



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC NO. 101 OF 2019

**EARNEST WANJOHI MAINA (Suing as the Legal
Representatives of
ELIUD WANJOHI MAINA).....**
.....PLAINTIFF

VERSUS

DANIEL KINYANJUI MUNGAI.....1ST
DEFENDANT

DOMINIC NJUGUNA KIARIE.....2ND
DEFENDANT

JULIUS MUTURI NG'ANG'A.....3RD
DEFENDANT

THE DISTRICT LAND REGISTRAR OF KIAMBU.....4TH
DEFENDANT

THE HONORABLE ATTORNEY GENERAL.....5TH
DEFENDANT

JUDGMENT

1. A valid title to land is a chain that must hold firm from its first link to its last. If one link is forged in fraud, the entire sequence risks collapse. The Plaintiff contends that the entries in the Land Registry favoring the three Defendants

are legal nullities spawned from a fraudulent root. By seeking the cancellation of these titles and a permanent injunction against trespass, the Plaintiff asks this Court to wield the judicial eraser to rub out the names of the 1st, 2nd and 3rd Defendants from the record and return the land to its original, lawful state.

2. Thus, the Plaintiff in filing the case by the Amended Plaint dated 4/10/2022 seeks these prayers:

a) A declaration that ELIUD WANJOHI MAINA is the registered proprietor of **Title Number Dagoretti/Kinoo/T187;**

b) A declaration that the land certificates/title deeds issued to the 1st Defendant on 29/04/2013 and 03/09/2013, to the 2nd Defendant on 10/09/2015 and 29/09/2017 and to the 3rd Defendant on 23/02/2018 in respect of the **Title Number Dagoretti/Kinoo/T187** were fraudulently acquired and at the same be revoked and/or cancelled;

c) That in the alternative, the 3rd Defendant be compelled to surrender the title for cancellation and/or revocation but in default of surrender the title be cancelled and/or revoked by the Kiambu District Land Registrar forthwith;

d) That the Kiambu District Land Registrar be compelled to rectify the register of **Title Number**

Dagoretti/Kinoo/T187, by cancelling all entries in favour of the 1st, 2nd and 3rd Defendants;

- e) A permanent injunction be issued restraining the 1st, 2nd and 3rd Defendants their servants, agents and/or employees from remaining, trespassing, entering or in any other way interfering with **Title Number Dagoretti/Kinoo/T187**;
 - f) Special Damages of Ksh 114,800.00;
 - g) General damages;
 - h) Costs and interests of this suit on (f), (g) and (h);
 - i) That the Court be pleased to issue such other or further orders as it may deem fit to grant.
3. The 1st and 2nd Defendants despite having been served multiple times chose not to file any Statements of Defence. On the part of the 3rd Defendant, he filed a Statement of Defence dated 4/11/2021 where he denied the averments in the Amended Plaint putting the Plaintiff to strict proof. He avers that he is a stranger to fraud complaints made and that he is not liable for any claim of mesne profits.
4. The 3rd Defendant has asked the Court to dismiss the Plaintiff's claim against him with costs.
5. At the same time the 3rd Defendant filed two Notices of Claim against the Defendants the first one is dated 6/02/2025.
6. This Notice of Claim is a legal maneuver where the 3rd Defendant, now the Claimant in this context seeks to shift liability or claim compensation from the other Defendants

and this one is against the 2nd, 4th and 5th Defendants if the Court finds that the land sale was fraudulent.

