



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELC APPEAL NO. E011 OF 2025**

**MARY KAUMBI GITARI.....**  
**APPELLANT**

**VERSUS**

**JOHN KARANJA KINUTHIA.....1<sup>ST</sup>**  
**RESPONDENT**

**PETER MUTAHI WANDIA.....2<sup>ND</sup>**  
**RESPONDENT**

**LAND REGISTRAR RUIRU.....3<sup>RD</sup>**  
**RESPONDENT**

**HON. ATTORNEY GENERAL.....4<sup>TH</sup>**  
**RESPONDENT**

*(Being an Appeal from the Judgment of Hon. D. Milimu  
SRM delivered on 13/01/2025 at the CM's Court at Thika in  
MC ELC Case No. E083 OF 2022)*

**BETWEEN**

**MARY KAUMBI GITARI.....**  
**.....PLAINTIFF**

**VERSUS**

**JOHN KARANJA KINUTHIA .....1<sup>ST</sup>**  
**DEFENDANT**

**PETER MUTAHI WANDIA.....2<sup>ND</sup>**  
**DEFENDANT**

**LAND REGISTRAR RUIRU.....3<sup>RD</sup>**  
**DEFENDANT**

**HON. ATTORNEY GENERAL.....4<sup>TH</sup>**  
**DEFENDANT**

### **JUDGMENT**

1) The background to this Appeal is that the Plaintiff vide a Plaint dated 9/09/2022 sued the Defendants. The major dispute revolved around a piece of land known **RUIRU/MUGUTHA BLOCK 1/10577** which the 1<sup>st</sup> Respondent who was the 1<sup>st</sup> Defendant in the lower Court had sold to the Appellant vide an Agreement for Sale dated 19/01/2021. The suit property was transferred to her names and she was issued with a Title Deed. He was to retain the title until she pays the balance of the purchase price of Kesh 700,000.

2) According to the Plaint filed in the lower Court the Plaintiff sought the following:

**a) A declaration that the Plaintiff is the beneficial/registered owner of the suit property title number RUIRU/MUGUTHA BLOCK 1/10577 having bought the same for value from the 1<sup>st</sup> Defendant;**

**b) A mandatory order directed at the 2<sup>nd</sup> Defendant to transfer and release the original title relating**

**to suit property title number RUIRU/MUGUTHA BLOCK 1/10577 within 30 days of the Judgment being delivered;**

**c) That in the event the 2<sup>nd</sup> Defendant does not comply with the order in (b) above, the Deputy Registrar and/or the Executive Officer of this Honorable Court be authorized to sign the transfer forms and all the documents necessary to facilitate transfer of the suit property title number RUIRU/MUGUTHA BLOCK 1/10577 to the Plaintiff;**

**d) That in the event the 2<sup>nd</sup> Defendant does not comply with the order in (b) above, the Land Registrar, the third Defendant herein be ordered to cancel the title in respect of the suit property title number RUIRU/MUGUTHA BLOCK 1/10577 in the 2<sup>nd</sup> Defendant's possession. Further, the Land Registrar be ordered to dispense with the production of the said original title when transferring the suit property title number RUIRU/MUGUTHA BLOCK 1/10577 to the Plaintiff;**

**e) A prohibitory order directed at the Defendants not to interfere with the Plaintiff's quite and peaceful enjoyment of the suit property title number RUIRU/MUGUTHA BLOCK 1/10577;**

**f) That costs of this suit be awarded to the Plaintiff;**  
**g) That this Honorable Court does issue such further orders as it may deem fit and just to grant.**

- 3) It was the Plaintiff's evidence that she was given possession of the property upon paying Kesh 3,000,000 she had a balance of Kesh 700,000 which was to be paid within 1 year. It took her 4 years to pay the balance. She also testified that she did not produce an addendum agreement and the agreement signed earlier had a default clause.
- 4) She testified that she had no evidence to show that she communicated with the 1<sup>st</sup> Defendant on late payment of the balance. Further that she filed this suit a year later after discovering that the property had been sold to the 2<sup>nd</sup> Defendant. At the same time, she told the Court that the 1<sup>st</sup> Defendant did not communicate with her while transferring the land back to himself and therefore she stated they are all in breach of the Sale Agreement.
- 5) On his part the 1<sup>st</sup> Defendant did not dispute the fact that he entered into a Sale Agreement with the Appellant/Plaintiff for sale of **RUIRU/MUGUTHA BLOCK 1/10577** but she failed to pay the remainder of the purchase price within the 90 days period stipulated in the agreement.
- 6) That since the Plaintiff failed to communicate with him, he terminated the agreement on 28/12/2017. That whereas he received a letter from the Plaintiff with a promise to provide

a cheque of the balance, to date this has never been paid. He told the Court that he sold the suit property to the 2<sup>nd</sup> Defendant 5 years later after the Plaintiff frustrated the agreement after the property was transferred back to him on 11/11/2021.

7) In his evidence to Court the 2<sup>nd</sup> Defendant told the Court that he was the registered owner of **RUIRU/MUGUTHA BLOCK 1/10577.**

8) When the matter was brought before the Senior Resident Magistrate's Court Hon. D Milimu after listening to all the parties found for the 2<sup>nd</sup> Defendant and stated as follows:

***"In the end, this Court has made a determination that the 2<sup>nd</sup> Defendant is the registered owner of the suit property RUIRU/MUGUTHA BLOCK 1/10577 having purchased the same legally. The Plaintiff has not made a case to warrant the issuance of the orders being sought hence this suit is hereby dismissed with costs to the Defendants."***

9) Being aggrieved by the said Judgement, the Appellant filed the Memorandum of Appeal dated 28/01/2025 on the following grounds:-

1. **THAT** the learned trial Magistrate erred in law and in fact in disregarding and failing to evaluate and place the appropriate weight to the fundamental and crucial

evidence adduced by the Appellant. The resultant consequence being that the learned Magistrate erred in law and fact in dismissing the Appellant's claim against the colossal weight of relevant evidence that was placed before her by the Appellant.

2. **THAT** the learned trial Magistrate erred in law and in fact in failing to find that the Appellant is the undisputed sole, lawful and legal registered proprietor of the suit property comprised in the Title Number **RUIRU/MUGUTHA BLOCK 1/10577** having purchased the same from the 1<sup>st</sup> Defendant for value together with RUIRU/MUGUTHA BLOCK 1/10575 & RUIRU/MUGUTHA BLOCK 1/10576 via a single Agreement for Sale dated **19<sup>th</sup> January 2017** and subsequently, being registered and issued with title deeds as an absolute proprietor of each of the three parcels including the **suit property** on **27<sup>th</sup> February 2017**.

3. **THAT** the learned trial Magistrate erred in law and in fact in failing to find that the transfer of the suit property Title Number **RUIRU/MUGUTHA BLOCK 1/10577 (the "Suit Property")** back to the 1<sup>st</sup> Defendant on the **11<sup>th</sup> November, 2021** was unprocedural, unlawful and void since it was based on forged and fraudulent documents given that the

Plaintiff as the registered proprietor since **27<sup>th</sup> February, 2017** was not involved and did not sign any transfer or transaction documents to that effect.

4. **THAT** the learned trial Magistrate erred in law and in fact in failing to find that the subsequent transfer of the suit property Title Number **RUIRU/MUGUTHA BLOCK 1/10577** by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant on **8<sup>th</sup> December 2021** was incurably and fatally defective therefore unlawful, null and void since the 1<sup>st</sup> Defendant did not have a good title capable of being transferred having fraudulently acquired the said title through illegal transfer back to himself on 11<sup>th</sup> November 2021.
5. **THAT** the learned trial Magistrate erred in law and in fact in failing to find that the 2<sup>nd</sup> Defendant was not a *bonafide* purchaser for value without notice as he was always aware of the Plaintiff's proprietary rights to the suit property Title Number **RUIRU/MUGUTHA BLOCK 1/10577** prior to the commencement of the sale and purchase transaction with the 1<sup>st</sup> Defendant and throughout the said transaction.
6. **THAT** the learned trial Magistrate erred in law and in fact in failing to find that the 1<sup>st</sup> Defendant did not terminate the sale transaction with the Plaintiff in respect of the suit property Title Number

**RUIRU/MUGUTHA BLOCK 1/10577** and as such, lacked capacity to enter or entertain any other transaction over the same property which was then registered in the **name of the Plaintiff** since **27<sup>th</sup> February 2017.**

7. **THAT** the learned trial Magistrate erred in law and in fact in disregarding the fact that the 1<sup>st</sup> Respondent sold the suit property to the 2<sup>nd</sup> Respondent after he had been furnished with the then outstanding balance of the purchase price by the Appellant.
8. **THAT** the learned trial Magistrate erred in law and in fact in disregarding the fact that the payment of the balance of the purchase price was offered by the Appellant before the transaction was purportedly terminated or rescinded by the 1<sup>st</sup> Respondent allegedly on account of failure by the Appellant to pay the balance of purchase price.
9. **THAT** the learned trial Magistrate erred in law and fact by applying the wrong principles in determining uncontested facts regarding the validity and legality of the Appellant's title to the suit property Title Number **RUIRU/MUGUTHA BLOCK 1/10577** subject of the suit before her.
10. **THAT** the learned trial Magistrate erred in law and fact by taking into account oral statements that

she ought not to have taken into account in determining the matter before her. The learned Magistrate considered and placed undue weight on inadmissible evidence thereby prejudicing the Appellant.

11. **THAT** the learned trial Magistrate erred in law and in fact by acknowledging the fact that the 1<sup>st</sup> Respondent did not terminate or serve a termination notice upon the Appellant nor refunded the part-paid amount on account of purchase price for the Suit Property Title Number **RUIRU/MUGUTHA BLOCK 1/10577** but failed to address the consequences of failing to issue a termination notice and its dire impact on the transaction between the Appellant and the 1<sup>st</sup> Respondent.

12. **THAT** the learned trial Magistrate erred in law and in fact by acknowledging the fact that the 1<sup>st</sup> Respondent was either required to issue a termination notice or sue for specific performance which he never did but failed to address herself on the illegality of the method the 1<sup>st</sup> Respondent opted for by unilaterally transferring the suit property Title Number **RUIRU/MUGUTHA BLOCK 1/10577** back to himself **without** the Appellant's involvement at all or **a Court order** and subsequently selling and transferring the

suit property to the 2<sup>nd</sup> Respondent.

13. **THAT** the learned trial Magistrate erred in law and in fact in finding that the Appellant failed to prove allegations of fraud.

14. **THAT the** learned trial Magistrate erred in law and in fact in finding that the 2<sup>nd</sup> Respondent was a *bonafide* purchaser of the Suit Property for value without notice.

15. **THAT** the learned trial Magistrate erred in law and in fact in rewarding the 1<sup>st</sup> Respondent with an award of costs despite the fact that evidence of fraud and wrongdoing on his part was presented before the Honourable Court.

10) The Appellant is therefore seeking the following Orders from Court:

a) **THAT** the Appeal against the entire Judgment and Decree of Honourable D. Milimu delivered on 13<sup>th</sup> January 2025, in the **Thika MC.ELC. Case No. E083/2022**, be allowed.

b) **THAT** the Judgment and Decree of Honourable D. Milimu delivered on 13<sup>th</sup> January 2025, in the **Thika MC.ELC. Case No. E083/2022**, be set aside in their entirety.

c) **THAT** the costs of this Appeal and the costs of the Lower Court proceedings be borne by the

Respondents.

d) **THAT** any further or alternative relief and or order that this Honourable Court may deem fit and just to grant.

11) The Appeal was canvassed by way of written submissions.

### **Appellant's Submissions**

12) In her submissions, dated 16/09/2025, the Appellant stated that in January 2017, she purchased three parcels of land from the 1<sup>st</sup> Respondent for **Kshs. 3,600,000**. She paid the bulk of the price, leaving a balance of **Kshs. 700,000**.

13) All three titles including the suit property were registered in the Appellant's name. However, the 1<sup>st</sup> Respondent retained the original title for the suit property as security until the balance was paid. Due to financial constraints, the Appellant delayed paying the balance but eventually sent a Banker's Cheque on August 5, 2021.

14) However, despite receiving the payment, the 1<sup>st</sup> Respondent with the help of the 3<sup>rd</sup> Respondent/Registrar transferred the property back to himself on November 11, 2021, and then sold it to the 2<sup>nd</sup> Respondent on December 8, 2021.

15) The Appellant in her submissions argues that the 1<sup>st</sup> Respondent failed to follow the mandatory statutory procedures for rescinding a land contract. That Section 39 of

the Land Act, 2012 outlines the vendor's right to rescind a contract and resume possession if the purchaser is in breach. That Section 41 of the Land Act, 2012 mandates that a vendor must serve a formal notice on the purchaser, specifying the nature of the breach and giving at least 30 days to remedy it before rescinding.

- 16) At the same time, the LSK Conditions of Sale (2015) Clause 13.4 requires the issuance of a Completion Notice to make time of the essence before a party can rescind.
- 17) From her submissions, the Appellant relies on several authorities to prove that the transfer was illegal and that the 2<sup>nd</sup> Respondent was not an innocent buyer. Among these authorities is **Ruth Wanjiku Ng'ang'a v Teresia Wangui Ng'ang'a [2019] eKLR** which she used to show that a rescission is void if the mandatory Section 41 notice is not served via registered post or fails to specify the breach.
- 18) The case of **Anne Murambi v John Munyao Nyamu [2018] eKLR** is also quoted where in the submissions she shows that it establishes that a contract remains valid and enforceable if no formal rescission notice is served, even if the completion period has lapsed.
- 19) Further, the Appellant argues the 2<sup>nd</sup> Respondent fails this test of formal rescission because he had a copy of the title in the Appellant's name and knew of her interest. She refers to the case of **Katende v Haridar & Co. Ltd [2008]**

**2 E.A. 173** which sets the criteria for a *bona fide* purchaser. Another case referred to is the case of **Ratilal Patel v Lalji Makanji [1957] EAR 314** regarding the Standard of Proof for fraud, noting it must be strictly proved and requires something more than a balance of probabilities.

- 20) It is the contention of the Appellant that 1<sup>st</sup> Respondent never served a termination notice making the rescission illegal and therefore, the Sale Agreement was still alive when the Appellant tendered the final payment in August 2021.
- 21) According to the Appellant, she never signed transfer documents or applied for Land Control Board consent to transfer the land back to the 1<sup>st</sup> Respondent. That these documents were forged and the act was fraudulent.
- 22) Therefore, since the 1<sup>st</sup> Respondent acquired the title through fraud, he had no legal right to sell it to the 2<sup>nd</sup> Respondent as espoused in the maxim ***Nemo dat quod non habet.***
- 23) Further, that the 2<sup>nd</sup> Respondent conducted a search and saw the Appellant's name but proceeded to transact with the 1<sup>st</sup> Respondent thus, he cannot claim to be a bona fide purchaser without notice.
- 24) The Appellant thus requests the Court to set aside the Judgment of the trial Magistrate delivered on 13/01/2025 and hold that the transfer of the suit property back to the 1<sup>st</sup>

Respondent and subsequently to the 2<sup>nd</sup> Respondent was fraudulent and void, and award costs to the Appellant.

### **2<sup>nd</sup> Respondent's Submissions**

- 25) In response to the Appeal, the 2<sup>nd</sup> Respondent filed submissions on 22/09/2025, urging the Court to uphold the trial Court's Judgment. Their core argument is that they are an innocent third-party purchaser whose title is protected by law, regardless of the private contractual disputes between the Appellant and the 1<sup>st</sup> Respondent.
- 26) According to the 2<sup>nd</sup> Respondent, they argue that the Appellant failed to provide tangible evidence of fraud or collusion. That under Section 107 and 109 of the Evidence Act, the burden of proof lies with the Appellant, he who alleges must prove. They point out the lack of forensic reports for the alleged forgeries or police reports on the matter.
- 27) He asserts that they performed due diligence by conducting a search on the Green Card which showed the 1<sup>st</sup> Respondent as the registered owner. They argue that knowledge of a past transaction which the vendor claimed was lawfully rescinded does not equate to knowledge of fraud.
- 28) Further that under the Land Registration Act, registration vests absolute ownership. They contend that even if the 1<sup>st</sup> Respondent's acquisition of the title was

flawed, the 2<sup>nd</sup> Respondent's title remains valid because they were not party to any illegality.

29) The 2<sup>nd</sup> Respondent also raised the issue of privity of contract and argues that the dispute over the completion notice and Section 41 notices that the Appellant has raised in her submissions is strictly between the Appellant and the 1<sup>st</sup> Respondent making the matter *res inter alios acta* which dictates that transactions, contracts or acts between certain parties should not harm or benefit third parties who are not involved. The maxim establishes that a contract's obligations or actions do not bind strangers, and in evidence law, it often deems evidence from outside parties to be irrelevant to the immediate case. Therefore the 2<sup>nd</sup> Respondent contends, any breach should result in a claim for damages against the 1<sup>st</sup> Respondent and not cancellation of the 2<sup>nd</sup> Respondent's title.

30) The 2<sup>nd</sup> Respondent in his submissions relies on the Evidence Act Sections 107 and 109 which establishes that the Appellant bears the burden of proving the existence of fraud. Section 24 (a) of the Land Registration Act which vests absolute ownership and rights in the proprietor and finally Section 26(1) which establishes that a Certificate of Title is prima facie evidence of absolute ownership and can only be challenged if the proprietor is proved to be a party to fraud.

- 31) Some of the authorities referred to are **Sehmi v Tarabana Co. Ltd [2025] KESC** which defines innocence as exercising the diligence expected of a reasonable purchaser via reasonable inquiry. The other case referred to is the case of **Torino Enterprises Ltd v Attorney General [2023] KESC** which elaborates that a diligent purchaser must conduct a physical inspection to check for visible signs of occupation.
- 32) Further the other case referred to is **Katende v Haridar & Co. Ltd [2008] 2 E.A.** which provides the 7-step test for a bona fide purchaser who holds title, paid value, no knowledge of fraud and not a party to fraud. At the same time there is the case of **Elijah Makeri Nyangw'ara v Stephen Mungai [2013] eKLR** where the Court held that fraud must be pleaded specifically and proved to a higher standard than the balance of probabilities. And the case of **Ruai Central 54 Association v Paddy Kamau [2020] KEELC** which reaffirms that a purchaser's title is protected if there is no evidence they were involved in fraudulent registration.
- 33) The 2<sup>nd</sup> Respondent has concluded by asking the Court to dismiss the appeal for lack of merit and to affirm the trial Court's finding that the 2<sup>nd</sup> Respondent is a bona fide purchaser for value without notice and costs of the appeal to be paid by the Appellant.

## **Analysis and Determination**

34) The Court has perused the grounds set out in the Appellant's Memorandum of Appeal as well as the material on record. Although the Appellant raised 15 Grounds of Appeal, the Court is of the opinion that resolution of the following issues would effectively determine the appeal:

***a) Whether there was a valid rescission and the 1<sup>st</sup> Respondent legally terminated the 2017 agreement.***

***b) Whether the transfer from the Appellant back to the 1<sup>st</sup> Respondent was fraudulently done or a legal consequence of a breach.***

***c) Who pays the cost of the appeal?***

35) As a first Appellate Court, this Court is enjoined to relook at the evidence that was adduced before the trial Court afresh, analyse it, evaluate it and come to its own independent conclusion. However, the Court must revisit the evidence bearing in mind that it did not have the opportunity like the trial Court of seeing and hearing the witnesses first hand. Plus observing their demeanor for which allowance should be given as was stated in the case of **Seascapes Limited v Development Finance Company of Kenya Limited [2009] KLR 384** and in **Selle & Another v Associated Motor Boat Co. Ltd. & Others (1968) EA 123**.

- 36) The guiding parameters for this Court are therefore, on first Appeal; the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions; secondly, in reconsidering and re-evaluating the evidence, the first Appellate Court must bear in mind and give due allowance to the fact that the trial Court had the advantage of seeing and hearing the witnesses testify before her; and lastly it is not open to the first Appellate Court to review the findings of a trial Court simply because it would have reached different results if it were hearing the matter for the first time.
- 37) The Appellant argues that the 1<sup>st</sup> Respondent's failure to serve a **Section 41 Land Act** notice makes the re-acquisition of the land void.
- 38) In **Ruth Wanjiku Ng'ang'a v Teresia Wangui Ng'ang'a; Peter Njoroge Kagwima & 31 others (Interested Party) [2019] eKLR**, the Court held that statutory notices are mandatory. Without proof of service ideally via registered post, a vendor cannot unilaterally take back property already registered in the purchaser's name.
- 39) Whereas the Court in **Union Eagle Ltd v Golden Achievement Ltd [1997] UKPC**), observed that while time is of the essence clauses are strictly enforced, equity and statute often require a notice to complete before a contract is rescinded.

- 40) Although the 2<sup>nd</sup> Respondent correctly cites **Section 107 of the Evidence Act**, the Appellant relies on a higher standard than the balance of probabilities.
- 41) The case of **Ratilal Patel v Lalji Makanji [1957] EA** set the standard of fraud and stated that fraud must be strictly proven, but it is not on a beyond reasonable doubt basis. The fact that the Appellant still had the title deeds and never signed a transfer instrument is compelling circumstantial evidence of fraud.
- 42) Under the Torrens System used in Kenya, Australia, and Canada, fraud is one of the few ways to pierce the indefeasibility of a title.
- 43) This is the most contentious issue. The 2<sup>nd</sup> Respondent argues he relied on the Green Card which is a public record. The Appellant argues he was willfully blind since the 1<sup>st</sup> green card record showed the Appellant as the owner of the suit property. The 2<sup>nd</sup> Respondent states that he conducted a second search and now the green card showed that the 1<sup>st</sup> Defendant is the owner of the suit property. Yet this did not raise any alarm for the 2<sup>nd</sup> Respondent. In **Katende v Haridar & Co. Ltd [supra]**, the Court held that a purchaser must prove they had no notice of fraud.
- 44) In the case of **Sehmi & Another v Tarabana Company Limited [2025] KESC**, the Court emphasized that a purchaser cannot ignore red flags. If the 2<sup>nd</sup>

Respondent saw a title in the Appellant's name and was told a story by the vendor about a cancellation, his failure to contact the Appellant directly may constitute constructive notice. It is a key element in determining whether a purchaser is a bona fide purchaser for value without notice.

- 45) In the Canadian case of **United Trust Co. v. Dominion Stores Ltd. [1977] SCR**, the Court held that actual notice of a prior unregistered interest can defeat the protection of the land registry.
- 46) Conclusively therefore, the Appellant has alleged that the root of the 2<sup>nd</sup> Respondent's title was a nullity. That if the transfer back to the 1<sup>st</sup> Respondent was based on a forgery, then the 1<sup>st</sup> Respondent had no title to pass.
- 47) Based on the legal principles governing Kenyan land law and the specific evidence presented in the submissions, a conclusive finding in this matter hinges on the doctrine of the root of title. In land ownership disputes, Courts are increasingly looking beyond a registered title deed to verify the root of title, as established in **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**. A title is not an absolute shield if it is procured through fraud, misrepresentation, or irregular, unlawful, or unprocedural methods. When the root of title is challenged, the proprietor must prove the legal acquisition of the property.

- 48) The weight of the law specifically the **Land Act 2012** and recent Supreme Court jurisprudence points toward a finding in favor of the **Appellant**. The Supreme Court has pronounced itself countless times that it is not enough to wave a title if it is under scrutiny. The 1<sup>st</sup> Respondent's re-acquisition of the title was ***void ab initio***.
- 49) Under Sections 39 and 41 of the Land Act, the service of a notice of rescission is not a mere formality; it is a mandatory statutory condition precedent. Because the 1<sup>st</sup> Respondent failed to serve this notice, he had no legal power to move the property back into his name.
- 50) In legal terms, the transfer back to himself was a paper transaction with no legal force. Therefore, when he sold the land to the 2<sup>nd</sup> Respondent, he was selling something he did not legally own.
- 51) At the same time, whereas the 2<sup>nd</sup> Respondent has sought to hide behind the innocent purchaser principle, it fails and it goes against him. While he relies on **Section 26 of the Land Registration Act**, the finding go against him for two reasons. The first being the McFoy Principle. As famously held in **MacFoy v United Africa Company Ltd [1962] AC 152 (often cited as [1961] 3 All ER 1169)**,  
***"You cannot put something on nothing and expect it to stay there. It will collapse."***

- 52) If the 1<sup>st</sup> Respondent's title was a nullity, the 2<sup>nd</sup> Respondent's title is built on a collapsed foundation.
- 53) Further, the 2<sup>nd</sup> Respondent admitted he saw the Appellant's name on the title history. The finding would likely be that a reasonable and diligent purchaser would have demanded proof that the Appellant's interest was legally extinguished through a signed surrender or a valid rescission notice. By failing to do this, he was willfully blind.
- 54) Therefore, it is my observation that the Trial Magistrate erred by focusing on the standard of proof for fraud while ignoring the statutory illegality of the rescission.
- 55) Even if the Appellant could not prove how the signature was forged the Green Card itself proves the 1<sup>st</sup> Respondent took the land back without following the Land Act procedure thus committing a statutory illegality that cannot be wished away.
- 56) Given the foregoing, I make the following findings:
- a) Appeal is hereby allowed.**
  - b) The transfers to the 1<sup>st</sup> Respondent in November 2021 and the 2<sup>nd</sup> Respondent in December 2021 are hereby cancelled and set aside.**
  - c) The Land Registrar is directed to rectify the register by reinstating MARY KAUMBI GITARI as the absolute proprietor.**

***d) The 1<sup>st</sup> Respondent is ordered to pay damages to the 2<sup>nd</sup> Respondent.***

***e) The Appellant to pay the balance of the purchase price at market rates as at November 2021.***

***f) The 1<sup>st</sup> Respondent to pay the cost of the Appeal.***

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 2<sup>ND</sup> DAY OF MARCH 2026.**

.....  
**MOGENI J  
JUDGE**

**In the presence of:-**

..... for the Appellant  
..... for the 1<sup>st</sup> Respondent  
..... for the 2<sup>nd</sup> Respondent  
..... for the 3<sup>rd</sup> Respondent  
..... for the 4<sup>th</sup> Respondent  
Melita ..... for Court Assistant

.....  
**MOGENI J  
JUDGE**

ORIGINAL