



**Wanjohi v Kimani & 2 others (Environment and Land Appeal
E002 of 2024) [2026] KEELC 1119 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E002 OF 2024
MAO ODENY, J
FEBRUARY 27, 2026**

BETWEEN

JANE NYAMBURA WANJOHI APPELLANT

AND

PETER MUCHERU KIMANI 1ST RESPONDENT

LAND REGISTRAR, NAKURU 2ND RESPONDENT

THE COUNTY GOVERNMENT OF NAKURU 3RD RESPONDENT

*(Being an appeal arising from the Judgment of Hon. F.K Munyi
delivered on 13th December, 2023 in CMELC NO 307 OF 2018)*

JUDGMENT

1. This Appeal arises from a Judgment delivered on 13th December, 2023, by Hon. F. K Munyi (SRM) in CMELC NO 307 OF 2018. The Appellant being aggrieved by the said judgment lodged a Memorandum of Appeal dated 11th January, 2024, and listed the following grounds:
 1. The Learned Trial Magistrate erred both in law and fact by holding that the 1st Respondent proved his case on a balance of probability thus arriving at a wrong conclusion.
 2. The Learned Trial Magistrate erred both in law and in fact in misapplying and misinterpreting the applicable law and threshold with regard to proof of fraud thus holding that the 1st Respondent proved fraud on the part of the Appellant on a standard that is above the balance of probabilities thus arriving at a wrong conclusion.
 3. The Learned Trial Magistrate erred both in law and facts by misdirecting herself on the law and fact by holding that the Appellant was a party to the fraud that was allegedly perpetrated by the Lands registry officials and other non-parties to the suit while the evidence on record



showed to the contrary that the Appellant was an innocent purchaser for value without notice thus arrived at erroneous finding.

4. The Learned Trial Magistrate erred both in law and fact in holding that the 1st Respondent held actual genuine and indefeasible title for the suit property since there was no evidence produced to prove that his title was forged and made without authority which in effect shifted the burden of proof to the Appellant which is contrary to the law.
 5. The Learned Magistrate erred both in law and fact in holding that the withdrawal of the case against Alice Mukuhi and Moses Maina was not fatal to the 1st Respondent's case while at the same time she attributed fraud to them, which is the basis of the impugned judgment, despite being aware they were not parties to the suit notwithstanding the case against the two was withdrawn thereby adopting double standard on the applicable law with regard to proof of fraud thus grossly misdirected herself.
 6. The Learned Trial Magistrate erred both in law and fact in failing to address and make a finding on all issues raised by the appellant in her pleadings, evidence and submissions and more particularly the issue that the 1st Respondent's claim was time barred and Appellant's plea of indemnity thus trial and judgment were so unsatisfactory as to amount to a complete mistrial.
 7. The Learned Trial Magistrate erred in law and fact by failing to properly evaluate pleadings and Appellant's submissions and as a result reached an irrational decision per incuriam and manifestly unjust leading to miscarriage of justice.
 8. The Learned Trial Magistrate erred both in law and fact by misapprehending and failing to properly deal with the evidence adduced in court in its entirety thus making assumptions and a finding that is incongruent with the applicable law, authorities and evidence.
 9. The Learned Trial Magistrate erred in law and fact when she delivered her judgment against the Appellant based on hearsay and circumstantial evidence against the weight of evidence that had been adduced and by considering extraneous matters.
 10. In all circumstances of the case, the findings of the Trial Magistrate are insupportable in law and on the basis of the evidence placed before her and in any case, the judgment is in contravention of the provisions of Order 21 Rule 1 of the Civil Procedure Rules, 2010.
2. The Appellant sought the following orders:
- a. That the instant appeal be allowed.
 - b. That the judgment delivered by the Learned Trial Magistrate on 13th December, 2023 be set aside, or vacated.
 - c. That this Honourable court be pleased to make its own finding based on the evidence available.
 - d. In the alternative, the judgment and the decree appealed from be set aside and this honourable court be pleased to order the suit be remitted to another Magistrate for retrial.
 - e. That the Respondents be ordered to further pay costs of this appeal and in case of (d) above, the Respondents be ordered to pay costs of the abortive suit.
3. A brief background to this appeal is that the 1st Respondent filed a suit against the Appellant, the 2nd and 3rd Respondents in the lower court in a Plaint dated 19th December, 2017, and amended on 20th March, 2018, seeking the following orders:



- a. A declaration that the plaintiff is the legitimate and lawful owner of the parcel of land known Nakuru Municipality Block 22/1158 measuring 0.0743ha and a permanent order of injunction restraining the Defendants by themselves, their agents, their servants and all other persons acting under them from entering, remaining or dealing with or in any way interfering with the Plaintiff's parcel of land known as Nakuru Municipality Block 22/1158 measuring 0.0743ha.
 - b. An eviction order against the 2nd defendant and a cancellation of the illegal Title deeds for Nakuru Municipality Block 22/1158 measuring 0.0743ha currently registered in the 2nd Defendant's name and the court to order the 4th Defendant to reinstate the title for the parcel of land L.R Nakuru Municipality Block 22/1158 measuring 0.0743ha into the plaintiff's names.
 - c. Cost of this suit.
4. The suit was heard and the Trial Magistrate in the judgment dated 13th December, 2023, entered judgment in favour of the Plaintiff against the Defendants jointly and severally as follows:
- a. It is hereby declared that the Plaintiff is the legitimate and lawful owner of the parcel of land known as Nakuru Municipality Block 22/1158 measuring 0.0743 hectares.
 - b. That a permanent order of injunction do issue restraining the Defendants by themselves, their agents, their servants and all other persons acting under them from entering, remaining or dealing with or in any way interfering with the Plaintiff's parcel of land known as Nakuru Municipality Block 22/1158 measuring 0.0743 ha.
 - c. That an order do issue to the 2nd Defendant for cancellation of the illegal title deed for Nakuru Municipality Block 22/1158 measuring 0.743 ha and reinstate the title in the Plaintiff's names.
 - d. That the 1st Defendant do move out of Nakuru Municipality Block 22/1158 within the next 30 days failure which an eviction order shall issue.
 - e. Costs of the suit.

Appellant's Submissions

5. Counsel for the Appellant filed submissions dated 23rd September, 2025, and identified the following issues for determination:
 - a. Whether the 1st Respondent proved the allegations of fraud to the required standards?
 - b. Whether the failure of the trial court to consider the plea of limitation of time and indemnity led to miscarriage of justice?
6. On the first issue, counsel submitted that the Trial Magistrate erred in law and fact by misapprehending and failing to properly deal with the evidence adduced in court. Counsel submitted that the Appellant faulted the court for double standards in her judgment by making a finding that the withdrawal of the suit against Alice Mukuhi Ndungu and Moses Maina Kariuki was not fatal while at the same time attributing fraud to them which formed the basis of the judgment.
7. Counsel submitted that the aspect of fraud imputed upon the 1st Defendant involves Alice Mukuhi Ndungu (deceased) and Moses Maina Kariuki (deceased) but the plaintiff did not find it fit to substitute them but instead withdrew the suit against them hence the Plaintiff court not purport to prove fraud against the Appellant who was merely a recipient of the property. Counsel relied on the case of *C'est Bon Superior School Ltd v Joseph Alex Gichuhi & 2 others* [2019] KEELC 3569 (KLR), where



the court observed that “the Plaintiff has set out the particulars of fraud, irregularity and illegality committed by the 1st and 2nd Defendants in paragraph 6 of the plaint, However, the case against the 1st Defendant who died in 2013 was marked as abated upon the request of the Plaintiff cannot now purport to prove fraud against the 1st Defendant. That certainly leaves the case hanging because the 2nd Defendant was merely a recipient of the property.”

