

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC LAND CASE NO. E025 OF 2025

JOSEPH ROBINSON NJOGU GIKEBE.....

PLAINTIFF

VERSUS

RARRE GROUP FARMERS LIMITED.....1ST

DEFENDANT

JOSEPH MUITA MBERAI.....2ND

DEFENDANT

JERIOTH NJERI THEURI.....3RD DEFENDANT

NAIVASHA LAND REGISTRAR.....4TH

DEFENDANT

ATTORNEY GENERAL.....5TH

DEFENDANT

JUDGEMENT

1. Vide an Amended Complaint dated 11th January 2026, the Plaintiff herein sought for the following orders:

- i. A declaration that the Plaintiff is the real, lawful and Bona fide purchaser of Longonot/Kijabe Block 4/317 (RARE) previously known as Plot No. 103 Rare.
- ii. The Land Registrar Naivasha be ordered to rectify the Register by cancelling and/or amending the registration of the title deeds issued to the 2nd and 3rd Defendants in respect to Longonot/Kijabe Block 4/317 (RARE) previously known as Plot No. 103 Rare since they were obtained by fraud.
- iii. The Land Registrar Naivasha be ordered to expunge the names of the 2nd and 3rd Defendants from the register.
- iv. The Land Registrar Naivasha be ordered to enter the Plaintiff's name in the register and issues him with a title deed in respect of Longonot/Kijabe Block 4/317 (RARE) previously known as Plot No. 103 Rare.
- v. A permanent injunction do issue restraining the Defendants

by themselves and/or their servants, officers, workmen, employees and agents or any other person from occupying, using, selling, leasing, transferring, charging, pledging, alienating, tampering with, altering or otherwise howsoever dealing with the property known as Longonot/Kijabe Block 4/317 (RARE) previously known as Plot No. 103 Rare.

- vi. The Defendants be condemned to pay the costs of the suit.
2. Despite service of Pleadings upon the Defendants, including through substituted service, they neither entered an appearance nor filed any Defence. Subsequently, Judgment was entered against them and thereafter the matter proceeded for formal proof hearing on 17th November 2025 wherein Joseph Robinson Njogu Gikebe, the Plaintiff herein, adopted his Witness Statement dated 5th May 2025 as his evidence in chief and then testified as PW1 to the effect that his uncle called Daniel W. Ikuu borrowed money from ICD bank, presently KDC (Kenya Development Co-corporation).
3. That, however, he could not service the said loan, and when the said land was about to be auctioned, he had asked him to bail him out (because he had given his land in Limuru as collateral) and in return he offered him his shares with RARE Group Farmers (1st Defendant herein) hence he got the title from ICDC and gave it to him. That they entered into an agreement with his uncle, who was to transfer his 1 (one) share in RARE to him. The land measured 14 acres for the share, for which he had paid Kshs.3,050/= and had been allocated land parcel No. Kingonot/Kijabe Block 4/317 (RARE).
4. That they both visited the office where RARE Company carried out its business, wherein his uncle had written a letter asking them to transfer the land to him (Plaintiff). They then presented themselves to the company on 3rd February 1994 for the transfer of the shares, but the transfer did not take place, and the company took no action. What followed next was a back and forth until the year 2004, when his uncle passed away.
5. Thereafter, around 28th September 2020, he visited the RARE office for the transfer of the shares. He executed a document and was asked to pay the transfer fee to process the title. After paying Kshs.8,000/= for the transfer, the RARE office gave him the transfer and LCB consent, after which he went to the Land Registrar, Naivasha, to pick up his title.
6. On arrival, he had been informed to ask the chairman of the company to

visit the land Registry so as to amend the register by replacing his uncle's name with his name, so he could be given a title.

