

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO E114 OF 2025

ANNE WANJIRU WACHIRA	-	APPELLANT
VS		
SAMUEL MBUGUA KARIUKI	-	1ST RESPONDENT
ATTORNEY GENERAL [for and on behalf of the CHIEF LAND REGISTRAR & LAND REGISTRAR, NAIROBI REGISTRY	-	2ND RESPONDENT
DORCAS AYOMA NANJERO	-	3RD RESPONDENT
FAULU MICROFINANCE BANK LTD PARTY	-	INTERESTED

JUDGEMENT

The case of the parties in the Trial Court

1. This appeal arises from the judgment of Hon. Lucy Njora, Senior Principal Magistrate, delivered on 20/6/2025. The Appellant filed the suit in the Lower Court under MCELC/10293/2018 against the Respondents, seeking inter alia: a declaration that all transfers of the title deed over the land known as property number NAIROBI/BLOCK/110/60 after 1975 are invalid, null, and void ab initio; an order directing the Land Registrar, Nairobi Lands Registry, to recall, revoke, cancel, and nullify the title deed over the said property issued on 31/10/2001; an order of rectification instructing the Lands Registrar Nairobi to amend the records and register the property in favour of the Appellant as the lawful proprietor; and a permanent injunction restraining the 1st, 2nd, and 3rd Defendants, as well as the Interested Party, their servants, agents, or any person acting on their behalf, from trespassing, encroaching, wasting, disposing of, alienating, or otherwise

interfering with the parcel of land known as property number NAIROBI/BLOCK/110/60.

2. The Appellant's case in the lower court was that, sometime in 1972, she purchased shares in Thome Farmers Company Limited. That the company acquired land, which was later subdivided among its members in proportion to their shareholding. Her land was recorded as Plot No. 60, approximately half an acre in Thome area, within a parcel of land known as LR No. 12674, which was recorded in the company register maintained by the 3rd Respondent. However, she lost her share certificate, which delayed the processing of her title.
3. It was her case that, sometime back in 2015, she realised that some unknown persons were attempting to sell her land. After conducting a search on the land, she discovered that it was registered in the name of the 1st Respondent and charged to the Interested Party. The green card contained false entries indicating that the land had been registered in the name of the government on 30/8/1990, then transferred to John Onyango Ogana on the same day, and later transferred to the 1st Respondent on 31/10/2001. She stated that she reported the matter to the Directorate of Criminal Investigation [DCI], but the 1st Respondent, despite being summoned, never responded. The Appellant asserted that she never offered her suit property for sale and has had uninterrupted possession of it since 1974. Therefore, the alleged ownership by the 1st Respondent is invalid.
4. Based on the Statement of Defence dated 3/12/2020, the 1st Respondent contends that the Appellant has no documentation to prove ownership of the subject property. It argued that the loss of the share certificate has not been documented via a police abstract. The claim that the Appellant has been occupying the suit property is denied, as the land was a coffee plantation at the time, and balloting had not yet been conducted. The 1st Respondent states that LR No. 12674 is not the same as LR No. Nairobi/Block/110/60. It is also asserted that the information on the Green Card cannot be challenged, as it forms part of the record. Furthermore, the

1st Respondent asserts that when the property was purchased, it was free of any encumbrances and, as a legally registered proprietor, he was entitled to take out a loan. He therefore requests the dismissal of the Appellant's suit against him.

5. The 2nd Defendant's claim, on the other hand, is stated in the Statement of Defence dated 18/10/2019. The 2nd Respondent asserted that the entries in the Green Card were procedurally made with the consent of the parties, and therefore, any allegations of fraud were denied.
6. The 3rd Defendant also filed a statement of Defence dated 24/6/2019, in which she admits that indeed Thome Farmers Company Limited bought the land LR No.12674 and that the Appellant was allocated Plot No. 60. She stated that she was issued with a Share Certificate and her details were recorded in the register pending the issuance of the title. She affirmed that she fully cooperated with the DCI's investigations and provided the register when called upon to. She also claimed that the allegations of fraud against her were made in bad faith.
7. The Interested Party filed a Statement of Defence dated 27/9/2019, in which it argued that the 1st Respondent, as the registered owner of LR No. Nairobi/Block/60, charged the property for a sum of Kshs. 5,000,000/=, plus interest in its favour. The Interested Party denied the allegations of illegality, irregularity, and fraud levelled against it.
8. The matter proceeded to hearing with the Appellant, the 3rd Respondent, and the Interested party all calling one (1) witness each. The 1st and 2nd Respondents did not call any witnesses.
9. Upon hearing the evidence presented, the trial court issued judgment against the Appellant because the Appellant failed to provide evidence proving that the suit property was the same as Plot No.60, which had been allocated by Thome Farmers Company Limited. The court also found that the Interested Party had established the 1st Respondent's indebtedness, and as a result, the Interested Party was entitled to exercise its statutory power of sale over the suit property.

10. Aggrieved with the said determination, the Appellant lodged this Appeal vide the Memorandum of Appeal dated 27/6/2025. The grounds of appeal are that;

- a. The Honourable Magistrate erred in law and in fact by holding that the Appellant had failed to prove that the suit property, being property number Nairobi/Block 110/60, was the same parcel as Plot No. 60, which she was allocated by Thome Farmers Company Limited.
- b. The Learned Magistrate erred in law and in fact by failing to follow established and binding precedent from this Honourable Court to the effect that where a Defendant merely files a statement of defence and fails to call any evidence in support thereof the Plaintiff's evidence is to be believed as allegations by the defence do not amount to evidence.
- c. The Honourable Magistrate erred in law and in fact and exhibited bias in holding that since the 1st Respondent refused to attend the hearing, the 4th Respondent's case against him was uncontroverted hence proven while failing to apply the same standards on similar grounds to the Appellant's case against the 1st Respondent.
- d. The Learned Magistrate erred in Law and in fact by failing to uphold express provisions of statute.
- e. The Honourable Magistrate erred in law and in fact in failing to follow established binding precedents from Superior Courts of Record.
- f. The Learned Magistrate erred in law and in fact by failing to consider the Appellant's Submissions.
- g. The Honourable Magistrate accordingly erred in law and in fact in making an Order dismissing the Appellant's suit in MCCC No. 10293 of 2018 with costs.

11. It is based on the above reasons that the Appellant prays that;

- a. The Judgement of the Learned Magistrate of the Subordinate Court delivered on the 20th June, 2025 in Chief Magistrate's Court at

Milimani MCELC/10293/2018 and the ensuing Decree be and are hereby set aside.

b. Judgment be entered in favour of the Appellant in the following terms:

- i. A declaration does issue that all the transfers of the Title Deed over all that piece of land known as property title number NAIROBI/BLOCK 110/60 after the year 1975 are invalid, null and void ab initio;
- ii. An order does issue directing the Land Registrar, Nairobi Lands Registry to recall, revoke, cancel and or nullify the Title Deed over property title number NAIROBI/BLOCK 110/60 issued on 31st October, 2001;
- iii. An order of rectification does issue directing the Land Registrar, Nairobi Lands Registry to rectify the records and or register at the Nairobi Lands Registry so as to reflect and or read ANNE WANJIRU WACHIRA as the registered proprietor of all that piece of land known as property title number NAIROBI/BLOCK 110/60;
- iv. A Permanent Injunction does issue restraining the 1st, 2nd and 3rd Defendants and the Interested Party by themselves, their servants or agents or otherwise howsoever, from trespassing, encroaching onto, wasting, disposing, alienating and or in any other way interfering with all that parcel of land known as title number NAIROBI/BLOCK 110/60;
- v. Aggravated damages against the 1st, 2nd and 3rd Defendants;
- vi. Interest on prayer (e) above
- vii. Costs of the Appeal be and hereby awarded to the Appellant.

The written submissions

12. The appeal was heard through written submissions. The appellant and the interested party filed their submissions accordingly. The appellant's submissions are dated 18/9/2025, while the interested party's

submissions are dated 31/1/2026. The court has had an opportunity to consider these submissions and the attached authorities. The submissions are summarised as follows;

The appellants submissions

13. The Appellant consolidated her seven grounds of appeal into three groups: a) Grounds of Appeal Number 1, 2, 5, 6 and 7; b) Ground of Appeal Number 3; and c) Ground of Appeal Number 4. Regarding the first group, which concerns whether the plot identified as Plot No. 60 is the same land as the suit property, the Appellant argues that she presented evidence showing that the suit property, Title Number NAIROBI/BLOCK 110/60, is indeed the same as Plot No. 60 allocated to her by Thome Farmers Co. Ltd. She contends that Plaintiff's Exhibit No. 3, an extract from the company register relating to plots in NAIROBI/BLOCK 110 (Marurui), displays the Appellant's name at Row No. 10, with Plot No. 60 listed in Column 4. This confirms her allocation as NAIROBI/BLOCK 110/60. Additionally, Plaintiff's Exhibits Nos. 4, 5, 6 and 10, which were admitted without objection, further support her position.
14. The affidavit of loss relates to the suit land; the Appellant's letter to the surveyors inquired about the status of her plot; and the surveyors' response explicitly confirmed that the plot reference changed from L.R. 12674/60 to NAIROBI/BLOCK 110/60. She argued that the documentary evidence establishes a clear connection between Plot No. 60 and Title Number NAIROBI/BLOCK 110/60. Her possession of the suit property since 1974 to date further demonstrates her ownership. She also stated that, during trial, the 3rd Respondent admitted that the original register of Members of Thome Farmers Co. Ltd confirmed the Appellant as the original owner of the suit property. The Appellant cites the case of Gichinga Kibutha -vs- Caroline Nduku ELC Appeal No.16 of 2017, where this court held that, for uncontroverted evidence of fraud allegations, it is the duty of the Plaintiff to plead and prove fraud with detailed evidence meeting the required standard.

15. On Ground of Appeal Number 3, it is submitted that the learned Trial Magistrate erred in law and in principle by applying inconsistent evidentiary standards in resolving the dispute. The Appellant argues that, having failed to attend court or produce evidence to validate the legality of his root of title when challenged, the 1st Respondent did not satisfy the evidential burden placed upon him under the *Munyu Maina versus Hiram Gathiha Maina Civil Appeal No. 239 of 2009 (2013) e KLR* case. In such circumstances, the Appellant's case ought to have been regarded as uncontroverted and proven on a balance of probabilities. It is therefore contended that the Trial Court misdirected itself by imposing a higher evidentiary threshold on the Appellant while excusing the 1st Respondent's failure to tender evidence, resulting in an erroneous decision. Ground No. 3 of the Memorandum of Appeal is therefore argued to be meritorious.

16. On Ground of Appeal Number 4 of the Appellant's Memorandum of Appeal, the Appellant alleged that, pursuant to Section 26 (1) of the Land Registration Act, 2012, she had successfully challenged the 1st Respondent's title on grounds of fraud and the illegal, unprocedural, and corrupt manner of its acquisition. Furthermore, the 3rd Respondent's testimony that she could not prepare a transfer concerning the suit property in favour of the Appellant, as the 1st Respondent had already fraudulently acquired title, confirms the 1st Respondent's fraudulent acquisition of the suit property. The Appellant urged the court to dismiss the appeal and grant the orders sought.

The Interested Party's submissions

17. The Interested Party identified two issues for determination. The first issue is whether the Learned Magistrate established the rightful owner of the suit property. It is submitted that the learned magistrate correctly determined that the 1st Respondent established lawful ownership of the suit property on a balance of probabilities. That pursuant to Section 107 of the Evidence Act, the burden of proof rested upon the party asserting ownership. It is alleged that the 1st Respondent discharged this burden

through credible documentary and oral evidence, including the production of a valid title deed whose authenticity was not successfully challenged. Consequently, by virtue of Section 24 of the Land Registration Act, registration vested in the 1st Respondent absolute ownership of the suit property together with all attendant rights and privileges.

18. The certificate of title serves as prima facie evidence of the 1st Respondent's absolute and indefeasible ownership, with no strict proof of fraud, illegality, or procedural impropriety. The Appellant failed to present credible evidence to challenge the validity of the title or invoke any statutory exception. The trial magistrate properly evaluated the evidence and concluded there was no fraud or misrepresentation attributable to the 1st Respondent.