8. Counsel further submitted that the cases against the deceased defendants having been withdrawn, meant that all the allegations of fraud made against them were also withdrawn. Counsel further relied on the case of *Mary Mukami Mbachia vs Land Registrar, Thika & 7 others* [2021] eKLR, *Edward Mwangi Irungu vs Chief Land Registrar & 3 others* [2018] eKLR, *Vijay Morjaria vs Nansingh Madhusigh Darker & Another* [2000] eKLR,
9. Mr. Mbutia submitted that the Plaintiff’s title and who was paying rates was contested and that the Trial Magistrate made assumptions and findings that were incongruent with applicable law.
10. On the issue whether the Appellant was a bona fide purchaser for value without notice, counsel relied on the cases of *Kazungu Fondo Shutu another vs Japhet Noti Charo another* 2021 KECA 592 (KLR) and *Daniel Mogoi Onchiieku vs Justus Ntiato Keton & 2 others* [2019] KECA 869 (KLR), and submitted that the Trial Magistrate arrived at a wrong conclusion that the Appellant was a party to the fraudulent transfer of the suit land.
11. On the second issue, counsel relied on Sections 7 and 26 of the *Limitation of Actions Act* and submitted that where fraud, mistake or ignorance of a material fact is pleaded, time will run from the moment such litigant discovered or ought to have discovered the fraud or mistake. Counsel submitted that time started running in 2015, when the 1st Respondent ought to have discovered change of records in the County Government records pertaining to the suit land and occupation thereof by Moses Maina Kariuki for over five years before the Appellant purchased the land.
12. It was counsel’s further submissions that the allegations of fraud against the Appellant having not been proved, the claim for recovery of the suit land is time barred. Counsel relied on the case of *West End Butchery Limited vs Arthi Highway Developers Limited & 6 Others* [2012] KEHC 97 (KLR), and urged the court to allow the appeal and set aside the judgment

1st Respondent’s Submissions

13. Counsel for the 1st Respondent filed submissions dated 14th November, 2025, and identified the following issues for determination:
 - a. Whether the trial court erred in finding that the 1st Respondent proved his case on a balance of probabilities?
 - b. Whether the learned magistrate properly applied the law on fraud and indefeasibility of title?
 - c. Whether the Appellant was an innocent purchaser for value without notice?
 - d. Whether the 1st Respondent’s suit was time-barred?
 - e. Whether the learned magistrate misdirected herself in evaluating the evidence?
14. On the first issue, counsel submitted that the appellant’s assertion that the 1st Respondent did not meet the standard of proof is misplaced, and cited Sections 107 & 108 of the *Evidence Act* and the case of *Miller vs Minister of Pensions* [1947] 2 All ER 372, where the court held that a fact is proved on a balance of probabilities if the evidence shows that the fact is more likely than not to be true.



15. On the second issue, counsel submitted that the burden of proving fraud lay on the 1st Respondent (who pleaded) and discharged it. Counsel submitted that the Appellant's insistence that the Magistrate shifted the burden is incorrect, and relied on the cases of Counsel relied on the following cases: Vijay Morjaria vs Nansingh Madhusingh Darbar (Supra), Gathondu (as administrator of the Estate of the late Thumbi Kariuki) vs Registrar & Others [2024] KECA 668 (KLR), Munyu Maina vs Hiram Gathiha Maina (supra) Daudi Kiputugan vs Commissioner of Lands & 4 others [2016] eKLR and Presebyterian Foundation vs Kibera Siranga Self Help Group Nursery School [2023] KECA 371.
16. On the third issue, counsel submitted that the appellant was not an innocent purchaser and 1st Respondent's title being first in time, it takes priority under the doctrine of nemo dat quod non habet. Counsel relied on Sections 25 (1) and 26 (1b) of the Land Registration Act and the following cases: Katende vs Haridar & Company Ltd [2008] 2 EA 173, Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others [2015] KEELC 151 (KLR) and Dina Management Ltd vs County Government of Mombasa & 5 others [2023] KESC 30 (KLR).
17. On the fourth issue, counsel relied on Sections 7 and 26 (1) of the Limitation of Actions Act and submitted that the Trial court rightly found that the suit was properly before it and not statute barred.
18. On the fifth issue, counsel submitted that the Learned Magistrate carefully reviewed the pleadings, evidence and submissions. The Court delivered a judgment that was detailed and reasoned demonstrating that all issues were considered.
19. Counsel relied on the case of Peters vs Sunday Post Ltd [1958] EA 424, and the provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules and submitted that the withdrawal of the case against Alice Mukuhi and Moses Maina was not fatal as the 1st Respondent's case stood independently on the strength of his documentary evidence. Counsel also submitted that their involvement in the case was ancillary to the main issue of ownership. Counsel therefore urged the court to dismiss the appeal with costs to the 1st respondent and affirm the judgment dated 13th December 2023.

Analysis and Determination

20. The issue for determination is whether the appeal is merited. The Appellant in this case has listed ten grounds of appeal faulting the Trial court's judgment. In the case of Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR, the court stated with regard to the duty of the first appellate court as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way”
21. The Learned Magistrate framed the issue for determination as follows:
 - a. Whether or not fraud has been proven and if so, who is liable?
 - b. Whether the 1st Defendant is an innocent purchaser for value without notice?
 - c. Withdrawal of case against Alice Mukuhi and Moses Maina?
 - d. Who should bear the costs of the suit?