7. The said chairman did not present himself, and it had been in December 2024, upon visiting the land registry again, that he discovered that the land had been transferred to the 2nd Defendant, allegedly by his deceased uncle in the year 2008, which was 4 years after his uncle had long passed away.
8. That he conducted an official search of the land on 1st April 2025, which search had revealed that the land had been transferred from RARE to the 2nd Defendant, who subsequently transferred it to the 3rd Defendant. That subsequently, he had registered a caution on the land. He then proceeded to produce the documents filed in his list on 5th May 2025 as follows:
 - i. Land sale Agreement dated 21st September 1992 as Pf exh.1
 - ii. Cheque paid to ICDC as Pf exh.2.
 - iii. A letter dated 16th May 2007 as Pf exh.3.
 - iv. His uncle's letter dated 3rd February 1994 as Pf exhi.4.
 - v. A receipt issued by Family Bank for the payment of the transfer and title deed made on 28th September 2020 as Pf exh.5.
 - vi. A letter dated 7th September 2020, addressed to RARE Group Company advising them to transfer the shares of Daniel to himself, as Pf exh.6.
 - vii. A letter dated 19th September 20(sic), which had been written by the area Chief for the children of the late Daniel, consenting that the transfer should be done as Pf exh.7.
 - viii. A letter by the area Chief to the Chairman of the RARE Group asking them to assist him in transferring the land as Pf exh.8
 - ix. copies of the deceased's children's ID Cards, as Pf exh. 9(a-f).
9. He explained that the said IDs were required by the chief to identify the said children of his late uncle, who sold the parcel of land to him.
 - x. a demand letter dated 21st September 2020 to the Chairman of RARE as Pf exh. 10.
10. His evidence had been that after he had delivered the demand letter, the Chairman of RARE issued him a transfer letter of the land to assist him in getting a transfer of the land from the Land Registry. He produced the said

Transfer of land from RARE to his name as Pf exh. 11.

11. He also produced the consent from the Land Control Board (LCB), for the whole block as Pf exh.12.
12. He also produced a letter from RARE Farmers Ltd dated 27th March 2025 addressed to the DCIO office in Naivasha as Pf exh 13, stating that after he had discovered that his land had been fraudulently taken, he had visited the County Commissioner in Mai Mahiu, who had advised him to lodge a caution and visit the DCIO to report. Accordingly, he had lodged a caution on 23rd December 2024, after which he had reported the matter to the DCIO. The caution had been placed on the land on 10th January 2025. The Chairman also confirmed that the land which was in the name of Daniel, had been transferred to him and that he was the owner since even Daniel's children had written a letter to that effect.
13. That on the 27th March 2025, his advocate conducted a search on the land which showed that on 10th March 2008, the 1st Defendant had issued a title deed to Daniel Ikua, who had since passed away on 26th June 2004. That the same deceased had purportedly then sold the land on 30th July 2010 to Joseph Mwita, the 2nd Defendant, whom he did not know. The search had further revealed that the 2nd Defendants had also allegedly sold the land to the 3rd Defendant on 16th November 2015. That he did not know these persons. He produced a green card as Pf exh 14.
14. That through the suit, he sought the court's assistance as per his prayers in the Plaint herein. That he wanted the land registered in his name and all subsequent titles issued to be cancelled because they were fraudulent. He also sought that the land Registrar be compelled to rectify the land register to remove the names therein and have them replaced with his name and thereafter an injunction be issued restraining the defendants from interfering with the land. Finally, he sought for the costs of the suit.
15. When he was examined by the Court, he confirmed that there was no one on the land. That no cultivation was ongoing and that the land was bare land at the moment.
16. PW2, Teresia Wahu Ngángá, informed the court that she was 66 years old, a farmer living in Kimende and that the Plaintiff was her cousin. She confirmed that the suit land was her land. That her father, who passed away in the year 2004, was known as Daniel Ikua. The suit land is known as

Longonot/Kijabe Block 4/317 (RARE), measuring 14 acres. That her father was a shareholder of RARE Longonot Farmers Ltd and had taken a loan, although she could not remember from whom. She confirmed that her father had entered into an agreement with the Plaintiff to sell and transfer to him the land because it was his property.

17. That subsequently her father wrote to the Chairman RARE asking him to transfer the land to the Plaintiff herein because he had helped him to pay the loan, which was in relation to a different land in Ndiya. However, it took 10 years without the land being transferred, during which time her father passed away. That after her father had died, the land was allegedly sold two years later to subsequent buyers but she did not know who had sold the same. That at the beginning, the land was in her father's name but it was to be registered to the Plaintiff's name.
18. When she was examined by the court, she stated that she did not know where the land was. That they had nothing against Plaintiff since he did not owe them anything with respect to the land. She confirmed that her siblings were also present in court.
19. The Plaintiff closed his case and filed Written Submissions dated 22nd December 2025 in which he submitted that he had proved his case against the Defendants, jointly and severally on a balance of probabilities having adduced both oral and documentary evidence to support his case and calling one witness to testify on his behalf.
20. He reiterated the evidence adduced in court as to how he had helped his uncle Daniel Wandiba Ikua (Deceased) to pay the loan to the ICDC leading to the discharge of charge over the deceased's parcel of land in Ndeiya/Ndeiya/596 on 5th July 1994. That, indeed, he had produced evidence of the payment made in relation to the loan to ICDC, which had been made with an understanding that the suit land would be transferred to him in due course.
21. He also reiterated how the deceased had written a letter to the chairman of RARE to transfer the suit land to him and how the Plaintiff's effort to have the same transferred to him had been in vain. It was only after he obtained a copy of the green card through his advocate that he realised several transactions had been undertaken between 2006 and 2016, allegedly by or for the deceased several years after his demise, in 2004.