19. The second issue concerns whether the Interested Party is entitled to exercise its statutory power of sale. The Interested Party argued that the indebtedness of the 1st Respondent was neither challenged nor disputed, thus authorising the 4th Respondent to exercise its statutory power of sale. Evidence was presented demonstrating proper service of the necessary statutory notices. The Interested Party cited the case of *Mafuta Products Ltd and Another v Barclays Bank of Kenya Ltd & Another* [2017] eKLR, where the court held that while a chargee's power of sale arises upon default, its exercise must strictly follow the prescribed procedural and legal requirements. The Interested Party argued that Section 90(1) and (3) of the Land Act, 2012, further formalises this position by stating that if a chargor remains in default for one month, the chargee may issue a written notice demanding rectification. If the chargor fails to comply within ninety days of service, the chargee is legally empowered to pursue remedies, including recovery proceedings, appointment of a receiver, or leasing of the charged property.

20. It is submitted that a bank's statutory power of sale arises strictly upon default by the chargor. Reliance is placed on *Millicent Wanjiku*

Gatheru -vs- Housing Finance (K) Ltd HCCC 138 of 2007, wherein the court held that a mortgagee's statutory power of sale properly accrues only upon default in payment of the principal sum, interest, or any periodic installment. It is argued that the 4th Respondent's compliance with statutory notice requirements remains a condition precedent to the lawful exercise of the chargee's remedies.

21. Accordingly, the court is urged to dismiss the appeal and uphold the judgment, as the sale was lawfully conducted to recover the outstanding debt owed by the 1st Respondent. The Interested Party should be awarded costs of the appeal.

Analysis and Determination

22. The court has analyzed the Record of Appeal the rival submissions and considered the law. The issues commending determination are; -
- a. Whether the Appellant proved on a balance of probabilities that she is the beneficial owner of the suit property;
 - b. Whether the title deed issued in the name of the 1st Respondent should be cancelled;
 - c. Whether the Appellant is entitled to the orders sought.

Whether the Appellant proved on a balance of probabilities that she is the beneficial owner of the suit property;

23. As this is a first appeal, this Court must evaluate the evidence presented in the lower Court, while bearing in mind that it did not have the opportunity to see and hear the witnesses.

24. The duty of an appellate court is stipulated under Section 78 of the Civil Procedure Act which states as follows;

1. "Subject to such conditions and limitations as may be prescribed, an appellate court shall have power;
 - a. to determine a case finally;
 - b. to remand a case;
 - c. to frame issues and refer them for trial;
 - d. to take additional evidence or to require the evidence to be taken;

e. to order a new trial.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”

25. The principles which guide a first Appellate Court were summarized in the case of *Selle & Another -vs- Associated Motor Boat Co. Ltd & Others* [1968] EA 123 at P.126 as follows:

“... Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression on the demeanor of a witness is inconsistent with the evidence in the case generally.”

26. In the case of *Kapsiran Clan -vs- Kasagur Clan* [2018] eKLR the summarized the applicable principles as follows:

- a. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- b. 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
- c. 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.

27. On the first issue for determination, it is agreed that the burden of proof rests on the Appellant, who is the party that approached the court

to present credible evidence demonstrating that she was a beneficial owner of the disputed property. The Appellant claims that in 1972, she purchased shares in Thome Farmers Company Limited, which company acquired land that was later subdivided among its members in proportion to their shareholdings. Her land was recorded as Plot No. 60 in Thome area, within a parcel of land known as LR No. 12674, which was recorded in the company's register maintained by the 3rd Respondent. However, she lost her share certificate, resulting in her title remaining unprocessed.

28. From the record, the Appellant produced a Receipt dated 14/9/1972 indicating payment of the 'Entrance Fee'. She also produced several Receipts from 1972 to 1973 as evidence. Additionally, she submitted, among other documents, an extract of the Register from Thome Farmers Company Limited confirming the Plaintiff's entitlement to Plot No. 60 in Nairobi/Block 110, a copy of the Appellant's Affidavit indicating the loss of the share certificate, and a copy of the Registry Index Map for Nairobi/Block 110 (Marurui).
29. The Appellant argued that the suit property, Title Number NAIROBI/BLOCK 110/60, is the same as Plot No. 60 allocated to her by Thome Farmers Co. Ltd. She contended that an extract from the company register relating to plots in NAIROBI/BLOCK 110 (Marurui) shows the Appellant's name at Row No. 10, with Plot No. 60 indicated in Column 4. Furthermore, the surveyors' response explicitly confirmed that the plot reference changed from L.R. 12674/60 to NAIROBI/BLOCK 110/60. She maintained that the documentary evidence establishes a clear connection between Plot No. 60 and Title Number NAIROBI/BLOCK 110/60.
30. It is evident that the Appellant has not produced a Share Certificate proving her membership in the Company. However, the receipts presented confirm her purchase of the shares. Although the Appellant was issued a Share Certificate, she claimed that she lost it. She submitted an Affidavit as evidence of the loss. The Appellant's ownership

of Plot No.60 was further verified by the 3rd Respondent, who was the custodian of the Company's official register of members.

31. It is also clear that the Appellant has been in possession of the suit property. She maintained that she has been on the suit property since 1974, fenced it, and has been farming there.
32. Furthermore, the letter dated 13/9/2017 from the Surveyor confirms that LR 12674 had been changed to Nairobi/Block 110. The Appellant's evidence was not contradicted by the Defendants. Her ownership of the suit property is therefore uncontested.
33. In the case of *Caroline Awinja Ochieng & Another -vs- Jane Anne Mbithe Gitau & 2 Others* [2015] eKLR, the court in determining the issue of ownership of the plot stated as follows: -

“In determining the above issue it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.....

It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’’: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant's beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease

agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.”

34. Based on the evidence presented, I find that the Appellant has established her beneficial ownership of the suit property as the legitimate owner of the suit property.

Whether the title deed issued in the name of the 1st Respondent should be cancelled;

35. The provision of Section 24(a) of the Land Registration Act No. 3 of 2012 outlines the interests and rights of a registered proprietor of land as follows; ‘the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....’

36. Section 25(1) of the Land Registration Act also stipulates that; ‘The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...’

37. The law is very clear on the position of a holder of a title deed in respect of land. Indeed, Section 26(1) of the Land Registration Act provides as follows:

“the Certificate of Title issued by the Registrar upon registration, 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 the 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

b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme

38. It will be seen from the above that the title to land is protected, but this protection can be removed and the title challenged if it is obtained through fraud or misrepresentation, to which the person is proved to be a party; or if it is procured illegally, unprocedurally, or through a corrupt scheme.

39. The Appellant's claim is that there was fraud and collusion in the Respondent's acquisition of land parcel No. NAIROBI/BLOCK 110/60. Though the 1st Respondent never called any witness to challenge the Appellant's evidence, the burden of proof was on the Appellant to prove her case. The burden remains the same and that burden of proof is in no way lessened because the 1st Respondent did not adduce any evidence. Sections 107 and 109 of the Evidence Act, Cap 80 Laws of Kenya which provides as follows: -

"107. Whoever desires any court to give judgment as to any legal right or liability dependent on facts which he asserts must prove that those facts exist.

"109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that proof of the fact shall lie on any particular person."

40. In the case of Gichinga Kibutha -vs- Caroline Nduku (2018) eKLR, the court held that: -

"It is not automatic that instances where the evidence is not controverted the claimant shall have his way in court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest."

41. It is trite that when a title is under attack, it is not enough to waive the instrument without showing that the process of acquisition was

regular, procedural, and legal. See *Dina Management -vs- County Government of Mombasa* (Petition 8 (E010 of 2021) [2023] KESC 30 (KLR), *Torino Enterprises -vs- Attorney General* [2023] KESC 79 [KLR] and *Hubert L. Martin & Others -vs- Margaret J. Kamar & Others* [2016] eKLR.

42. In the case of *Elijah Makeri Nyangw'ra -vs- Stephen Mungai Njuguna & Another* (2013) eKLR, the court elaborating on the provisions of Section 26 held that: -

“.....the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

43. The Court of Appeal in the case of *Munyu Maina vs. Hiram Gathiha Maina* (2013) EKLR pronounced itself as thus;

“we state that when a registered proprietor’s 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 challenged 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.”

44. Further in the case of *Kassim Ahmed Omar & Another vs. Anwar Ahmed Abed & Others*, Malindi ELC No. 18 of 2015 the Court held that;

“A certificate of title is an end process. If the process that followed in issuing the title did not comply with the law, then such a title can be cancelled by the Court.”

45. The Appellant has proved through documentary evidence that she is the rightful owner of the suit property. She averred that her efforts to obtain a title were never fruitful. Having found that the Appellant is the rightful owner of the suit property, it follows then that the 1st

Respondent's title was procured illegally, un-procedurally, or through a corrupt scheme.

46. Section 80(1) of the Land Registration Act comes into play. It provides: -
"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."
47. The 1st Respondent, therefore, acquired nothing and conferred nothing on the 3rd Respondent in the form of a charge. Consequently, this Court is satisfied that the Certificate of title held by the 1st Respondent was procured illegally and, as such, it is impeachable and ought to be cancelled and/or revoked.

Whether the Appellant is entitled to the orders sought.

48. Having established that the Appellant is the rightful owner of the suit property and that the trial court should have cancelled the 1st Respondent's title, it follows that the appeal is justified. The Appellant is entitled to the orders sought, except for the prayer for aggravated damages. Exemplary and aggravated damages are to be awarded at the court's discretion. In the East African Court of Appeal case of *Obongo & Another v. Municipal Council of Kisumu* (1971) EA 91, the Court of Appeal stated:

"Exemplary and punitive damages are appropriate in two classes of cases; oppressive, arbitrary, or unconstitutional action by the servants of the government and conduct by a defendant calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff...."

It might also be argued that aggravated damages would have been more appropriate than exemplary. The distinction is not always easy to see and is to some extent an unreal one. It is well established that when damages are at large and a court is making a general award, it may take into

account factors such as malice or arrogance on the part of the defendant and this is regarded as increasing the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of are regarded as still being essentially compensatory in nature. ”

49. In the present case, the Appellant is in possession of the suit property. The Appellant has not demonstrated any injury on her part to justify an award of damages in compensation. For an award of aggravated damages to be granted, the Appellant should have shown malice or arrogance on the part of the Defendants that exacerbated the injury she suffered, if any. The Appellant is therefore not entitled to an award of aggravated damages.

Final orders for disposal

50. From the foregoing, the court exercising its mandate under the provisions of Section 80 of the Registration of Land Act has the power to order cancellation of the registration of the title issued to the 1st Respondent. Consequently, I hereby allow this appeal and issue the following orders:

- a. It is hereby declared that the suit land LR NAIROBI BLOCK110/60 belongs to the Appellant
- b. The Judgement of the Learned Magistrate of the Subordinate Court delivered on the 20th June, 2025 in Chief Magistrate’s Court at Milimani MCELC/10293/2018 and the ensuing Decree be and are hereby set aside.
- c. Judgment be and is hereby entered in favour of the Appellant in the following terms:
 - i. A declaration is hereby issued declaring that all the transfers of the Title Deed over all that piece of land known as property title number NAIROBI/BLOCK 110/60 after the year 1975 are invalid, null and void ab initio;

- ii. The Land Registrar, Nairobi Lands Registry is hereby directed to recall, revoke, cancel and or nullify the Title Deed over property title number NAIROBI/BLOCK 110/60 issued on 31st October, 2001;
- iii. The Land Registrar, Nairobi Lands Registry is hereby directed to rectify the records and or register at the Nairobi Lands Registry so as to reflect and or read ANNE WANJIRU WACHIRA as the registered proprietor of all that piece of land known as property title number NAIROBI/BLOCK 110/60;
- iv. To avoid doubt, the title for LR No NAIROBI/BLOCK 110/60 in the name of the 1st Respondent is hereby cancelled and revoked, and the same shall be registered in the name of the appellant forthwith.
- v. Furthermore, the charge registered against the title on 17/9/2015 to the 4th Respondent is hereby declared illegal, null, and void. The same is forthwith cancelled and revoked.
- vi. A Permanent Injunction is hereby issued restraining the 1st, 2nd and 3rd Defendants and the Interested Party by themselves, their servants or agents or otherwise howsoever, from trespassing, encroaching onto, wasting, disposing, alienating and or in any other way interfering with all that parcel of land known as title number NAIROBI/BLOCK 110/60;
- vii. The Appellant shall have the costs of the Appeal.

51. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.

J G KEMEI
JUDGE

Delivered online in the presence of;

1. Mr Omulama for the Appellant
2. Mr Swaka for the 1st Respondent
3. N/A for the 1st -3rd Respondents
4. C/A - Ms. Yvette Njoroge