7. In this Notice of Claim the 3rd Defendant is saying that he bought the suit property in good faith. That if it turns out that he was scammed, the people who scammed him and the officials who let it happen should pay him back.
8. In the Notice of Claim the 3rd Defendant has stated that he responded to a newspaper advertisement and negotiated a price of Kshs. 12,000,000 for the suit property being LR. No. Dagoretti/Kinoo/T. 187 with the 2nd Defendant.
9. He asserts that he followed legal procedures, including hiring an Advocate to conduct a search at the Kiambu Land Registry, which showed no issues at the time. That the land was successfully transferred to the 3rd Defendant's name by 22/05/2018.
10. It is the contention in the claim that the 2nd Defendant should be the one targeted as the primary party involved in the potentially fraudulent sale. Further that the 4th and 5th Defendants should be included in the claim for their roles in the process. Specifically, the 4th Defendant who he accuses of allowing land records to be compromised, suggesting a failure in official duty or oversight at the registry.
11. He therefore seeks a refund of the purchase price plus interest from February 2018. That there should be a shift of liability in the event that the Plaintiff wins against the 3rd Defendant which liability should be borne by the 2nd, 4th and

5th Defendants. At the same time, he seeks compensation for the prejudice and detriment that will result from compromised records.

12. The 3rd Defendant has asked the Court to dismiss the Plaintiff's case against them entirely and order the 2nd and 5th Defendants to pay back Kesh 12 million and damages to paid by the 2nd, 4th and 5th Defendants

13. There is also a second Notice of Claim against the 2nd, 4th and 5th Defendants dated 8/05/2025 and in this claim the 3rd Defendant argues that they acted in good faith throughout the transaction for property **L.R. No. Dagoretti/Kinoo/T. 187**. Just like the Notice of Claim dated 6/02/2025, he avers that they responded to a newspaper ad, met the 2nd Defendant, and performed legal due diligence through a search by their advocate.

14. That at the time of purchase, the registry showed the land belonged to one Dominic Njuguna Kiarie. Following the search, they paid the full price **of Kshs 12,000,000**, and the transfer was officially registered at the Kiambu Land Registry by May 2018.

15. In the application, the 3rd Defendant anticipates that the Court might find the 1st and 2nd Defendants to be fraudsters. That if the sale is nullified, the 3rd Defendant claims a full refund of the Kshs. 12 million shillings plus interest.

16. He also argues that any damages the Plaintiff is seeking should not be paid by the 3rd Defendant, but rather jointly

and severally by the 2nd, 4th and 5th Defendants because he suffered due to the negligence of public officials being the 4th and 5th Defendants which is a major claim of the Notice of Claim where he avers that there was failure of the Land Registry.

17. According to the 3rd Defendant, he accuses the 4th Defendant of allowing or permitting the land records to be compromised, which led to the 3rd Defendant losing their money. The 3rd Defendant explicitly cites Sections 81–84 of the Land Registration Act, which generally provide for the right to be indemnified by the government if a person suffers loss due to an error or fraud in the land register.
18. In the end the 3rd Defendant has asked the Court to dismiss the Plaintiff's case against the 3rd Defendant, indemnify them from the 2th and 5th Defendants and enter judgment for Kesh 12,000,000 against the 2nd, 4th, and 5th Defendants. And general damages for the ordeal.
19. On their part, the 4th and 5th Defendants have filed a joint Statement of Defence dated 11/07/2019 and denied the contents of the plaint putting the Plaintiff to strict proof thereof. They aver on a without prejudice basis that if at all the suit land was transferred to the 1st Defendant and consequently to the 2nd Defendant and the 3rd Defendant, then it was procedural based on the documents presented to the 4th Defendant by the Defendants and the documents were believed to be genuine.

20. Further that should the Court find that the land was fraudulently transferred to the 1st Defendant and then to 2nd and 3rd Defendants then the said Defendants should indemnify the 4th and 5th Defendants against any liability since the 4th Defendant relied on documents presented by the Defendants to effect the transfer.

21. The 4th and 5th Defendants pray for dismissal of the Plaintiff's suit.

22. When the matter was slated for hearing only the Plaintiff and the 3rd Defendant turned up at trial making the statement of joint Defence made by the 4th and 5th Defendants to be just that - mere statements with no probative value.

The Trial.

23. The Plaintiff Mr Earnest Wanjohi Maina testified as PW1 and he adopted his witness statement dated 4/10/2022 as his evidence in chief and he submitted his List of Documents as his exhibits.

