



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. E047 OF 2023

JOSEPH MUINDE WAMBUA
(Suing as administrator).....
.....PLAINTIFF

VERSUS

JOSEPH MWANGI THIGA.....1ST
DEFENDANT
DRUMVALE FARMERS COOPERATIVE
SOCIETY LIMITED.....2ND
DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by way of a Plaint dated 9th August 2023, seeking the following orders:
 - a) ***A permanent injunction do issue against the Defendants, whether by themselves or through their servants or agents or anybody claiming through them whatsoever, from entering onto the suit premises or dealing in any manner whatsoever with the suit premises.***

b) A declaration that the suit property belongs to the Plaintiff.

c) An order directed to the Registrar of Lands to issue to the Plaintiff in respect to the property.

d) A declaration that any purported document by the Defendant for the suit property is null and void.

e) General damages for trespass.

f) Costs of the suit.

g) Any other relief that the Honourable Court may deem fit to grant.

2. The 1st Defendant filed a statement of defence and Counterclaim dated 16th April 2024, denying the Plaintiff's claim. In the counterclaim, the 1st Defendant seeks the following orders:

a) A declaration that the 1st Defendant, the Plaintiff in the counterclaim, is entitled to the exclusive and unimpeded right of possession and occupation of all that piece of land known as NAIROBI BLOCK 118/1575 (the suit property).

b) A permanent injunction restraining the 1st Defendant by way of counterclaim, whether by themselves or their servants or agents or otherwise, from trespassing and/or

interfering with the 1st Defendant in the Plaintiff, possession and enjoyment of all that property known as NAIROBI BLOCK 118/1575.

c) An order that the 1st Defendant in the counterclaim do vacate and/or deliver possession of L.R No. Nairobi Block 118/1575 to the 1st Defendant/Plaintiff in the counterclaim.

d) General damages for trespass.

e) Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable court may deem fit to grant.

3. The Plaintiff filed a reply to the Defence and Defence to the counterclaim dated 19th June 2024, urging the Court to dismiss the Defence and counterclaim with costs.
4. The 2nd Defendant entered an appearance but did not file a defence.

THE PLAINTIFF'S CASE

5. The Plaintiff John Muinde Wambua testified as PW1 and called two witnesses in support of his case. He adopted his witness statement dated 7th May 2024 as his evidence-in-chief. He also produced the documents in his list dated 7th May 2024 as PEX 1 - 9.

6. PW1 informed the Court that his late father was member No. 1274 of the 2nd Defendant's Society. He testified that members were allocated 5 acres in Machakos and 1 acre in Nairobi. He further testified that his father's five-acre allocation was on very rocky ground, and that, after petitioning the society, he was subsequently allotted five acres under L.R. No. 11594 along the River Athi.
7. He told the Court that he had successfully registered the title to the one-acre parcel in his name and in the names of the other beneficiaries. He stated that in July 2023, Mr. Paul Murithi and Mr. Anthony Murimi, whom he had licensed to cultivate four of the five acres of the suit property since 2018, informed him that the 1st Defendant was claiming ownership of the property. He reported the matter to Ruai Police Station, and the case is currently under investigation.
8. He further stated that during his investigation, he discovered that the 1st Defendant had fraudulently obtained title to the suit property in his name, prompting him to file this suit. In conclusion, he urged the court to grant the orders sought in the Plaint.
9. On cross-examination, he stated that his late father had paid the annual rent of Kshs 12,310/= though he did not have the receipts. He reiterated that the 2nd Defendant had allocated the suit property to his late father.

10. PW2 Daniel Kyuli adopted his witness statement dated 7th May 2024 as his evidence-in-chief. He testified that he has been the Chairman of the 2nd Defendant Society since 2010 and insisted that the individuals in the office were masqueraders.
11. He further testified that the Plaintiff's late father was a bona fide member of the Society and that his family has been in possession of the suit property for over two decades. He further testified that the Society was grappling with land grabbers, including those attempting to seize the suit property.
12. On cross-examination, he reiterated that he is the Chairman of the 2nd Defendant's Society. He confirmed that the Society was under liquidation from 2010 to 2023.
13. On re-examination, he testified that he remained the 2nd Defendant's chairman because the Society had not held an election.
14. PW3 Paul Mureithi adopted his witness statement dated 7th May 2024 as his evidence-in-chief. He testified that he had been cultivating the suit property since 2018 with the Plaintiff's permission. He further testified that in July 2023, the 1st Defendant ordered him to vacate the suit property, claiming ownership. However, he refused to leave, asserting that the land did not belong to the 1st Defendant.

15. On cross-examination, he testified that although he does not have a lease agreement, he pays Kshs 75,000/= per year. He further testified that he had no documents or photographs to support his assertions that he was cultivating the land. He insisted that he was in possession of the land.

THE 1ST DEFENDANT'S CASE

16. The 1st Defendant testified as the sole witness in support of his defence. He adopted his witness statement dated 16th April 2024 as his evidence-in-chief. He also produced the documents in his list dated 16th April 2024 as DEX 1 - 9, respectively.
17. DW1 testified that he is the registered owner of the suit property. He further testified that he was allocated the suit property by the 2nd Defendant through a letter dated 24th April 2023. That on 9th April 2023, he was allocated the suit property pursuant to the subdivision scheme approval, subject to the attached special conditions, payment of charges, and the surrender of the original title L.R. No. 11594 by the 2nd Defendant.
18. He informed the Court that he paid the standard charges, received a receipt, and that a lease document was subsequently prepared and forwarded to him for execution. He asserted that the Plaintiff has no proprietary interest in the suit property. He maintained that the purported minutes admit only the surrender of the shares

- in lieu of the allocation of L.R. No. 11594. He further testified that the Plaintiff did not produce a letter of allotment. He maintained that the letter dated 24th November 2010 by Peter Wanjohi Kiama lacked the authority of a liquidator, as it had been revoked by Gazette Notice No. 8427; hence, it has no legal effect.
19. In conclusion, he urged the court to dismiss the suit and to allow his counterclaim with costs.
20. On cross-examination, he testified that he was shareholder No. 1183, though he had no documents to prove it.
21. He confirmed that in a letter dated 24th April, 2023, the 2nd Defendant's Society identified him by his identification card number. He stated that he was allocated land and that the title was issued within a month.
22. After the close of the hearing, the parties agreed to file and exchange their written submissions.

THE PLAINTIFF'S SUBMISSIONS

23. The Plaintiff filed his submissions dated 2nd September 2025.
24. On behalf of the Plaintiff, Counsel identified the following issues for the Court's determination:
- a) *Who is the bona fide owner of the suit property?*
 - b) *How does one acquire a valid title?*
25. Regarding the first issue, Counsel submitted that the Plaintiff's father was allocated the suit property by virtue

- of his membership in the 2nd Defendant's Society. It was further submitted that the Plaintiff took possession in 1995 and has remained in possession ever since. Counsel argued that the Defendant's contention that the liquidator's recommendations were not binding due to the gazette notice dated 6th July 2022 was misleading, as the Notice reinstated the Society to full registration rather than nullifying the acts of the liquidator, who, in his letter dated 24th November 2010, had recommended that the title for the suit property be processed in favour of the Plaintiff and his brother as joint administrators.
26. Counsel further submitted that the Plaintiff had demonstrated that he is the bona fide owner of the suit property.
 27. Regarding the second issue, Counsel submitted that the Defendant had not produced any document proving his membership in the 2nd Defendant's Society. Counsel argued that the allocation letter issued to the 1st Defendant did not identify him by his membership number, and that he had not produced a share certificate.
 28. Counsel further submitted that the 1st Defendant failed the test set out in **Munyu Maina v Hiram Gathiha**. In light of the foregoing, Counsel asserted that the 1st Defendant fraudulently obtained the title to the suit property through a corrupt scheme. To support this argument, Counsel relied on **Mohammed v Board of**

Management Pertrose Community School & another 2023 KEELC 19133. It was argued that the 1st Defendant was not a member of the 2nd Defendant's Society and therefore could not be allocated land. In conclusion, Counsel urged the court to cancel the title and order its registration in favour of the Plaintiffs.

THE 1ST DEFENDANT'S SUBMISSIONS

29. The 1st Defendant filed his submissions dated 19th September 2025
30. On behalf of the 1st Defendant, Counsel outlined the following issues for the Court's determination:
 - a) *Whether the registration of the 1st Defendant as the owner of the suit property is absolute and indefeasible and not subject to challenge.*
 - b) *Whether the Plaintiff can impeach the title held by the 1st Defendant in accordance with the parameters set forth in the Land Registration Act.*
 - c) *Whether there was any fraudulent activity involved in the acquisition of the suit property and whether the 1st Defendant was privy to such fraud, if any.*
31. Regarding the first issue, Counsel relied on the evidence on record to argue that the 1st Defendant had established the root of his title. Counsel cited the cases of **Munyu Maina v Hiram Gtitha and Henry Muthee Kathurima v Commissioner of Lands** to address when a registered proprietor's title can be challenged. Counsel maintained

that the certificate of lease was issued in accordance with due process.

32. Regarding the second issue, Counsel submitted that the minutes of the meeting held on 20th September 1995 indicated that Paul Wambua Muinde was to be allocated NAIROBI/BLOCK 118/152, a subdivision of L.R. No. 11544.
33. It was submitted that the subdivision scheme approval produced by the Plaintiff for NAIROBI/BLOCK 118/575, issued on 11th November 1993, is a forgery because it lacks a property reference number, unlike the one produced by the 1st Defendant. It was further submitted that the signatures on the two subdivision approval schemes do not match, even though they were affixed by the same person. It was also submitted that the Plaintiff did not produce receipts showing payment for the subdivision plan. Counsel asserted that the share certificates produced by the Plaintiff are not linked to the suit property.
34. Regarding the third issue, Counsel submitted that fraud must be specifically pleaded and strictly proved. Counsel further submitted that no evidence of fraud or any misrepresentation was tendered to link the 1st Defendant to the acquisition of the suit property or to show that the property was illegally acquired.
35. Counsel urged the court to dismiss the Plaintiff's suit and to allow the 1st Defendant's counterclaim with costs.

ANALYSIS AND DETERMINATION

36. Having considered the pleadings, the evidence on record, and the parties' submissions, the following issues arise for determination:
- a) Whether the Plaintiff is entitled to the orders sought in the Plaint; and*
 - b) Whether the 1st Defendant is entitled to the orders sought in the counterclaim.*
37. The dispute between the parties revolves around who owns the suit property. The Plaintiff claims ownership based on the share certificate and the letter of allotment, whereas the 1st Defendant's claim relies on the certificate of lease.
38. The Plaintiff stated that the 2nd Defendant allocated the suit property to his late father. He asserts that he is the bona fide owner of the suit property. He produced two share certificates, No. 1274, belonging to Paul Wambua Muinde, showing that his father was a member of the society. He also produced minutes of the management committee meeting held on 20/9/95, reflecting the allocation of 5 acres within L.R 11594.
39. The Court notes that membership in a Cooperative Society, as evidenced by a Share Certificate, creates a contractual relationship between the member and the society. However, such membership does not automatically confer ownership of land.

40. To prove ownership of the suit property, the Plaintiff produced Share Certificate No. 1274 and a subdivision scheme approval for the suit property, issued to Paul Wambua Muinde on 11th November 1993 by the Ministry of Lands and Settlement. A perusal of the subdivision scheme approval shows that the grant of lease would be made as soon as the Ministry received his formal written acceptance of the special conditions and payment of the prescribed charges, subject to surrender of the original title. He testified that his father paid the ground rent for the suit property.
41. The Plaintiff failed to provide any evidence demonstrating compliance with the stipulated conditions. In the absence of such evidence, the approval of the subdivision scheme remained conditional and did not confer any enforceable property rights. Furthermore, the Plaintiff did not present any proof that the mother title was surrendered as mandated by the subdivision conditions. No surrender instrument, acknowledgment from the relevant authority, or record from the registry was submitted. His claims that officials of the 2nd Defendant refused to furnish the necessary documentation to process the title were unsupported by correspondence, formal complaints, or any documented records.
42. Furthermore, the Plaintiff failed to produce evidence indicating that the subdivision approval scheme was

- forwarded to the Land Registrar for registration. In the absence of evidence confirming that the allocation process was completed and transmitted to the Land Registry for registration, the claim based on allocation remains unsubstantiated.
43. Similarly, in the absence of proof of such compliance, the subdivision scheme approval could not confer any enforceable rights. Without such evidence, the allocation cannot be regarded as registered.
 44. In his Pleint, the Plaintiff acknowledged that Mr. Felix Maingi, an official of the 2nd Defendant, visited the suit property and confirmed that it belonged to the 1st Defendant. This admission undermines his claim. He failed to present any evidence indicating that the confirmation was irregular or unauthorized.
 45. The Plaintiff relied on a letter dated 24th November 2010 from Peter Wanjohi Kiama, the liquidator of the 2nd Defendant, confirming that the suit property had been allocated to his late father. The 1st Defendant challenged the validity of that letter and produced a Gazette Notice showing that the 2nd Defendant society's registration had been cancelled on 28th August 2009 and that it was only registered on 6th July 2022.
 46. On that basis, the 1st Defendant contends that there was no lawful office of liquidator capable of acting in 2010, and that the letter lacked legal foundation.

47. Upon cancellation of registration, a Society ceases to exist as a legal entity capable of transacting, except within the confines of lawful liquidation under the relevant statutory framework. The Plaintiff presented no evidence that liquidation proceedings were ongoing or that the liquidator retained authority at the material time following the cancellation. Similarly, no evidence was tendered to show that Peter Wanjohi Kiama had lawful authority subsisting in 2010 to confirm ownership of the suit property. In the absence of proof of lawful authority, the letter cannot confer proprietary rights nor override the statutory status of the Society as reflected in the Gazette Notice.
48. The Plaintiff alleged that the 1st Defendant fraudulently obtained title to the suit property.
49. It is trite law that allegations of fraud must be specifically pleaded and proved.
50. In **Vijay Morjaria vs Nansing Madhusingh Darbar & Others [2000] eKLR (Civil Appeal No 106 of 2000)**, Tunoi JA stated as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were***

done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

51. Similarly, in **Kinyanjui Kamau vs George Kamau [2015] eKLR**, the Court of Appeal held that:

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo Vs Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”

52. Although the standard of proof is not beyond a reasonable doubt, it is higher than proof on a balance of probabilities

53. In Civil cases, the standard of proof is on a balance of probabilities. Section 107 (1) and (2) of the Evidence Act provides that:

107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

It is clear from the above provisions that the burden of proof is on the party alleging the existence of a fact which he wants the Court to believe.

54. The 1st Defendant claimed that he was lawfully allocated the suit property and that he obtained title. He produced a letter of allotment dated 24th April 2023 for the suit property, issued by the 2nd Defendant, and a letter dated 24th July 2023 introducing the 2nd Defendant's office bearers. He also produced a Subdivision Scheme Approval dated 9th May 2023, issued by the Ministry of Lands, Public Works, Housing and Urban Development, directing that the lease for the suit property would be issued to him as soon as he formally accepted the special conditions and paid the charges, subject to the surrender of the mother title. He produced a receipt for Kshs 14,310

confirming payment of the legal fees and other charges, and was subsequently issued a certificate of lease.

55. The 1st Defendant fortified his position by producing correspondence from the Ministry of Lands confirming that his subdivision scheme was forwarded, received, and processed by the Land Registry. This confirms that the subdivision progressed through the statutory process, culminating in recognition at the Land's Office. In contrast, the Plaintiff failed to present any evidence showing that his subdivision plan was ever forwarded, received, or processed at the Ministry of Lands
56. The absence of a share certificate, by itself, does not invalidate a registered title. The lack of supporting receipts weakens the Plaintiff's case. Unless authenticated by the issuing authority, such a document cannot impeach a registered title.
57. In light of the foregoing, I find that the Plaintiff has not proven that the 1st Defendant fraudulently obtained the title to the suit property. The 1st Defendant has demonstrated the root of his title. He is therefore entitled to all the rights and privileges of a registered landholder.
58. The 1st Defendant seeks general damages for trespass. The Plaintiff acknowledged that he is in possession of the suit property. Having established that the 1st Defendant is the registered owner of the suit property, it follows that the Plaintiff's continued occupation is without legal basis

and amounts to trespass. Regarding damages, the 1st Defendant did not present any evidence establishing the duration of the trespass or the extent of the loss suffered. In light of the foregoing, I find it appropriate to award nominal damages for trespass.

59. The Plaintiff has failed to prove that he is the bona fide owner of the suit property. Accordingly, the Plaintiff is not entitled to the orders sought in the Plaint.
60. Based on the foregoing, I find that the Plaintiff has failed to prove his case on a balance of probabilities. I also find that the 1st Defendant has proved his counterclaim to the required standards and is therefore entitled to the orders sought.
61. The upshot of the foregoing is that I enter judgment for the 1st Defendant against the Plaintiff as follows:

a. A declaration is hereby issued that the 1st Defendant/Plaintiff in the counterclaim is entitled to the exclusive possession and occupation of all that piece of land known as NAIROBI BLOCK 118/1575.

b. A permanent injunction is hereby issued restraining the Plaintiff from trespassing and or interfering with the 1st Defendant's enjoyment of all that property known as NAIROBI BLOCK 118/1575.

c. An order that the Plaintiff/1st Defendant in the counterclaim vacate and or deliver possession of L.R. No. NAIROBI BLOCK 118/1575 to the 1st Defendant/Plaintiff in the counterclaim.

d. The 1st Defendant is awarded Kshs 20,000/= as damages for trespass.

e. The 1st Defendant is awarded costs for the suit and the counterclaim.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026.

.....
HON. T. MURIGI
JUDGE

IN THE PRESENCE OF:

Gatungo for the Plaintiffs

Kirwa for the 1st Defendant

Ahmed - Court Assistant