

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E204 OF 2021

RAHIL INTERNATIONAL LIMITED

PLAINTIFF

VERSUS

ERIC AGBEKO 1ST

DEFENDANT

CHIEF LANDS REGISTRAR NAIROBI 2ND

DEFENDANT

JUDGEMENT

1. The Plaintiff commenced this suit by way of a plaint dated 4th June 2021. It averred that it is the registered owner of the parcel of land known as **IR 49556 LR No. 209/10801**, Nairobi, hereinafter referred to as the 'suit land'. Further, that in 2021, it discovered that the 1st Defendant had fraudulently caused itself to be registered as the owner and

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Judgement

was in the process of selling the suit land to Palm Terraces Limited, when the Plaintiff uncovered the fraud. It seeks judgment against the Defendants for:

- i. A declaration that the Plaintiff is the lawful and bonafide owner of the parcel of land known as IR 49556 LR No. 209/10801 Nairobi.**
- ii. A declaration that the title of the property known as IR 49556 LR 209/10801 Nairobi in the name of the 1st Defendant was acquired fraudulently and is therefore null and void.**
- iii. A permanent injunction against the 1st Defendant, his servants, agents, employees or any other person or individual acting on his instructions and any other third party whatsoever restraining them from trespassing, interfering with or dealing with the parcel of land known as IR 49556 LR No. 209/10801 Nairobi in any manner whatsoever.**
- iv. A mandatory injunction compelling the 2nd Defendant to cancel and nullify the transfer and**

registration of all that parcel of land known as IR 49556 LR No. 209/10801 Nairobi to the 1st Defendant.

v. A mandatory injunction compelling the 2nd Defendant to correct and rectify the register by cancelling the transfer and registration of the parcel of land known as IR 49556 LR No. 209/10801 Nairobi in the names of the 1st Defendant and causing the register to reflect the owner of the parcel as Rahil International Limited.

vi. Costs of this suit.

2. Despite being served with summons and pleadings herein, the 1st Defendant did not file a defence.
3. The 2nd Defendant filed a statement of defence in which it denied allegations levelled against it and averred that if it registered any transaction, the same was done in accordance with statute and upon presentation of the proper documents by the registered proprietor(s) and that it executed its mandate in good faith.

4. The matter proceeded for hearing where the plaintiff called one witness but the 2nd Defendant did not have a witness.

Evidence of the Plaintiff

5. PW1 was Dhanji Manji Ravji, a director of the Plaintiff. He testified that on 14th December 2006, the Plaintiff entered into a sale agreement for the purchase of **IR 49556 LR No. 209/10801** from Mzuri Properties Limited at a cost of Kshs.20 million. Further, that a transfer was then executed on 22nd July 2008 and registered on 29th July 2008, after which the Plaintiff took possession.
6. He claimed that on 30th March 2021, the Plaintiff received a letter from the firm of messrs Munyao, Muthama & Kashindi Advocates stating that their client, Palm Terraces Limited was interested in purchasing the suit land from the 1st Defendant, who was posing as the registered owner and had forwarded to it a copy of title together with an official search dated 22nd October 2020, which bore the 1st Defendant as

owner. He explained that a subsequent search dated 4th March 2021 reflected the Plaintiff as owner, while a third search dated 11th March 2021 reflected the 1st Defendant as owner of suit land.

7. He averred that being that the suit land has never been sold by the Plaintiff to anyone, the certificate of title held by the 1st Defendant was acquired illegally, unprocedurally and through a corrupt scheme.
8. He produced the Plaintiff's list and bundle of documents dated 4th June 2021 as P. Exhibits 1-9.
9. In cross-examination, PW1 reiterated his evidence in chief and stated that it was in possession of the suit land and had even excavated it. Further, that it has paid land rates until 2017.

Submissions

- 10.** The Plaintiff submitted that it is entitled to the orders sought as it acquired title to the suit land through a legitimate conveyancing process and has consistently complied with its obligations as a registered proprietor, including the settlement of all statutory outgoing and there is no evidence that it was party to any fraud, misrepresentation, or illegality in acquiring its title.
- 11.** Further, that registration of the 1st Defendant as proprietor of the suit land was illegal since it had never alienated it, to the 1st Defendant.
- 12.** It was also submitted that the 2nd Defendant had a statutory obligation under Sections 9, 14 and 79 of the Land Registration Act to safeguard the integrity of the Land Register and to prevent double registration. Further, that official searches dated 22nd October 2020, 4th March 2021 and 11th March 2021 respectively, expose glaring inconsistencies within the Lands Registry, being that ownership was alternating between the 1st Defendant and

itself. It insisted that the 2nd Defendant was acting in cahoots with the 1st Defendant since it refused to maintain the integrity of the Land Register, to ensure that all registrations were lawfully effected, supported by genuine documentation and free from fraud. The Plaintiff also urged the Court to order rectification of the register by cancelling the 1st Defendant's registration pursuant to Section 80 (1) of the Land Registration Act.

- 13.** To buttress its averments, the Plaintiff relied on the following decisions: **Arthi Highway Developers V West End Butchery Limited & Others [2015] eKLR; Elijah Makeri Nyangwara v Stephen Mungai Njuguna & another [2013] eKLR; and Kenya Anti-Corruption Commission v Online Enterprises Limited & 4 others [2019] eKLR.**

Analysis and Determination

14. Upon consideration of the Plaintiff, 2nd Defendant's Statement of Defence, testimony of the witness, exhibits and submissions, the following are the issues for determination:

- **Who between the Plaintiff and the 1st Defendant is the lawful owner of the suit land?**
- **Which of the competing titles held by the parties should be nullified?**
- **Whether the Plaintiff is entitled to the Orders as sought in the Plaintiff.**

15. The parcel in contention is **IR 49556 LR No. 209/10801.**

The Plaintiff produced a title issued under the Registration of Titles Act (repealed) indicating that it was registered as owner of the said suit land on 29th July 2008 pursuant to a transfer from Mzuri Properties Limited. The Plaintiff further confirmed payment of land rates until 2017. On the other hand, a letter from messrs Munyao Muthama & Kashindi Advocates addressed to the Plaintiff indicated that the 1st Defendant was posing as the registered owner of the suit

land and had intended to sell it to their client, Palm Terraces Limited.

16. Three separate official searches were conducted on diverse dates being 22nd October, 2020, 4th March, 2021 and 11th March, 2021, but because they were glaring inconsistencies as they revealed both the Plaintiff and 1st Defendant as owners, the Plaintiff contends that this demonstrates serious irregularities in the Land Register and failure to detect and prevent them, amounts to gross negligence on the part of the 2nd Defendant. Insofar as the 2nd Defendant denied allegations levelled against him and insisted that he relied on the documents presented to him to register the land, I opine that he owed a duty of care to the Plaintiff since he is the custodian of land records hence he cannot attempt to escape responsibility or liability for interfering with the land records in respect to the title to said suit land.

17. The Plaintiff's evidence was not controverted as the 1st

Defendant failed to enter appearance or file a defence.

Further, the 2nd Defendant despite filing a Defence did not tender any evidence to controvert the Plaintiff's averments. However, even where a suit is unopposed, the Plaintiff still bears the burden to prove his case. In **Gichinga Kibutha v Caroline Nduku [2018] eKLR**, the Court stated as follows:

“It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

18. Under Sections 24 and 25 of the Land Registration Act, registration confers absolute ownership to a proprietor of land. The Plaintiff testified that it never transferred or alienated the suit land to the 1st Defendant yet the 1st Defendant purportedly also holds a title to the same parcel but as mentioned earlier, it did not tender evidence to demonstrate the root of his title.

19. Section 26(1) (b) of the Land Registration Act provides that a title may be impeached if it was acquired illegally, unprocedurally, or through a corrupt scheme. It states that:

“26 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.”

20. In order to legally impeach a title therefore, a party would be required to demonstrate the root of the said title. The

Supreme Court held as follows in **Dina Management Limited v County Government of Mombasa & 5 others** [2023] KESC 30 (KLR):

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...”

21. On root of title, the Court of Appeal held as follows in the case of **Munyu Maina v Hiram Gathiha Maina** [2013] eKLR:

“We state that when a registered proprietor 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 would not be noted in the register.”

22. While in the case of **Alberta Mae Gacci v Attorney General & 4 Others (2006 (eKLR))**, the Court held that:

“Cursed should be the day when any crooks in the street of Nairobi or any town in this jurisdiction using forgery, deceit or any kind of fraud would acquire a legal and valid title deceitfully, snatched from a legal registered innocent proprietor. Indeed, cursed would be the day when such a crook would have a legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration....”

23. From the evidence tendered in Court while relying on the legal provisions cited and associating myself with the decisions quoted, I find that the Plaintiff is indeed entitled to the orders sought as it acquired title to the suit land through a legitimate conveyancing process and has complied with its obligations as a registered proprietor, including the settlement of all statutory outgoings. Further, there was no evidence tendered by any of the Defendants to confirm that

the Plaintiff was party to any fraud, misrepresentation, or illegality in acquiring its title. I opine that the Plaintiff indeed demonstrated that it is the registered proprietor of the suit land by proving the root of its title. In the foregoing, I will proceed and uphold the Plaintiff's title as its root is not fettered.

24. In my view, insofar as the 1st Defendant did not file a Defence, and since he failed to demonstrate, the root of his title, I find that his title was acquired illegally, unprocedurally and irregularly and should hence be cancelled in accordance with section 80 of the Land Registration Act which provides that:

“(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.”

Whether the Plaintiff is entitled to the Orders as sought in the Plaintiff.

25. In the circumstances, I find that the Plaintiff is indeed entitled to the Orders as sought in the Plaintiff.

26. It is against the foregoing that I find that the Plaintiff has proved his case on a balance of probability and will proceed to enter judgement in its favour in the following terms:

i. A declaration be and is hereby issued that the Plaintiff is the lawful and bonafide owner of the parcel of land known as IR 49556 LR No. 209/10801 Nairobi.

ii. A declaration be and is hereby issued that the title of the property known as IR 49556 LR 209/10801 Nairobi in the name of the 1st Defendant was acquired fraudulently and is therefore null and void.

- iii. A permanent injunction is hereby issued against the 1st Defendant, his servants, agents, employees or any other person or individual acting on his instructions and any other third party whatsoever restraining them from trespassing, interfering with or dealing with the parcel of land known as IR 49556 LR No. 209/10801 Nairobi in any manner whatsoever.**
- iv. A mandatory injunction is hereby issued compelling the 2nd Defendant to cancel and nullify the transfer and registration of all that parcel of land known as IR 49556 LR No. 209/10801 Nairobi to the 1st Defendant.**
- v. A mandatory injunction is hereby issued compelling the 2nd Defendant to correct and rectify the register by cancelling the transfer and registration of the parcel of land known as IR 49556 LR No. 209/10801 Nairobi in the names of the 1st Defendant and causing the register to reflect the owner of the parcel as Rahil International Limited.**
- vi. Costs of this suit is awarded to the Plaintiff.**

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
24TH DAY OF FEBRUARY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Wandati for Plaintiff

Ms Njuguna for 2nd Defendant

Court Assistant: Joan

ORIGINAL