24. Upon cross examination by Mr Amolo, Counsel for the 3rd Defendant, he told the Court that the suit property belongs to his father Edwin Wanjohi Maina who is deceased having passed on in 2019. He told the Court that they learned about the trespassers from their neighbors who informed them about their activities. Then his father was alive but he was very sick and he could not go to the suit property.

25. That his sister went to the suit property and found the trespassers on the land. He averred that he has sued the 3rd Defendant although he does not know him.
26. On further cross-examination by Counsel for the 4th and 5th Defendants Mr Mutuku, PW1 testified that he sued the 4th Defendant but that he had no evidence that he knew the 1st, 2nd and 3rd Defendant's Gazette Notice No. 16588 which is at pag 33 and the Probate and Administration information filed at pag 33 and dated 5/11/2012 and Gazette Notice Number 1937 at page 36 and the other Gazette Notice No. 7514 at page 44 of the Trial Bundle.
27. According to his testimony, the Land Registrar gave or transferred land without following the law and the 1st Defendant sought the Letter of Administration on 30/10/2012 and the title was issued on a date that PW1 did not know.
28. He told the Court that he placed a caution on the suit property on 30/01/2023. He testified to have come to know that their land was being grabbed in 2019 but that they never went to Court. His father he stated died in 2023 and that he still holds that the Land Registrar colluded with the Defendants to transfer their land to the 1st, 2nd and 3rd Defendants.
29. On re-examination he clarified that their father passed on, on 17/03/2021. With that the Plaintiff closed their case.
30. When the matter resumed hearing on 01/07/2025, the Counsel for the 3rd Defendant sought an adjournment stating

that he would prefer his client to testify virtually since he is an elderly man. Whereas the application was strenuously opposed by the Counsel for the Plaintiff the Court citing Article 159 (2) gave a last chance to the 3rd Defendant's Counsel and allowed the adjournment.

31. The 3rd Defendant's case was heard on 14/07/2025. The 3rd Defendant testified as DW1. He testified that he is a retired civil servant and that he was one of the Defendants in the case. He adopted his witness statement as his evidence in chief and his exhibits as filed. He testified to having filed a Notice of Claim against the 2nd, 4th and 5th Defendants which he stated that he will rely on as presented in Court.

32. Upon cross-examination by Counsel for the Plaintiff he told the Court that at paragraph 6 he stated that Dominic Njuguna, 2nd Defendant was a fraudster. He also stated that he has not released the title for cancellation because he needed a Court order. With that the 3rd Defendant closed his case.

33. The Court issued directions on filing of submissions. The Plaintiff filed their submissions dated 23/07/2025 and the 3rd Respondent filed theirs dated 7/08/2025

Plaintiff's Submissions

34. From the Plaintiff's submissions, it is their position that the 1st Defendant filed a Succession Case in 2012 claiming Eliud Wanjohi Maina was dead, even though he was still alive. By posing as the administrator of the deceased's estate, the 1st

Defendant obtained a new title deed and transferred the land to the 2nd Defendant.

35. The Plaintiff submits that they successfully had these succession proceedings declared null and void by the High Court as shown through Exhibit 21 at page 48 of the trial Bundle which is the Order for Revocation of Grant issued on 12/10/2016.

36. The Plaintiff has submitted that despite having placed legal restrictions namely caveats on the land's Green Card in 2016 via the High Court and the DCI, there seems to have been collusion and registry manipulation leading to their removal.

37. That despite these restrictions, the land was transferred to the 3rd Defendant in 2018. The Plaintiff argues this could only happen if the 4th Defendant, the Land Registrar manipulated or cleansed the Green Card to remove the entries of the restrictions.

38. The Plaintiff asserts that 2nd, 3rd and 4th Defendants acted together to bypass legal blocks.

39. Despite these manipulations the Plaintiff relies on the legal principle *nemo dat quod non habet* meaning no one gives what they do not have. Because the 1st Defendant's title was based on a fraudulent succession, it was void from the start. Therefore, he had no good title to pass to the 2nd Defendant, and the 2nd Defendant had nothing valid to pass to the 3rd Defendant.

40. In their submissions the Plaintiff rejects the 3rd Defendant's claim of being an innocent purchaser. They argue that if the 3rd Defendant had done proper due diligence, they would have seen the Court restrictions. Furthermore, the Plaintiff claims the 3rd Defendant admitted during cross-examination that he was aware of the fraud.

41. The Plaintiff seeks an order under Section 80 of the Land Registration Act to cancel all entries in favor of the 1st, 2nd and 3rd Defendants. Also, that the land should be restored to the name of the original owner, Eliud Wanjohi Maina/his estate.

42. The Plaintiff is seeking significant financial compensation including special damages of Kesh 114,800 which is legal fees spent to revoke the fraudulent grant and general damages of Kesh 5,000,000 for trespass, mental anguish, loss of use of the land since 2016 and the prolonged denial of justice.

43. The Plaintiff concludes that the entire chain of ownership from the 1st to 3rd Defendant is tainted by fraud and sanctioned by the negligence or collusion of the Land Registrar, 4th Defendant and should therefore be overturned.

Defendant's Submission

44. The 3rd Defendant's submissions are that he is an innocent party who did everything right but was misled by official government records. In the submissions he shifts the blame

and the financial bill to the 2nd Defendant, the seller and the 4th Defendant.

45. The 3rd Defendant argues that he met the three-part legal test established in the case of **Samuel Kamere v. Lands Registrar [2015] eKLR Civil Appeal 28 of 2005**.

According to him he obtained an official Search Certificate on 13/10/2017, from the Kiambu Land Registry. At that time, the records showed the 2nd Defendant, Dominic Njuguna Kiarie as the legal owner.

46. That he paid a significant sum of Kshs 12,000,000 for the land, proving it was not a sham gift or a low-value transfer. Further, that he received a second official search on 22/05/2018, confirming that the land had been successfully registered in his name.

47. He argues that the Plaintiff has failed to provide specific evidence that he personally participated in the fraud. He asserts that even if the Land Registrar issued a fraudulent Gazette Notice, that is a fault of the government, not the buyer.

48. He claims that he is not a perpetrator but a victim of a fraud enabled by the Land Registry's failure to maintain accurate records.

49. He argues that the law entitles any person to be indemnified by the government if they suffer damage due to an error in the land register or a certified copy of it according to Section 81 of the Land Act.

50. Since he relied on the Official Search provided by the 4th Defendant, he argues the state is legally obligated to pay him back the Kesh 12 million if the title is canceled.

51. He highlights that 1st and 2nd Defendants, the alleged fraudsters and the 4th and 5th Defendants, the Land Registrar and Attorney General have not filed any Defense or offered any evidence to challenge his claim. According to him therefore his evidence remains unrebutted and should therefore be accepted by the Court.

52. The 3rd Defendant concluded his submissions by raising three key issues that the Court must determine and these are:

- i. Whether he had constructive notice of the fraud or should he have known something was wrong?*
- ii. Whether the Land Registrar's dereliction of duty trigger the statutory right to indemnity under Section 81?*
- iii. If the Plaintiff gets the land back, who is ordered to pay the 3rd Defendant his Kesh 12 million?*

Analysis and Determination

53. The sanctity of a land title in Kenya is protected under Article 40 of the Constitution, yet this case presents a chilling narrative of how that sanctity can be violated through administrative manipulation and fraud.

54. The Plaintiff's father, Eliud Wanjohi Maina, was at all material times the registered owner of

Dagoretti/Kinoo/T187, the suit property. In a brazen act of fraud, the 1st Defendant filed **Kiambu Succession Cause No. 313 of 2012**, claiming Eliud was deceased while he was, in fact, alive. Through this fraudulent dead-man scam, the 1st Defendant obtained a Grant of Letters of Administration, transmitted the property to himself, and subsequently transferred it to the 2nd Defendant.

55. The 2nd Defendant then sold the land to the 3rd Defendant for Kshs. 12,000,000. By the time the Plaintiff discovered the fraud in 2016, a High Court order, presented through Exhibit 21 had already revoked the fraudulent Grant. Despite caveats placed on the register by the DCI and the High Court, the 4th Defendant, Land Registrar oversaw a transfer to the 3rd Defendant in 2018, appearing to have cleansed the Registry's Green Card of all restrictions.

56. Based on the pleadings and submissions, the following issues fall for determination:

- a) *Whether the 1st Defendant acquired any valid interest in the suit property.*
- b) *Whether the 2nd and 3rd Defendants can maintain a valid title derived from a root considered fraudulent.*
- c) *Whether the 3rd Defendant is an innocent purchaser for value without notice.*
- d) *Whether the 4th and 5th Defendants are liable to indemnify the 3rd Defendant under Section 81 of the Land Registration Act.*

e) *Who is entitled to the land and what damages are payable?*

57. It is undisputed that the 1st Defendant obtained the property by claiming the owner was dead when he was alive. In law, fraud "unravels everything." The High Court revoked the Grant of Probate, meaning the 1st Defendant's title was **void ab initio** (void from the beginning).

58. The legal maxim **nemo dat quod non habet** applies here. As held in **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR**, a fraudulent title cannot confer valid ownership, regardless of how many hands it passes through. Since the 1st Defendant had no valid title, he could transfer nothing to the 2nd Defendant, who in turn had nothing to give to the 3rd Defendant.

59. When the Chief Magistrate's Court decreed in **Succession Cause No. 313 of 2012** that *"THAT the Grant of Letter of Administration intested issued to DANIEL KINYANJUI MUNGAI on 17th December 2012 and the Certificate of Confirmation of grant issued on 26th April 2013 is hereby revoked and/or annulled forthwith."* This means the illegal transfer to Daniel Kinyanjui on 29/04/2013 was also nullified and the transfer to Dominic Njuguna Kiarie, 2nd Defendant and issuance of title on 10/09/2015 was an act in futility and is null and void.

60. From the documents produced in Court the letter at page 51 and being exhibit 32 clearly elaborates the scheming done to

grab as the Plaintiff stated the land belonging to Eliud Wanjohi Maina (deceased).

61. The 3rd Defendant claim of innocent purchaser has relied on the case of **Samuel Kamere v Lands Registrar, Kajiado [2015] eKLR**, arguing that he performed due diligence. However, the Plaintiff proved that as of 2016, there were restrictions on the Green Card, the official record of all transactions on a piece of land. Therefore, if indeed the 3rd Defendant did due diligence, he would not have missed out this historical part of the suit property.

62. The fact that these restrictions were removed to facilitate the 3rd Defendant's registration points to constructive notice. A diligent purchaser does not just look at a clean Certificate of Search; they investigate the history of the Green Card. Infact under cross-examination, the 3rd Defendant admitted awareness of the fraud but stated he was waiting for a Court order to surrender the title. This admission defeats the status of a *bona fide* purchaser.

63. In **Dina Management Limited v County Government of Mombasa & 5 Others (2023)**, the Supreme Court of Kenya ruled that a bona fide purchaser for value without notice is not protected if the title they acquired originated from an illegal or irregular process. The Court held that if the root of the title is tainted, the subsequent transfer is invalid, placing the burden on buyers to investigate the entire history of ownership.

64. In Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR), the Supreme Court held that an innocent purchaser for value denotes a purchaser who exercised due diligence, which would include, but is not limited to, inspecting the suit property. It explained further as follows;

“64 What about the argument to the effect that the appellant was an innocent purchaser for value without notice? It is obvious by now that such argument cannot hold in view of our pronouncements regarding the transactions between Renton and the appellant. ... there is evidence on record in the form of correspondence and minutes, confirming that DoD had been granted access by the defunct municipal council and had taken possession of, and erected public infrastructure upon the suit property before the purported purchase.... Further, it is on record that the Ministry of Lands and Settlement was monitoring excision activities by NCC to ensure that the portion occupied by DoD was not affected Therefore, if the appellant was a diligent purchaser, it ought to have at least known of this fact. An innocent purchaser for value

would also denote one was aware of what they were purchasing by inspecting the suit premises. This takes us to the question of whether the appellant had visited the suit premises and if so, what was its impression of the military installations on the suit premises? The fact that the suit land was occupied must have sounded a warning of “buyer be aware” to the appellant. We therefore find that it was not an innocent purchaser for value entitled to orders for restoration or compensation” [Emphasis added].

65. The Supreme Court further went on to state that:

“63. The doctrine is a classic example of the time hallowed maxim; “equity follows the law”. And so aptly stated, legal rights are good against all the world; equitable rights are good against all persons except a bona fide purchaser of a legal estate for value without notice. It is worth emphasizing that the innocent purchaser doctrine only protects the purchaser against those basing their claims upon an equitable interest in the suit land [see Megarry; The Law of Real Property; 6th Ed Pp 138- 150].”

66. The Supreme Court strengthened this position in **Sehmi & Another v Tarabana Company Limited & 5 Others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)**, confirming that even an innocent purchaser cannot retain land if the initial title was fraudulent or illegally issued, reaffirming that the doctrine of a *bona fide* purchaser does not apply to defective titles.
67. This landmark decision shifted the law from simply relying on the register (Torrens system) to requiring verification of the root of the title.
68. Under Section 80 of the Land Registration Act, the Court has the power to order rectification of the register where a registration has been obtained by fraud or mistake. The evidence shows a coordinated chain of fraudulent dealings sanctioned by the 4th Defendant's office. The register must be restored to its original state.
69. The 3rd Defendant has filed a Notice of Claim seeking Kshs. 12,000,000 from the State. Section 81(1) of the Land Registration Act provides that a person suffering damage by reason of an error in a copy of the register is entitled to indemnity.
70. The 4th Defendant who is the Land Registrar failed to explain how Court-ordered caveats disappeared. This is a clear dereliction of duty. While the 3rd Defendant loses the land, he is entitled to be made whole by those who

facilitated the loss the 2nd Defendant, the fraudster and the 4th Defendant, the negligent state official.

My Final Findings and Orders

71. It is my considered view that the Plaintiff has proved their case on a balance of probabilities. The 3rd Defendant's title is a fruit of a poisoned tree.

72. Accordingly, Judgment is hereby entered for the Plaintiff against the Defendants as follows:

- i) A declaration is hereby made that ELIUD WANJOHI MAINA'S Estate is the lawful registered proprietor of Dagoretti/Kinoo/T187.***
- ii) An order is hereby issued directing the 4th Defendant (Land Registrar) to rectify the register by cancelling all entries and titles in favor of the 1st, 2nd and 3rd Defendants and restore the name of ELIUD WANJOHI MAINA.***
- iii) A permanent injunction is hereby issued restraining the 1st, 2nd and 3rd Defendants from trespassing or interfering with the suit property.***
- iv) The 1st, 2nd and 3rd Defendants shall pay general damages of Kshs 2,000,000 for trespass and loss of use and Special Damages of Kshs 114,800.***
- v) On the Notice of Claim by the 3rd Defendant, Judgment is entered for the 3rd Defendant***

against the 2nd, 4th and 5th Defendants jointly and severally for the sum of Kshs 12,000,000 (being the purchase price lost) plus interest at Court rates from the date of the claim until payment in full.

vi) The Plaintiff shall have the costs of the main suit.

vii) The 3rd Defendant shall have the costs of the Notice of Claim.

Those are the Orders of the Court.

DATED, SIGNED AND DELIVERED IN THIKA VIA MICROSOFT TEAMS THIS 3RD DAY OF MARCH 2026

.....
MOGENI J
JUDGE

In the presence of:

.....Plaintiff

.....1st Defendant

.....2nd Defendant

.....3rd Defendant

.....4th Defendant

.....5th Defendant

Melita.....Court Assistant

.....

MOGENI J

JUDGE

ORIGINAL