as PExh.8A and urged the court to allow the prayers in the amended Plaintiff.
12. Upon cross-examination by Mr. Terer, PW2 stated that he represents the other Trustees who gave him authority to do so and that they were aware of these proceedings.
13. PW2 stated that Reverend Jeremiah Kiguru, Julius Kimani, Edith Ngugi and Rumba Kuria are the current Trustees and their head office is in Thika. It was his testimony that its objective is to preach the gospel, sponsor schools and own properties, but he does not have the ownership documents of the suit land parcel.
14. PW2 stated that Gacharage Co-operative Society exists with the head office in Kandara, Muranga, and that the 1st and 2nd Defendants are not members of Gacharage Co-operative Society otherwise they could have balloted. He stated that the land is in Molo South Sub-county, though he has never gone there.
15. Upon cross-examination by Ms. Shirika, PW2 stated that he is aware of 2nd defendant's title and that they have sought the cancellation of the same. Upon re-examination by Mr. Kariuki, PW2 testified that the church is still using the land and it was incumbent upon the defendants to give evidence on how they acquired the property.

2nd Defendant's Case

16. DW1, Philip Thuku Githaiga adopted his witness statement dated 4th August 2017, as his evidence in chief and stated that he is a retired teacher. He also produced a list of documents dated 3rd August 2017 as DExhb No. 1 to 3, and stated that the suit land belongs to him, which he bought from the 1st Defendant who was in possession of the land. It was his testimony that he carried out a search and confirmed that the land belongs to the 1st Defendant.
17. It was DW1's testimony that he entered into a sale agreement dated 8th August 2016 and paid Kshs. 420,000/= as the purchase price, together with stamp duty, and signed the transfer forms. He stated that he took immediate possession after purchase and processed the title in his name.
18. DW1 testified that the land was vacant, and after the filing of this case he decided not to carry out any development and that he did not attempt to evict the plaintiff He urged the court to dismiss the Plaintiff's case with costs.
19. Upon cross-examination by Mr. Kariuki, DW1 stated that he entered into a sale agreement with the 1st Defendant and that the vendor gave him a sketch map, a search certificate and a title. He also told the court that he owns other parcels of land, and that the suit land was a subdivision from a large portion, which was owned by Gacharage Farmers' Co-operative Society. He was referred to a letter dated 11th October, 2016, of which he denied ever being shown by the 1st Defendant.
20. Similarly, DW1, stated that he was not shown a copy of the register that was forwarded to the Lands registry by Gacharage Farmers' Co-operative Society, and that the 1st Defendant did not give him the



history of where she bought the land. DW1 referred to clause 10 of the agreement on warranty in case there is a defect of title, and stated that he has neither filed a counterclaim against nor tried to get the 1st Defendant to come to court and clarify the issues.

21. It was DW1, evidence that the 1st Defendant told him that she was a member of Gacharage Farmers' Cooperative Society but she did not give him any documentary proof, and that he is not aware that the Land Registrar has a register of the people who were allocated the land.
22. Upon re-examination by Mr. Wanjir, DW1 testified that he does not agree with the allegation that he procured the title fraudulently, and that he has never been charged with fraud. He further informed the court that the neighbours confirmed to him that the 1st Defendant was the owner of the land, but did not know where the 1st Defendant was.

Plaintiffs' Submissions

23. Counsel for the Plaintiff filed submissions dated 4th November, 2025, and identified the following issues for determination:
 - a. Whether or not the Plaintiff was the lawful allottee and owner of land parcel Molo South Ikumbi Block 12/245 (Gacharage)?
 - b. Whether or not the registration and the title of the 1st Defendant and the subsequent transfer of the subject parcel of land to the 2nd Defendant were procedural and lawful?
 - c. Whether or not the registration and the title of the subject parcel of land issued to the 2nd Defendant should be cancelled and the same be registered in the name of the Plaintiff?
 - d. Is the Plaintiff entitled to mesne profits and general damages?
 - e. Who is to pay the costs of the suit?
24. On the first issue, counsel submitted that based on the evidence of PW1 and PW2, the Plaintiff was the lawful allottee and owner of the disputed property. On the second issue, counsel submitted that the 2nd Defendant's evidence does not show any due diligence he undertook before he purchased the land.
25. Counsel submitted that the 3rd Defendant did not offer any explanation or justification as to how the 1st Defendant got herself registered as the proprietor of the suit land. Further the 1st Defendant needed to have gone further in due diligence other than relying on the registration of the 1st Defendant as the proprietor of the suit property and relied on the cases of Moses Ageya Kembe vs Washington Okello Sule [2020] EEELC 1873 (KLR), Daudi Kiptugen vs Commissioner of Lands & 4 others [2015] eKLR and Munyu Maina vs Hiram Gathiha Maina [2013] eKLR.
26. On the third issue, counsel submitted that the 2nd Defendant does not hold a valid title and the same needs to be cancelled and registered in the name of the Plaintiff. Counsel relied on the case of Dina Management Ltd vs County Government of Mombasa-Petition No 8 (E010) of 2021. On the fourth issue, counsel submitted that the Plaintiff is entitled to both mesne profits and general damages, which counsel assessed at Ksh 2,500,000.00/= with costs of the suit.

2nd Defendant's Submissions

27. Counsel for the 2nd Defendant filed submissions dated 19th November, 2025, and identified the following issues for determination:
 - a. Whether the Plaintiffs have proved that they have a valid claim over the suit property?



- b. Whether the Plaintiffs are entitled to the orders sought in the claim?
 - c. Who is to bear the cost of the suit?
28. On the first issue, counsel submitted that the Plaintiffs failed to specifically plead the particulars of the alleged fraud, and further, the Plaintiff did not produce any allocation letter. Counsel submitted that the Plaintiff only produced a copy of transfer which is undated, unsigned and whose origin is unknown. Further that there was neither evidence of occupation nor proof of any action taken to prevent the alleged eviction by the Defendants.
29. According to counsel, the Plaintiff did not produce any documents to show that the Land Registrar was to effect the registration in their favour. It was his submission that the Certificate of title held by the 2nd Defendant is adequate evidence of his legal ownership and relied on Sections 107, and 109 of the *Evidence Act* and 24 & 26 of the *Land Registration Act*. Counsel further relied on the cases of *Mburu vs Magulu* [2025] KEELC 4868 (KLR), *Vijay Morjaria vs Nansigh Madhusing Darbar & Another* [2000] eKLR, *Christopher Ndaru Kaniga vs Esther Mbandi Kagina & Another* [2016] eKLR and *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna* [2013] eKLR.
30. Counsel urged the court to dismiss the Plaintiffs' suit with costs to the Defendants as they are not entitled to the orders sought.

Analysis And Determination

31. The issues for determination that arise from the pleadings are as follows:
- a. Whether the Plaintiff is the lawful allottee and owner of the suit land parcel No. Molo South Ikumbi Block 12/245 (Gacharage)?
 - b. Whether the registration of the suit parcel of land to the 1st Defendant and subsequent transfer to the 2nd Defendant was procedural and lawful?
 - c. Whether the Plaintiff is entitled to mesne profits and general damages?
 - d. Whether the Plaintiff is entitled to the orders sought.
32. PW1 gave evidence and stated that the Plaintiff is the beneficial owner of the suit parcel of land known as Molo South/Ikumbi Block 12/245 (Gacharage) which they were allotted and balloted for in 1995, being members of the Gacharage Farmers' Co-operative society.
33. The Plaintiff produced an introduction letter to the Land Registrar Nakuru, dated 11th October 2016, by Ruchu Gacharage Farmers Co-op Society, confirming that Molo South Block 12 Ballot No. 245 belongs to ACC & Mukuria (Membership No. 0875-02-231) to assist them in collecting their title deed. The Plaintiff further produced a copy of the ballot, an extract from the Membership register, which shows that African Christian Church is No. 245 in the register, an application for registration, a payment receipt, and a copy of a transfer of land form duly signed. It was the Plaintiffs' case that the 1st and 2nd Defendants have never been members of Ruchu Gacharage Farmers' Co-operative Society therefore were not capable of acquiring a good title to the suit land.
34. It is the 2nd Defendant's case that he bought the land from the 1st Defendant who was in possession of the land. And upon carrying out a search he confirmed that the land was registered in the 1st Defendant's name.
35. In a case where two or more people are laying claim to the same parcel of land, the court must look at the root of the title and how each of the claimants acquired the land.



36. In the case of *Gathonde (As Administrator of the Estate of the Late Thumbi Kariuki) & 3 others v Registrar & 7 others (Civil Appeal E505 & E519 of 2020 (Consolidated))* [2024] KECA 668 (KLR) the Court of Appeal held on the issue of competing titles as follows:

“Once upon a time, the holding of a title deed, that treasured document that declared the person named therein as the indisputable owner of the landed property, was a ticket to peace and proprietary security. That it was before a vile mix of greed, rapacity and fraud on one hand and corruption mischief, and tampering of records on the other, increasingly rendered many a title deed worthless papers the holding of which, without more, provided neither certitude nor assurance of safety as courts have had to step in to decipher and determine which among two contending instruments of title is genuine and efficacious. The puzzle of competing title deeds over the same property on the ground in contemporaneous existence is now becoming a contest not of dualities of claims, but, as this case shows, one of multiple contestations, each backed by a title deed.”

37. It is not enough for the 2nd Defendant to wave a title and state that it is indefeasible as per Sections 24, 25, and 26 of the *Land Registration Act* without establishing the root of his title. Did the 1st Defendant, who sold the land to him, have a good title to pass? Does he qualify as a bona fide purchaser for value?
38. The 2nd Defendant admitted that he does not know where the 1st defendant is. The 1st Defendant held the key to answering the questions in respect to the root of the title, how she got the parcel of land registered in her name yet she was not a member of Gacharage Co-operative Society. The best she could have done was to fortify the 2nd Defendant’s title by giving him the history and documentation of how she acquired the suit land procedurally/legally or otherwise.
39. In the case of *Hubert L. Martin & 2 Others – Versus - Margaret J. Kamar & 5 Others*[2016] eKLR, the court held that:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one’s case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

40. Indeed this court is faced with two claimants with competing interests on the same parcel of land. As earlier stated, it is incumbent upon the claimants to demonstrate to the satisfaction of the court how they acquired the suit parcel of land. This is very crucial in establishing the rightful owner of the suit land.
41. Similarly, in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR where the Court of Appeal held that:

“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 interest which need not be noted on the register.”

42. The Plaintiff gave an elaborate explanation of how they acquired the suit land, which was not rebutted by the 2nd Defendant, who claimed that he had purchased the land from the 1st Defendant. The 1st Defendant’s acquisition of the suit land was not explained, leaving the root of the 2nd Defendant’s unprotected. I find that the Plaintiff has proved that it is the rightful owner of the suit parcel of land and therefore is entitled to be registered as such.

43. The Plaintiff also sought the cancellation of the 2nd Defendant’s title and registration of their name as the owners. In the case of *Elijah Makeri Nyangwara –Vs- Stephen Mungai Njuguna & Another* [2013] the Court held that:

“The evidence in this case puts no one in doubt that the title to the 1st Defendant was obtained illegally, unprocedurally or through a corrupt scheme. The documents that conveyed title to him were forged. The title could not therefore have been obtained legally or procedurally. I am satisfied that the provisions of Section 26 (1) (b) have been met and that the title of the 1st defendant is liable to be cancelled. I therefore proceed to cancel the title of the 1st defendant and his registration as proprietor of the suit land. The Plaintiff should be registered as owner of the suit land. It is regretful that the 1st defendant was snared by the scheme perpetuated by the 2nd defendant. I sympathise with him, but I must ensure that the real title holder is protected and that he is registered as the proper owner of the suit land.”

44. The court is empowered under Section 80 of the *Land Registration Act* to cancel a title which was procured unprocedurally. The Section provides as follows:

1. Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
2. The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

45. On the issue whether the Plaintiff is entitled to general damages and mesne profits, the court finds that mesne profits is a special damage which must be specifically pleaded and proved. The plaintiff pleaded mesne profits but neither indicated the amount nor led any evidence to prove the same. I therefore decline to grant this limb which cannot be granted together with general damages.

46. I have considered the pleadings, the evidence adduced together with submissions by counsel, and conclude that the plaintiff has proved its case against the defendants on a balance of probabilities and make the following orders:

- a. An order is hereby issued directing the Nakuru Land Registrar to cancel the registration of the 1st Defendant and subsequent transfer of the Title No. Molo South/Ikumbi Block 12/245 (Gacharage) to the 2nd Defendant and have the suit land registered in the names of the Plaintiffs.
- b. A permanent injunction is hereby issued barring the Defendant either by himself, his agents, servants or in any manner howsoever from advertising, leasing, charging, selling, dealing with,



conveying, charging, leasing, subdividing, encroaching on trespassing and/or remaining on land title no. Land title no. Molo South/Ikumbi Block 12/245 (Gacharage) and/or interfering with the Plaintiff and/or their agents legal, equitable interest and/or rights of quiet ownership, possession, occupation and enjoyment thereof.

- c. Costs of the suit to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF JANUARY 2026.

M. A. ODENY

JUDGE

