



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELC LC E008 OF 2026

JOSEPH MWANGI WANJOHI.....PLAINTIFF

VERSUS

JOB KIIRU NDUATI1ST DEFENDANT
AGRICULTURAL FINANCE CORPORATION2ND DEFENDANT
MURANG'A COUNTY GOVERNMENT3RD DEFENDANT
THE LAND REGISTRAR, MURANG'A COUNTY4TH DEFENDANT
MURANG'A COUNTY SURVEYOR5TH DEFENDANT
THE DIRECTOR OF SURVEY6TH DEFENDANT

JUDGMENT

(1) The Plaintiff seeks the following reliefs against the Defendants both jointly and severally.

- (a) A declaration that the Plaintiff is the sole proprietor of the suit plot known as Murang'a Municipality Block 2/732 (Arcade Centre) situated in Murang'a town.
- (b) An order directing the 4th Defendant to cancel and/or revoke the title to plot number Murang'a Municipality Block 2/576 and declaring its imposition on the suit plot illegal.
- (c) An order directing the 5th Defendant to restore the original mutation for the suit plot.
- (d) An order directing the 6th Defendant to amend the map for the area where the suit plot stands and restore it in the map as it was originally.
- (e) An order of permanent injunction restraining the 1st and 2nd Defendants, their servants, and/or agents or any other third party from selling, damaging, interfering with, developing, dealing and or/ in any other manner alienating the suit plot.
- (f) Costs of the suit and interest thereon.

(2) The Plaintiff's case is as follows.

Firstly, he is the registered owner of the suit plot. On 9-6-1998, he was allocated the suit plot and issued with a letter of allotment. On 10-1-2003, he was issued with a certificate of lease. Since then he has been paying annual rates for the suit land and the payments are up to date.

In the year 2001, he submitted building plans to the planning department at the Municipal Council of Murang'a for he wished to develop the plot. The plans were duly approved and he constructed a residential building which he named Arcade Centre. It is situated along Uhuru Highway in Murang'a Town. One of his first tenants in flat No. E1 was the 1st Defendant. He occupied the flat until the year 2016 when he moved out.

- (3) Secondly in the month of October 2023, the Plaintiff received a call from his house agent to the effect that the suit plot was on sale. This prompted him to visit the 2nd Defendant's offices in Murang'a town. He found out that the 1st Defendant had fraudulently and without his knowledge used the suit plot to obtain a loan of Ksh 15 Million from the 2nd Defendant and he had defaulted in paying the required installments. He also found out that the 1st Defendant in connivance with the 3rd, 4th and 5th Defendants fraudulently changed plot No. Murang'a Municipality Block 2/732 to plot No. Murang'a Municipality Block 2/576 and the 1st Defendant had been registered as proprietor on 16-4-2021 thereby super imposing his land on the Plaintiff's land. The original mutation form had been fraudulently changed to show that instead of L.R. No. Block 2/732 standing on the land, it is now the 1st Defendant's plot No. Block 2/576 which stands in the space. The 1st Defendant was issued with a certificate of lease on 2-7-2021 and on 13-10-2021, he charged the Plaintiffs' residential building to obtain the 15 million loan which he has not serviced and he had since gone into hiding.
- (4) Thirdly, on 24-10-2023, the Plaintiff conducted a search and confirmed that the title for the suit land was still intact.
- (5) Finally, the Plaintiff blames the 1st, 3rd, 4th and 5th Defendants for fraudulently registering the 1st Defendant's land parcel No. Block 2/576 and superimposing it on his plot. He also blames the 2nd Defendant for failing to find out that the building which the 1st Defendant was offering as security was constructed long before the 1st Respondent was registered as the proprietor of the fake lease.
- (6) In support of his case, the Plaintiff filed the following evidence.
- (i) **His witness statement dated 6-11-2023.**
 - (ii) **Copy of letter of allotment dated 9-6-1998.**
 - (iii) **Copy of lease dated 16-8-2002 and registered on 10-1-2003.**

- (iv) Copy of certificate of lease dated 10-1-2003.**
- (v) Copy of certificate of official search for the suit plot dated 29-10-2023.**
- (vi) A photograph of the building on the suit plot.**
- (vii) Copies of selected receipts for payment of rates for the suit land.**
- (viii) Copy of certificate of official search for L.R. No. Block 2/576.**
- (ix) Copy of valuation report for L.R. No. Block 2/576 dated 17-9-2021.**
- (x) Copy of certificate of lease for plot No. Block 2/576 dated 2-7-2021.**
- (xi) Copy of valuation report for plot No. Block 2/576 by Cambrian valuers dated 21-8-2023.**
- (xii) Other relevant documents.**

(7) The 1st Defendant filed a written statement of defence dated 20-2-2024 through his counsel on record. In the defence, he avers as follows. One, he is the registered owner of plot No. Murang'a Municipality Block 2/576 for which he holds an absolute and indefeasible title which he acquired on 2-7-2021 when he was issued with a certificate of lease. The 1st Defendant's plot is distinct from that of the Plaintiff. The sizes of the two plots as well as the ownership are very different. He denies the alleged unlawful acquisition of his plot. Two, he lawfully acquired a loan of Kshs 15 million from the 2nd Defendant by charging his land which measures 0.0218 Ha. He denies manipulating and altering the original mutation form as alleged. Three, it is the 1st Defendant's case that his land is not superimposed on the Plaintiff's land. For the above and other reasons, he prays for the dismissal of the Plaintiff's suit with costs.

(8) In support of his case, the 1st Defendant filed the following evidence.

- (i) His witness statement dated 29-8-2024.**
- (ii) Copies of lease and certificate of lease for plot No. Block 2/576 dated 21-1-2021 and 2-7-2021 respectively.**
- (iii) Copy of letter of allotment dated 14-7-1997.**
- (iv) Copy of payment receipt for plot No. A dated 5-9-2019.**
- (v) Copy of survey report dated 9-5-2019.**
- (vi) Copy of letter dated 21-10-2020 notifying of the amendment of the R.I.M.**
- (vii) Copies of letters dated 22-1-2021 and 25-10-2023.**

(viii) Copies of maps.

(ix) Other relevant documents.

(9) The second Defendant filed a statement of defence dated 6-3-2024 in which he avers as follows. Firstly, on 30-9-2021, the 1st Defendant applied for a loan of Kshs 15 million from the 2nd Defendant. In support of his application, he produced the title deed for L.R. No. Block 2/576. This title is distinct from that of the Plaintiff. Finally, the 2nd Defendant is not aware of any illegality and fraud amongst the 1st, 3rd, 4th and 5th Defendants.

(10) In support of its case, the 2nd Defendant filed the following evidence.

(a) Witness statement by Hezron Mbugua, branch Manager Murang'a dated 27-5-2024.

(b) Copy of loan agreement dated 30-9-2021.

(c) Copies of title deed and certificate of official search for L.R. No. Block 2/576.

(11) The third Defendant through counsel on record filed its statement of defence dated 20-2-2024 in which it denies the entire claim by the Plaintiff and calls for its dismissal. No witness statements or documents were filed by the 3rd Defendant.

(12) The 4th, 5th and 6th Defendants filed a statement of defence dated 20-12-2023 in which they aver as follows. Firstly, they deny receiving executed documents by the concerned parties, registering or rejecting to register the lodged documents, making entries in the land registers or issuing title deeds or certificates of lease. Secondly, they deny that the Plaintiff is entitled to the reliefs sought and call for the dismissal of his suit with costs. Thirdly, E.M. Mputhia filed a witness statement dated 20-12-2023 in which she says that she is the Land Registrar Murang'a and that the two title documents were issued by the Land Registrar Murang'a whose mandate does not extend to ascertaining the actual size of the plots on the ground. Fourthly, there is a surveyor's report dated 4-12-2024 and 9-12-2024 which has the following findings.

(a) Parcel No. Block 2/732 is fully developed with a four storey building within a space of 273 mgq.

(b) Parcel No. Block 2/576 is an undeveloped and vacant parcel measuring 0.0116 Ha against the registered area of 0.0218 Ha.

(c) Parcel No. Block 2/576 encroaches to the North onto the 20 metre road reserve. The extent of the encroachment onto the road reserve measures 80msq (0.0080 Ha) and this parcel also encroaches onto a developed part of land parcel No. Block 2/732. The extent of the encroachment onto the developed part of parcel No. Block 2/732 measures 21 msq. (0.0021 Ha.)

(d) Parcel No. Block 2 /732 was fully developed and registered at the time of the survey of Block 2/576 and therefore its boundaries should have been respected during the surveyor of Block 2/576.

(e) Parcel No. Block 2/576... the grid coordinates that define this parcel on the survey plan do not match or represent the ground position as some beacons appearing on the survey plan marking the plot corner of plot No. Block 2/576 are entirely on a road reserve while others are within parcel No. Block 2/732 and therefore cannot be correct. This implies that misleading survey data of plot No. Block 2/576 was submitted to the Director of Surveys for examination and approval which gave rise to an approved survey plan that is not a true reflection of the ground position.

(13) At the trial on 24-3-2025 and 10-6-2025, a total of four witnesses testified. They included the Plaintiff, the first Defendant , the branch manager of the 2nd Defendant at Murang'a and the Deputy Director of survey in charge of Murang'a County. The narrative by the Plaintiff did not change. He stuck to what is in his pleadings and witness statement. The totality of his evidence is that the 1st Defendant's land No. Block 2/576 overlaps his Plot No. Block 2/732 by 17.5%.

The 1st Defendant in his testimony in Court did not deviate from his pleadings and witness statement. The only new thing he said is that the surveyor found that there was a variation between the ground and the map because part of his land had been taken up by the Arcade Centre, that is to say Plot No. Block 2/732.

The branch manager Murang'a AFC said in his testimony that it is not the Plaintiff's land that is on the sale but plot No. Block 2/576 belonging to the 1st Defendant. He added that plot No. Block 2/576 could also have been sold if we did not have this case pending. He however, admitted that there is a problem with the valuation report for saying that the plot is improved and includes a five storey building when it is in fact vacant with no building thereon.

The most significant evidence was by the Deputy Director of survey in charge of Murang'a County. She said that plot No. Block 2/576 does not exist on the ground and it encroaches on three (3) plots which include 2 roads, a Municipal dust bin and plot No. 732. Significant too is the evidence that plot No. Block 2/732 does not exist in the map even though it has an existing building. She attributes this to a mismatch between the County Government records and survey maps. In Murang'a there are over 800 plots but only about 500 have been surveyed leaving out over 300 plots which are unsurveyed.

- (14) Counsel for the parties filed written submissions dated 14-7-2025, 16-10-2025, 8-9-2025, 1-9-2025 and 1-12-2025.

The issues raised by the Counsel for the 1st Defendant are as follows.

- (i) Whether the Plaintiff has proved fraud or illegality.**
- (ii) Validity and indefeasibility of the 1st Defendant's title.**
- (iii) Whether there is a basis for cancellation of the 1st Defendant's title.**
- (iv) Whether the Plaintiff is entitled to the relief sought .**

The 2nd Defendant's issues are as follows.

- (a) Whether the Plaintiff has proved fraud or illegality.**
- (b) Whether the Plaintiff has a cause of action against the 2nd Defendant.**
- (c) Whether the Plaintiff is entitled to the remedies sought.**

The issues framed by the 4th, 5th and 6th Defendants are as follows.

- (a) Whether there is double allocation.**
- (b) Whether the Plaintiff is entitled to the prayers sought.**

The Plaintiff's counsel identified only one issue as follows.

- (i) Whether the Plaintiff is entitled to the prayers sought.**

- (15) I have carefully considered all the evidence adduced in this case by all the parties and this includes the witness statements, documents and the testimony at the trial. I have also considered the written submissions by learned counsel for the parties and the law cited therein. I find that the issues identified by the parties will resolve the dispute conclusively. I make the following findings on the issues.

(16) On the first issue, I find that the Plaintiff has proved both fraud and illegality on the part of the Defendants for the following reasons. Firstly, we have it on the evidence of the Deputy Director in charge of survey in the entire County of Murang'a that the 1st Defendant's Plot No. Block 2/576 does not exist on the ground. It only exists on the two roads, a municipal dust bin and on plot No. Block 2/732 which belongs to the Plaintiff. How was it possible to create land on paper that does not exist on the ground other than through fraud? Whoever created L.R. No. Block 2/576 knew that it did not exist on the ground because all the ground was covered by the roads, the Municipal dust bin and L.R. No. Block 2/732. This creation of the 1st Defendant's land was therefore fraudulent.

Secondly, the 1st Defendant was not truthful in his testimony. In his witness statement dated 29-8-2024 at paragraph 2, he stated as follows.

“ Sometime in the year 2003, I bought land parcel No. Block 2/576 measuring approximately 0.0218 Ha... from one Kimani Muna.”

If the 1st Defendant bought the land in the year 2003, why does he have an allotment letter dated 14-7-1997 in his name. How did the land allocating authority know six(6) years earlier that the land would be sold to the 1st Defendant so as to issue the allotment letter in his name. The letter of allotment which the 1st Defendant filed as an exhibit in this case cannot be genuine having been issued to him 6 years before the sale between him and Kimani Muna. While under cross-examination on 10-6-2025 by the Counsel for the Plaintiff, the 1st Defendant was totally unable to explain this glaring anomaly.

Thirdly, the valuation report by Cambrian valuers dated 21-8-2023 has the photograph of the Plaintiff's building prominently displayed and labelled as Murang'a Municipality Block 2/576. It describes the registered owner as Job Kiiru Nduati. The improvements are described as follows.

“ The subject plot was developed with a five storey commercial cum residential block with a total of 12 2 bedroom units and 16 shops...”

It is obvious that this description is that of the Plaintiff's plot and not the 1st Defendant's plot which is admitted to be vacant.

All the three instances illustrated above prove fraud on the part of the 1st, 2nd, 3rd, 4th and 5th Defendants. I make this finding bearing in mind the high burden of proof in fraud cases as per

the case of **Ndolo vs Ndolo (Civil Appeal No. 128 of 1995)** where it was held that in cases where fraud is alleged the standard of proof is higher than proof on a balance of probabilities and lower than beyond reasonable doubt as in criminal cases.

- (17) The 1st Defendant's title to his land would only have valid if it had been obtained regularly. Now we know that the letter of allotment he presented is not genuine for the reasons already given. We also know that his land does not exist on the ground. There are many other inadequacies like lack of a sale agreement between him and Kimani Muna, the alleged seller and lack of any transfer instruments from Mwangi Muna to the 1st Defendant. The holding in the case **Munyu Maina vs. Hiram Gathiha Maina Civil Appeal No. 239 of 2009** squarely applies to the 1st Defendant in this case. In the case it was held as follows.

“ when a registered proprietors root of title is challenged in court, it is not sufficient for the proprietor merely to rely on the certificate of title as evidence of ownership. The proprietor must go beyond the instrument and demonstrate the lawful and formal manner in which the title was acquired and show that it is free from encumbrances or interests not noted on the register.”

It was a further holding in the case that while the legal burden of proof remains with the party asserting, the evidential burden may shift to the other party once a primary factual assertion is made. In this case, the 1st Defendant was expected to explain how he owned land whose location on the ground could not be ascertained and how he acquired he said land. He has failed to discharge the evidential burden which shifted to him after the Plaintiff proved that his land exists on the ground and he has a lawful title while the 1st Defendant was advertising the Plaintiff's land as his own.

- (18) It is my finding that the Plaintiff has a cause of action against the second Defendant because according to the testimony of the branch manager of the second Defendant in Murang'a the only reason that the second Defendant has not sold the 1st Defendant's land is because this case is pending. If there was no case, the land would have been sold to recover the unserviced loan. We know for a fact that the 1st Defendant's land does not exist on the ground. It only exists on the roads, Municipal dust bin and 17.5% of it on the Plaintiff's land. 17.5.% of the Plaintiff's suit land is at risk of being sold by the 2nd Defendant. There lies the Plaintiff's cause of action against the 2nd Defendant.

- (19) As to whether this is a case of double allocation, I find it is not. This is a case of creating land in the air over existing roads, Municipal dust bin and the Plaintiff's land. If it was a case of doubt allocation, the 1st Defendant's letter of allotment would have the same date with the Plaintiff's and the 1st Defendant's letter would also be in the name of Kimani Muna who allegedly owned the land before the 1st Defendant.
- (20) The Land Registrar and the Surveyor cannot escape liability because it is them who issued the lease and the certificate of lease for L.R. No. Block 2/576 and created it over existing allocations pretending that those other allocations did not exist. The County Government of Murang'a cannot escape blame because they are on record writing letters like the one dated 25-10-2023 demanding for plot rent/rates arrears from the 1st Defendant for Plot No. Block 2/576.
- (21) I find that there is a strong basis for the cancellation of the 1st Defendants' title and that basis is the fraud in creating the 1st Defendant's land on top of other lawfully alienated land.
- (22) Finally and for the reasons already given, I find that the Plaintiff is entitled to all the six prayers in the plaint against all the six (6) Defendants.
Accordingly, I enter judgment for the Plaintiff against all the six Defendants jointly and severally as prayed for in the plaint dated 6-11-2023.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 3rd day of March, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

Plaintiff's Counsel – Mr Samora

1st Defendant's Counsel – Mr Mbue Ndegwa

2nd Defendant's Counsel – Absent

3rd Defendant's Counsel – Mr Chege

4th, 5th and 6th Defendant's Counsel – Absent