22. That clearly, the various records at the Naivasha lands office had fraudulently been obtained, hence the resultant titles were tainted with illegalities. That he had even referred the matter to the police, wherein the Chairman of the 1st Defendant confirmed that he was the bona fide owner of the suit land. Further, PW2, the deceased's daughter, had also confirmed that he had helped her deceased father clear the loan, and that the deceased's family was aware of the transaction and had no objection to his registration as the owner of the suit land. Furthermore, she confirmed that, as the Deceased's children, they had visited the chief at Ndeiya and signed a document stating that they knew their father had sold the suit land to the Plaintiff.
23. His submission was that the Plaintiff's evidence in totality had shown that he was the real, lawful and bona fide purchaser of title number Longonot/Kijabe Block 4/317 (RARE). He thus prayed that judgment and the orders prayed for in the Plaint be granted.

Determination.

24. I have duly considered the evidence adduced before the court by the Plaintiff and find that the same was believable as it was backed by genuine documents and was not contested by the Defendants, who neither entered an appearance nor participated in the proceedings despite service.
25. The Plaintiff, Joseph Robinson Njogu Gikebe, through an Amended Plaint of 11th January 2026, sought the court's declaration that he is the lawful owner of the suit property namely, Longonot/Kijabe Block 4/317 (RARE) for which he requested the court to, cancel the titles held by the 2nd and 3rd Defendants, alleging they were obtained through fraud. He then sought an order directing the Land Registrar to expunge the Defendants' names from the register and replace them with his name. Lastly, he sought a permanent injunction restraining the Defendants from any further dealings with the land.
26. In his testimony, he gave evidence that in an agreement of 1992-1994, his uncle, Daniel W. Ikua (now deceased), faced an auction of his collateral in Limuru due to an unpaid ICDC loan. The Plaintiff bailed him out by paying the loan and in exchange, his uncle agreed to transfer his 14-acre share in RARE Group Farmers (the 1st Defendant) to him.

27. That despite his uncle having written a letter in 1994 requesting the transfer, the RARE company did not finalize the process, whereby, unfortunately, his uncle passed away in June 2004 before the completion.
28. That after paying the transfer fees in the year 2020 and visiting the Land Registry in late 2024, he (Plaintiff) discovered the land had been transferred to the 2nd Defendant in 2008, (which was four years after his uncle's death), who had then sold it to the 3rd Defendant in the year 2015.
29. The Plaintiff produced 14 exhibits, including the 1992 sale agreement, proof of loan payment to ICDC, the uncle's 1994 transfer request, and a search showing the fraudulent timeline among the documents mentioned above, in support of his case.
30. He called (PW2): Teresia Wahu Ng'ang'a, the deceased's daughter, as his witness, who confirmed that the family recognized the Plaintiff as the rightful owner of the suit land to which they had no claim, because he had saved their father's other property from auction.
31. The evidence adduced was that the land was currently bare and unoccupied and that the RARE Group Chairman had reportedly confirmed to the police (DCIO) that the Plaintiff was the bona fide owner after he had made a report of the fraudulent transaction. The Plaintiff contended that, because the initial transfer to the 2nd Defendant occurred years after the original owner's death, the resulting titles were tainted by illegality and fraud, rendering them null and void.
32. The issues that come out clearly for determination are as follows.
 - i. Whether the Plaintiff was a lawful and Bona fide purchaser of Longonot/Kijabe Block 4/317 (RARE) previously known as Plot No. 103 Rare for which the title in the names of the 2nd and 3rd Defendants should be cancelled and the register amended to declare him as the proprietor of the suit land, and he be issued with a title in his name.
 - ii. Who should pay the cost of the suit?
33. On the first issue for determination, having pleaded fraud and illegality on the part of the 2nd Defendant in the manner in which he had obtained the suit land, the onus was on the Plaintiff to prove those allegations. Fraud is a

serious matter which must be proved to the required standard. In **R.G Patel vs Lalji Makanji 1957 E.A 314**, the Court of Appeal stated as follows:

“Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.

34. Section 26 (1) of the Land Registration Act of 2012 also provides as follows:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon 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.

35. It was held in the case of **Republic vs Senior Registrar of Titles Ex parte Brookside Court Limited (2012) eKLR**, that statutorily, the sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the Land Registration Act. The court is also aware of the attribute of Section 26(1) (a) and (b) of the Land Registration Act, which provides that a Title to land shall not be absolute and indefeasible because it can be impeached where it is shown to have been obtained through fraud, misrepresentation, illegally, un-procedurally or through a corrupt scheme.

36. In the Plaintiff filed before the trial court, the Plaintiff had challenged the 2nd and 3rd Defendant’s title to the effect that it had been obtained fraudulently and therefore sought that it be cancelled and the same be registered in his name. Now, since the Title was challenged, the Plaintiff had

to lead evidence, according to Section 26 of the Land Registration Act, to prove that the said title was acquired unlawfully.

37. Indeed, where the registered proprietor's root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership; 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.

38. The Court of Appeal in the case of **Jacob Wekesa Bokoko Balongo vs. Kincho Olokio Adeya & another [2020] eKLR** held as follows:

*“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant's title to the suit land was indefeasible... In the persuasive case of **Fahiye & 2 others - v- Omar & 4 others [2014] 2KLR, 224**, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In **Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (OS))**, it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of **Champaklal Ramji Shah & 3 Anors -v- AG & Anor, HCCC No. 145 of 1997**, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”*

39. The Plaintiff provided sufficient documentary evidence (Pf exh. 1-8) proving that there had been a valid contract and consideration between him and his deceased uncle, who was a Member of the RARE Group Farmers Limited and who had offered him his shares in the Company in exchange of him offsetting a loan he had with ICDC so as to save his collateral in Limuru which was in danger of being auctioned. The testimony of the Deceased's daughter (PW2) further solidifies the Plaintiff's equitable interest in the land.
40. The Plaintiff further adduced glaring evidence of fraud when he produced the Green Card to the suit land as Pf exh 14, which clearly showed that on 10th March 2008, the 1st Defendant had issued a title deed to Daniel Ikuu, who had since passed away on 26th June 2004. That the same deceased had purportedly then sold the land on 30th July 2010 to Joseph Mwita, the 2nd Defendant who then sold the land to the 3rd Defendant on 16th November 2015. It is trite that a dead man cannot sign a transfer instrument and, therefore, any transfer purportedly executed by a deceased person is a forgery, a nullity, and cannot confer a valid title.
41. The Supreme Court's finding in **Dina Management Limited vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** was to the effect that .

“Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of the Constitution. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.”

42. Having found that the root of the 2nd Defendant's title was fraudulent, the 3rd Defendant's title—regardless of whether they were an innocent purchaser, I find, was equally tainted and cannot be sustained under the principle of nemo dat quod non habet (no one gives what they do not have).
43. Section 80 (1) of the Land Registration Act provides that:-

“Subject to sub Section (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.”

44. From the above provisions, it is clear that the court has powers to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake. There having been sufficient evidence adduced as earlier stated in support of the Plaintiffs’ claim to impugn the Defendants’ titles, I find that the original title must be restored to the Plaintiff in line with the maxim *fraus omnia corrumpit* (Fraud unravels everything).

45. That being the case, I find that the Plaintiff has proved his case on a balance of probabilities, and is entitled to the prayers sought in the Plaint. I thus enter judgment for him against the Defendants in the following terms:

- i. A declaration is hereby issued that the Plaintiff is the real, lawful, and bona fide purchaser of Longonot/Kijabe Block 4/317 (RARE).
- ii. An order is hereby issued directing the Land Registrar, Naivasha, to rectify the register by cancelling the registration of the 2nd and 3rd Defendants within 30 days of this Judgement, register the Plaintiff as the absolute proprietor of the Suit Property and issue him with a Title Deed accordingly.
- iii. A permanent injunction is issued restraining the Defendants, their agents, or servants from interfering with the Plaintiff’s possession or dealing with the land in any manner.
- iv. Costs of this suit are awarded to the Plaintiff at a lower scale since it was undefended.

Dated and delivered via Microsoft Teams at Naivasha, this 26th day of February 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE