



Mworia (Suing as the Personal Representative of the Estate of Francis Arithi Mworia - Deceased) v Principal Secretary, Ministry of Lands, Housing and Urban Development & 3 others (Environment and Land Case 63 of 2015) [2026] KEELC 614 (KLR) (10 February 2026) (Judgment)

Neutral citation: [2026] KEELC 614 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 63 OF 2015
AY KOROSS, J
FEBRUARY 10, 2026**

BETWEEN

RONALD GITOBU MWORIA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANCIS ARITHI MWORIA - DECEASED) PLAINTIFF

AND

THE PRINCIPAL SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 1ST DEFENDANT

THE PRINCIPAL SECRETARY, MINISTRY OF FINANCE 2ND DEFENDANT

THE CHIEF LANDS REGISTRAR 3RD DEFENDANT

THE HON. ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. This constitutes the second judgment issued by this court, following the initial ex parte one in favour of the late Francis Arithi Mworia (deceased plaintiff) delivered on 26/02/2021, being set aside. Previously, the defendants had failed to attend the scheduled court hearing, resulting in the matter proceeding ex parte. Nonetheless, the defendants successfully petitioned the court to set aside the ex parte judgment and, in a ruling delivered on 4/10/2023, the court granted the sought-after orders and directed that the case be reheard.
2. Strangely, and just as in the past instance, a similar scenario played out in the circumstances herein, where the court is now penning an ex parte judgment. To put it in context, after the previous judgment was set aside, this court conducted pretrial directions in the presence of counsel for both parties and scheduled two days of hearings. Still, on the scheduled dates, the defendants were a no-show, and their case was therefore closed. We will now turn to the gist of the matter at hand.



3. In a plaint dated 2/03/2015 and amended on 10/09/2019, the deceased plaintiff stated he was and remains the lawful registered owner of the land identified as L.R. No. 21990 (IR No. 72055) and L.R. No. 21991 (IR No. 72054), hereinafter referred to as “the suit properties”.
4. The deceased plaintiff claimed that he had peacefully possessed the suit properties until 2009, when he intended to develop them. At that time, he observed that an unidentified group had erected a fence around the entire area, including the suit properties. Subsequently, he discovered that the 1st defendant was responsible for erecting the fence.
5. The deceased plaintiff stated that he had previously filed a Judicial Review Application number 356 of 2009 in the High Court at Machakos. However, in a ruling issued on 29/09/2014, the court dismissed the application, ruling that judicial review proceedings would not sufficiently address the core issue-ownership of the suit properties. He contended that the ruling also noted that the deceased plaintiff was issued title documents in 1995, long before the suit properties were allotted to the 3rd defendant in 2004. Ultimately, the plaintiff prayed for the following prayers: -
 - a. A declaration that the Estate of the deceased plaintiff is entitled to exclusive, unimpeded right of possession and occupation of all the suit properties and that the defendants are accordingly trespassers on the same.
 - b. An order revoking the certificate (sic) of the letter of allotment issued by the 3rd defendant to the 2nd defendant and vesting the registration of title in the deceased plaintiff.
 - c. That a permanent injunction does issue against the defendants, whether by themselves, their agents, servants, employees and/or representatives, stopping them from trespassing on the suit properties or interfering with it whatsoever.
 - d. General Damages for trespass.
 - e. In the alternative and without prejudice to the above, an order directing the 1st and 2nd defendants to compensate the Estate of the deceased plaintiff for the land illegally acquired for their development needs without any legal authority.
 - f. Costs of the suit.
 - g. Any other relief this Honourable Court deems fit to grant.
6. Upon service, the defendants filed a defence dated 8/12/2017, which was mainly composed of denials and put the plaintiff to strict proof. They also claimed that the suit properties were owned by the government and intended for the development of affordable housing units. They argued that the fencing around the property was erected to protect the public interest and alleged that the deceased plaintiff's title documents were obtained fraudulently and by misrepresentation.
7. Subsequently, the matter proceeded to a hearing on the 17th and 18th of June, 2025, during which only the deceased plaintiff's legal representative, Ronald Gitobu Mworira (PW1), testified, and thereafter, the deceased plaintiff's and the defendants' cases were formally closed.
8. In his testimony, PW1 reiterated the averments contained in the amended plaint and relied upon his witness statement, along with the produced documents marked as Pex 1- 31 and oral testimony. These documents demonstrated that an allotment letter dated 24/02/1195 for an unsurveyed residential plot no. 577 Athi River was issued to Christine Wausi and Mutuku Nyangi by the Commissioner of Lands. They were required to accept and remit a total sum of Kshs. 25,337/-. By a letter dated 24/04/1995,



- acceptance was duly made, and the stipulated sums were settled in two instalments, as evidenced by two receipts from the Lands Office, each for Kshs. 12,668/- respectively dated 2/05/1995 and 16/11/1995.
9. These parties subsequently transferred the designated land to the deceased plaintiff, with payments received for the purchase price as evidenced by correspondence dated 22/11/1995 and 29/11/1995. During these transactions, the parties executed a transfer form for the designated land on 20/09/1995, which was subsequently registered.
 10. A similar procedure was undertaken regarding the unsurveyed residential plot no. 580 Athi River, which was allocated to Richard Nguma and Daniel Nthiwa on 24/02/1995. In this one, acceptance was made on 25/04/1995, and a cheque amounting to Ksh. 25,337/- for the full payment was issued on the same date of acceptance. The property was sold to the deceased plaintiff, as evidenced by the acknowledgements dated 17/11/1995. Concurrently, the parties executed a registered transfer form on 20/09/1995.
 11. Furthermore, the survey plan and pertinent deed plans were submitted as evidence alongside applications for the issuance of the grant for these properties and the corresponding payments. Ultimately, the title documents for the suit properties were issued to the deceased plaintiff on 3/12/1996. In a letter dated 11/05/2012, the Chief Land Registrar confirmed that the suit properties were registered in the plaintiff's name. Additionally, photographs illustrating some of the defendants' fencing activities were provided.
 12. Upon closure of the parties' cases, the plaintiff's counsel, Ms Migos Ogamba & Waudo Advocates, filed written submissions dated 15/08/2025. In its analysis and determination, the judgment will carefully consider the arguments presented in the rival submissions, along with the relevant law and judicial precedents cited. Therefore, the single issue for determination is whether the plaintiff is the valid owner of the suit properties and entitled to protection
 13. In dealing with this issue, it is paramount in the analysis and determination to address the relevant legal framework and prevailing jurisprudence. The grants issued to the deceased plaintiff were governed by the Registration of Titles Act (repealed). Section 23(1) of the said Act provides as follows:
 - “(1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”
 14. As for protection and impeachment of title documents over land, the prevalent law is found in Article 40 (1) and (6) of *the Constitution*. These provisions restrict legal protection to property that has been lawfully acquired and owned. According to these Sub-Articles, every person has the right, whether individually or in association with others, to acquire and own property within Kenya. Statutorily, Sections 24 and 25 of the *Land Registration Act* acknowledge the registered owner as the absolute owner of the land and provides protection under Section 24. However, a title document may be impeached on various grounds outlined in Section 26 of the Act, including fraud.
 15. Moreover, it is well-established law that fraudulent, illegal, and irregular conduct must be specifically pleaded as required by Order 2 Rule 4 of the Civil Procedure Rules and proved with a standard of proof higher than the balance of probabilities but less than proof beyond a reasonable doubt. In the instant case, the defendant's defence did not meet the legal threshold by failing to particularise fraud



and misrepresentation. In any case, since they did not testify, the allegations in the defence remained mere assertions, unsubstantiated.

16. As to the procedure for allotment of unalienated government land, the Supreme Court of Kenya in the decision of *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR), affirmed the well-cited decision of *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR), and held: -

“Where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. It was the instrument that was in challenge, and therefore, the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal, and free from any encumbrance, including interests which would not be noted in the register...Under the repealed Government Lands Act (GLA), a PDP had to be drawn and approved by the Commissioner of Lands or the Minister for Lands before any unalienated Government land could be allocated. After a PDP had been drawn, a letter of allotment based on the approved PDP was then issued to the allottees. It was only after the issuance of the letter of allotment and the compliance with the terms therein that a cadastral survey could be conducted for the issuance of a certificate of lease.” Emphasis added

As for subsequent allotments following a prior allotment, the decision of *Republic v City Council of Nairobi & 3 others* [2014] KEHC 4597 (KLR), which was relied upon by the deceased plaintiff, stated as follows: -

“As was held by Warsame, J (as he then was) *Rukaya Ali Mohamed vs. David Gikonyo Nambacha & Another* Kisumu HCCA No. 9 of 2004 once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

As for the intersect of public and private land, the decision of *Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR) that has been relied upon by the plaintiff stated thus: -

“Further this court in *Torino Enterprises Limited v hon Attorney General*, SC Petition No 5(E006) of 2022; [2023] KESC 79 (KLR) pronounced itself on what constitutes public and private land. We held at paragraph 55 of that judgment that, once an individual or entity acquires any unalienated government land, or other land for that matter, consequent upon registration of title, in accordance with the provisions of the applicable law, such land transmutes from public to private land. We also noted that such land is as a consequence, removed from the ambit and confines of the GLA to the new legal regime conferring title to an entity other than the government and on such terms as shall be inscribed on the new title. It follows therefore that the subject suit parcels, being land that was at the time private property vested in Lonrho Agribusiness did not fall within the category of ‘unalienated government land’ envisaged under the GLA and former President Moi had no legal capacity



and authority to allocate or confer any legitimate interest in the subject suit parcels to members of Sirikwa or any other entity.”

17. In the present case, the deceased plaintiff made considerable efforts to elucidate the origin of his title, supported by pertinent documents, which ultimately resulted in the issuance of title documents for the suit properties in his favour. This court is satisfied with these unchallenged documents. These title documents have neither been cancelled by a court order or otherwise nor have they been subjected to compulsory acquisition as contemplated under Article 40 of our Constitution.
18. The legal effect of these title documents is that upon conversion of the suit properties at that time from unalienated government land to alienated government land, with the consequence that the suit properties became private property, it could only be acquired by the defendants as government entities under the legal framework of compulsory acquisition. Thus, this made the suit properties unavailable for subsequent allotment and alienation by the Commissioner of Lands, the President of Kenya, or the National Land Commission, as the case may be.
19. Once the allotment letters were issued, accepted, and transfers were made to the deceased plaintiff by the allottees who subsequently fulfilled all the pertinent conditions specified, the suit properties were no longer available for further allotment to the defendants. These letters of allotment and the eventual issuance of grants to the deceased plaintiff conferred upon him an absolute right of ownership or proprietorship over the suit properties, unless the allotting authority challenged them, or if the allotment was obtained through fraud, mistake, misrepresentation, or was outright illegal or against public interest, or if they were compulsorily acquired upon following the legal process.
20. Absent these, this court therefore finds that the deceased plaintiff holds valid title documents to the suit properties. It also finds that he is entitled to protection by this court. It also finds that the defendants have alienated the suit properties by fencing them off, which this court finds are illegal and void ab initio. Ultimately, this court finds that the deceased plaintiff has proved his case on a balance of probabilities and is entitled to the reliefs sought. Since it is trite law that costs follow the event, costs are awarded to the deceased plaintiff. In the end, the following final disposal orders are hereby issued: -
 - a. A declaration be and is hereby issued that the Estate of Francis Arithi Mworira (deceased) is entitled to the exclusive, unimpeded right of possession and occupation of all the suit properties known as L.R. No. 21990 (IR No. 72055) and L.R. No. 21991 (IR No. 72054), and that the defendants are accordingly trespassers on the same.
 - b. That a permanent injunction is hereby issued against the defendants, whether by themselves, their agents, servants, employees and/or representatives, stopping them from trespassing on L.R. No. 21990 (IR No. 72055) and L.R. No. 21991 (IR No. 72054), or interfering with the suit properties in any manner whatsoever.
 - c. The costs of the suit are awarded to the plaintiff, which the defendants shall bear.

Judgment accordingly

DELIVERED AND DATED AT MACHAKOS THIS 10TH DAY OF FEBRUARY, 2026.

HON. A. Y. KOROSS

JUDGE

02.2026

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform



In the presence of;

Ms Kanja Court Assistant.

Mr. Waudu for Plaintiff.

No appearance for Defendant.