22. The trial court found that the 1st Respondent's title is genuine and indefeasible, and further found that the Appellant's affidavit facilitated a fraudulent scheme hence she could not claim to be an innocent purchaser for value without notice.
23. The Appellant faulted the trial court for making a finding that the withdrawal of the suit against Alice Mukuhi Ndungu and Moses Maina Kariuki was not fatal while at the same time attributing fraud to them which formed the basis of the judgment. This court notes that the subject matter informing the trial court's judgment was the particulars of fraud as pleaded by the 1st Respondent in the amended plaint dated 20th March, 2018 and not the original Plaint which had included the parties whose cases had abated.
24. It should also be noted that the 1st Respondent pleaded that the 3rd Defendant caused Nakuru Municipality Block 22/1158 to be transferred from the Plaintiff to the 1st Defendant and subsequently to one MOSES MAINA KARIUKI (now deceased) without the plaintiff's authority, consent, knowledge or approval.
25. Section 24 of the *Land Registration Act* provides that subject thereto:
- a. 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; and
 - b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of lease.
26. Section 25 of the *Land Registration Act* states as follows:
- “(1) 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, but subject:—
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”
27. Section 26 states as follows:
- “(1) The certificate of title issued by the Registrar upon registration, or 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 that 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; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

28. In a suit where the root of a title to a suit land, is in question, the party alleging ownership must prove that the same was acquired legally and procedurally. The 1st respondent who was the Plaintiff in the lower court, gave testimony as to the root of the title, how he was part of a land buying company by the name Volcano Eight (k) Limited in the late 90’s where they bought 10 acres Nakuru Municipality Block 22/1120 which they later subdivided into several plots including the suit plot.

29. The 1st respondent produced documents, the subdivisions, the list of the members and their respective payments and a copy of the original title. The 1st Respondent had the original title deed of the suit land and wondered how the transfer was done and yet he had not surrendered the title. He claimed that the Appellant fraudulently procured the title to the suit land.

30. The Appellant claimed to be a bona fide purchaser for value, but did not prove that the root of her title was clean and untainted. It is trite law that merely producing a title is insufficient where the acquisition is under scrutiny as indefeasibility protects lawful registered proprietors, but courts retain the duty to drill deeper where acquisition is questionable as was held in the case of Mbarak v Freedom Limited (Civil Appeal E028 of 2022) [2024] KECA 160 (KLR) (23 February 2024) (Judgment).

31. Similarly, in the recent case of Dina Management Limited vs. County Government of Mombasa & 5 others [2023] KESC 30 (KLR) in which the Supreme Court held that establishing a good root of the title is the first step in establishing whether a party is a bona fide purchaser for value, and had this to say:

“ 94. To establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right from the first allotment...

... ..Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...

Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired.”

32. There were many gaps in the Appellants evidence to the claim of ownership and unfortunately the persons who sold the land to her were already deceased but there was documentary evidence to prove that the 1st respondent was the rightful owner of the suit land having given a history of how he acquired the land and was subsequently registered as a proprietor. The 1st respondent also explained the steps he took upon discovery that the Appellant had illegally gotten a title deed to his suit land.



33. The Court of Appeal case of Presbyterian Foundation vs Kibera Siranga Self Help Group Nursery School [2023] KECA 371 (KLR) restated that a party must show a good root of title and went further to detail what this would entail:

“The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

- (a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question;
- (b) it must contain a recognizable description of the property;
- (c) it must not contain anything that casts any doubt on the title.”

34. The 1st respondent reported the matter to the DCI Nakuru who took over the matter for investigation, whereby the parties recorded statements and was advised to lodge a restriction on the parcel of land. The restriction was lodged but I do not know why the Appellant was in a hurry to remove it vide an application while the case was still pending determination.

35. Having re-evaluated the evidence on record, the submissions by counsel, I find that the Learned Trial Magistrate properly applied the law to the facts and arrived at a correct conclusion that the 1st respondent had proved his case on a balance of probabilities and there would be no justifiable reason to interfere with the judgment.

36. The upshot is that the appeal is dismissed with costs to the 1st respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE

