



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC SUIT NO. E191 OF 2024

KAREN WAMBUI WAITI.....
.....PLAINTIFF

VERSUS

GITHUNGURI CONSTITUENCY RANCHING.....1ST
DEFENDANT

DAVIS GITHINJI MITHAMO.....2ND
DEFENDANT

DISTRICT LANDS REGISTRAR, RUIRU.....3RD
DEFENDANT

JUDGMENT

1. Vide a Plaint dated 12/11/2024 the Plaintiff filed a Plaint seeking the following orders:

- a) *An order directing the 3rd Defendant to cancel the Title to the suit property issued to the 2nd Defendant on 23rd September 2019.*
- b) *An order of specific performance compelling the 1st, 2nd & 3rd Defendants, or any of them as the case may be to take all steps and to execute all documents and forms necessary to vest the suit property, the said RUIRU/KIU BLOCK 2 (GITHUNGURI)/2467 within 30 days of*

judgment, or such other time as the Court may deem fit, to vest the property exclusively in the Plaintiff AND a default of the Defendants compliance herewith, the Deputy Registrar of this Court to take all steps, including, inter alia, execution of the transfer documents to vest the suit property in the Plaintiff, exclusively.

- c) An order of permanent injunction restraining the 1st and 2nd Defendant from trespassing or in any manner whatsoever interfering with the Plaintiff ownership and quiet peaceable enjoyment of the suit property, the said RUIRU/KIU BLOCK 2 (GITHUNGURI)/2467.*
 - d) Cost of this suit.*
 - e) Such other relief that this Honorable Court may deem fit to grant.*
2. Despite having been served by substituted service vide The Standard Newspaper dated 10/04/2025, the 2nd Defendant did not file any response and neither did the 3rd Defendant. Only the 1st Defendant filed a Statement of Defence dated 23/05/2025 and they were in support of the Plaintiff's case.
 3. They stated that the 2nd Defendant's documents were all manufactured and acquired illegally or obtained fraudulently hence any registration was void ab initio and any title to the land in favour of the 2nd Defendant is a nullity in law. Since the process of titling is done by the Company on the strength

of documents availed and there were documents brought forth by the 2nd Defendant.

4. According to the 1st Defendant there was fraud by the 2nd and 3rd Defendants which has been particularized at paragraph 9 of the Statement of Defence. Therefore the 1st Defendant prays that the suit land do revert to the Plaintiff and the case against them be dismissed with costs to be paid by the 2nd Defendant.
5. The Court gave directions on hearing of the matter on 2/12/2025 at 11:00a.m and only the Plaintiff testified as PW1. The 1st Defendant stated that they are in support of the Plaintiff's case and they will support them.

Plaintiff's Case

6. The Plaintiff Karen Wambui Waiti, testified as PW1 and adopted her witness statement dated 12/11/2024 as her evidence in chief and her List of Documents of even date with 26 documents.
7. It was her testimony that she knows the 1st Defendant. She testified that she went to transfer her husband's land to herself upon his demise on 01/08/2020. That the land belongs to Wallace Muiruri who was her father-in-law the father to her deceased husband.
8. She told the Court that her mother-in-law took out Letters of Administration and when she died in 2006 the children took out Letters of Administration and they shared the land among themselves. So, when her husband passed on after

taking out Letters of Administration for her husband's Estate she decided to seek to have the suit property transferred to her as elaborated at page 22 of the trial bundle.

9. That all this time the suit property was not titled by the records at Githunguri Ranching Company. And when she visited their offices with Letters of Administration, she was given a Certificate from the 1st Defendant's office. According to her, her husband even before his death had a Certificate to the land as evidenced by the document at page 21.
10. She testified that she paid for transfer as shown at page 23-25 and she was given a Certificate which she had produced at page 26 which is in her name. Plus, a Clearance Certificate produced at page 47.
11. However, she told the Court that when she went to the Land Registry, she found the land was registered in the name of the 2nd Defendant as per letter produced at page 33 and the search produced at page 34. Her only prayer is that the Court gives her back her land.
12. Upon cross-examination by Counsel for the 1st Defendant Mr. Kanyi, she testified that she went to the offices of the 1st Defendant who recognized her and that is why they gave her the Clearance Certificate but that they told her that they did not know the 2nd Defendant.
13. With that the Plaintiff closed her case and the Court issued directions on filing of submissions. The Plaintiff filed

her submissions dated 30/12/2025 which I have considered in writing this decision.

Plaintiff's Submissions

14. The Plaintiff submissions outline the Plaintiff's legal argument for the recovery of a property that was allegedly registered in the name of the 2nd Defendant erroneously or illegally by the 3rd Defendant. In paragraph of the Plaint the Plaintiff has alleged fraud.
15. According to the Plaintiff, she submits that the suit is largely undefended. The 1st Defendant who originally managed the property supports the Plaintiff's case and chose not to call evidence. Further she submits that the 2nd Defendant the current registered owner failed to respond despite being served via substituted service. Yet the 3rd Defendant which is the Land Registrar of Ruiru, entered an appearance but filed no Defense.
- 16.** In her submissions she acknowledges that even in an undefended suit, they must still prove their case on a balance of probabilities as the Court stated in the case of **Imanyara v Attorney General Civil Appeal 98 of 2014) [2016] KECA 557 (KLR) (19 May 2016).**
17. It is her case and she submits that she provided extensive documentation Exhibits 1-26 to trace the legal devolution of the property over several decades lending credence to the Root of Title which supports the Chain of Ownership. In the case at hand, she submits that the original

owners are Wallace Muiruri (alias Munyingi Ng'ang'a) who upon death the property was passed to his wife, Penina Wairimu.

18. The second devolution of the suit property is when it passed to her son, James Waiti Muiruri, the Plaintiff's late husband. And the final devolution is when the Plaintiff acquired the property through **Succession Cause No. E346 of 2022** in Kiambu.
19. She has submitted that to support the formalization process she perfected the title by paying required fees to the 1st Defendant and received a Certificate of Ownership.
20. Further she submits that the 1st Defendant had instructed the 3rd Defendant, the Registrar to formally register the property in the Plaintiff's name. But the Plaintiff discovered that the 3rd Defendant had instead registered the property in the name of the 2nd Defendant. That the 1st Defendant is now assisting the Plaintiff in recovering the title.
21. She has relied on the decision of the Supreme Court in the case of **Dina Management Limited v County Government of Mombasa & 5 Others (2023) eKLR**, citing the "**Dina Management**" Principle and she argues that merely dangling a title deed is not enough. The **Dina Management** principle established by the Supreme Court states that when a title is challenged, the holder must prove the legality of the root of that title. That an innocent purchaser for value cannot claim protection if the original

title was obtained illegally or through irregular processes. The Principe mandates thorough due diligence, requiring buyers to verify the entire chain of title, not just rely on the register.

22. According to the Plaintiff, since the 2nd and 3rd Defendants offered no evidence, the Plaintiff's detailed history of the property remains uncontroverted and should be accepted by the Court.

23. Thus, the Plaintiff sums her submissions by requesting the Court to find that she has proved her case on a balance of probabilities and asks for all prayers in the Plaint to be granted, including costs of the suit.

Analysis and Final Disposition

24. The Plaintiff in the instant suit seeks to recover land that she inherited through a series of legal successions following the deaths of her father-in-law Wallace Muiruri, her mother-in-law Penina Wairimu and her husband James Waiti Muiruri. While the 1st Defendant recognizes the Plaintiff as the legitimate owner and issued her a Certificate of Ownership and Clearance, the 3rd Defendant registered the land in the name of the 2nd Defendant in 2019. The 2nd and 3rd Defendants did not defend the suit, while the 1st Defendant supports the Plaintiff, alleging that the 2nd Defendant's documents are fraudulent.

25. I have read and considered all the pleadings and the issues that commend themselves for determination are:

a) Whether the Plaintiff has established a valid "Root of Title" to the suit property.

b) Whether the registration of the suit property in the name of the 2nd Defendant was fraudulent, illegal, or void ab initio.

c) Whether the Plaintiff is entitled to the orders of cancellation of title, specific performance, and permanent injunction.

26. Under Kenyan Law, particularly the principle established in **Dina Management Ltd v County Government of Mombasa [supra]**, a party cannot rely solely on a title deed if the process of acquiring that title is challenged. They must prove the probity of the process.

27. The Plaintiff has provided a seamless documentary chain (**Exhibits 1-26**) tracing ownership from the original allottee to herself through **Kiambu Chief Magistrate Succession Cause No. E346 of 2022**. The 1st Defendant, who holds the primary records of allotment for this block, corroborated this history. I find that the Plaintiff has successfully proved a legitimate root of title.

28. The 1st Defendant testified that the 2nd Defendant is a stranger to their records and that any documents used to secure registration were manufactured. In **Munyu Maina - vs- Hiram Gathiha Maina (2013) eKLR** the Court of Appeal held that when a title is challenged, the holder must

go beyond the instrument and prove the legality of the acquisition.

29. The 2nd Defendant, despite being served via substituted service in *The Standard Newspaper*, chose not to enter appearance or file a Defense. In the absence of a rebuttal, and considering the 1st Defendant's admission of fraud in the registration process, this Court finds the 2nd Defendant's title to be a nullity. Section 26 of the **Land Registration Act** allows for the impeachment of a title if it was acquired through fraud or misrepresentation.

30. It is my considered view that the Plaintiff has met the standard of proof on a balance of probabilities. The evidence shows that the 3rd Defendant acted contrary to the 1st Defendant's records and the Plaintiff's established succession rights.

Final Determination

31. Judgment is hereby entered for the Plaintiff against the Defendants as follows:

a) An order is hereby issued directing the 3rd Defendant to cancel the Title to suit property RUIRU/KIU BLOCK 2 (GITHUNGURI)/2467 issued to the 2nd Defendant on 23/09/2019.

b) The 1st and 3rd Defendants are ordered to take all necessary steps to register the suit property in the exclusive name of the Plaintiff - Karen Wambui Waiti within 30 days. In default, the

Deputy Registrar of this Court is authorized to execute all necessary transfer documents.

c) A permanent injunction is issued restraining the 2nd Defendant by himself, his agents, or servants from trespassing, occupying or interfering with the Plaintiff's quiet enjoyment of the property.

d) The costs of this suit shall be borne by the 2nd Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 23RD DAY OF FEBRUARY, 2026.

.....
MOGENI J
JUDGE

In the presence of:-

.....for Plaintiff
.....for 1st Defendant
.....for 2nd Defendant
.....for 3rd Defendant
Melita..... Court Assistant

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MOGENI J
JUDGE

ORIGINAL