



REPUBLIC OF KENYA



Kariuki (As the Administratrix of the Estate of the Late Kariuki Kamau (Deceased)) v Mugambi (As the Administratrix of the Estate of the Late Leah Mukami Mandania (Deceased)) & another (Environment and Land Appeal E021 of 2024) [2025] KEELC 5586 (KLR) (28 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5586 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANGA

ENVIRONMENT AND LAND APPEAL E021 OF 2024

MN GICHERU, J

JULY 28, 2025

BETWEEN

CHARITY WAMBUI KARIUKI APPELLANT

**AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE KARIUKI
KAMAU (DECEASED)**

AND

**JUDITH WAMBUI MUGAMBI (AS THE ADMINISTRATRIX OF THE ESTATE
OF THE LATE LEAH MUKAMI MANDANIA (DECEASED)) .. 1ST RESPONDENT**

**CHAIRMAN GATHAITE FARMERS' COOPERATIVE SOCIETY
LIMITED 2ND RESPONDENT**

*(Being an Appeal from the judgment and decree of Honourable E.M.
Nyaga, SPM, delivered on the 14th day of May 2024 in the Chief
Magistrates Court at Murang'a vide CM ELC Case No. E015 of 2023)*

JUDGMENT

1. The Appellant, vide her memorandum of appeal dated 24-5-2024 seeks the following orders.
 1. That the judgment and decree in Murang'a CM ELC Case No. E015/2023 delivered on 14-5-2024, be set aside.
 2. That the costs of this appeal and those of the lower Court be awarded to her.
2. There are twelve (12) grounds of appeal.

That the learned trial magistrate erred in law and in fact in-



- i. deciding the case in favour of the 1st Respondent against the weight of evidence available and tendered by the Appellant,
 - ii. failing to consider that the 1st Respondent's suit was time barred,
 - iii. failing to consider that the Respondents' had not proved fraud to the required standard,
 - iv. shifting the burden of proof to the Appellant,
 - v. failing to consider that the 1st Respondent had not established any linkage between membership No. 78 and land parcel No. Makuyu/Makuyu/Block 2/1004,
 - vi. failing to consider that the receipts produced by the 1st Respondent bore no indication of the parcel number,
 - vii. failing to consider that the 1st Respondent produced a search that was not certified a true copy of the original,
 - viii. failing to consider the discrepancies between the certified copy of the green card and uncertified copy of the search,
 - ix. failing to consider that the late Leah Mukami Mandania had never been the registered owner of the suit land and could not therefore pass any title to the alleged beneficiaries of her estate,
 - x. failing to consider that the 1st Respondent and the alleged beneficiaries and predecessors of Leah Mukami Mandania have never been in occupation of the suit land,
 - xi. failing to find that the Court had no jurisdiction to entertain the issue of removal of the cautions lodged against the title to the suit land, and
 - xii. failing to consider that the 1st Respondent had not proved her case on a balance of probabilities.
3. The facts of the case according to the 1st Respondent are as follows. In the 1970s Mandania Karii bought shares from the 2nd Respondent. He was issued with membership No. 78. The said Mandania died on 8-12-1974. He was survived by his two wives Mary Wambui and Mbura Mandania. When the wives of Mandania Karii died, the family appointed Leah Mukami Mandania, his daughter to administer the estate of her father. Leah Mukami paid all the pending levies for the land including survey fees. Eventually the family of Mandania Karii was allocated L.R. No. Makuyu/Makuyu/Block 2/1004. When Leah Mukami passed away, the 1st Respondent was appointed vide Thika Succession Cause No. 78 of 2003 as the personal representative of Leah's estate. She filed the probate matter when the suit land was still in the name of the Government of Kenya. A search carried out in 1996 confirmed that the suit land was administered by the 2nd Respondent but was in the name of the Government. In the year 2010, the 1st Respondent found out that the suit land had been irregularly registered in the name of one Kariuki Kamau. She complained to the 2nd Respondent. This culminated in the two Respondents registering two cautions in respect of the suit land. In the meantime, the 2nd Respondent promised the 1st Respondent that they would investigate how Kariuki Kamau who was neither a member of 2nd Respondent nor introduced thereto by a member came to be registered as the owner of the suit land. All this time, the family of Mandania was in occupation. The caretaker at the land called the 1st Respondent's sister in March 2023 inquiring whether they were selling the suit land. On conducting a search, they learnt that the cautions they had registered had been lifted vide a Court order and without their knowledge. She learnt further that the family of Kariuki Kamau was trying to sell the suit land. The case ended in court and the lower court found that the land belonged to the family of Mandania Karii and not to the family of Kariuki Kamau.



4. The position taken by the 2nd Respondent is that the lawful owner of the suit land is Mandania Karii who was their member from 1970s. The second Respondent does not know Kariuki Kamau at all. He was not a member of the 2nd Respondent and he was not introduced by any member. He removed the caution through fraud because Samuel Ndirangu Njoroge who was the Chairman of 2nd Respondent died in the year 2015 and the suit for the removal of the caution was filed in the year 2021, being Murang'a CMCC ELC Case No. E047/2021, yet Samuel N. Njoroge was a party in the case six years after his death.
5. The facts of the case according to the Appellant are that Kariuki Kamau, her husband bought the suit land from the 2nd Respondent in the year 1988 and in the year 2005 a title deed was issued. Since then she has been in possession of the suit land. In the year 2020, she filed Murang'a CM Succession Cause No. 426 of 2020 and through the suit, she inherited the suit land from her husband. When she found a caution registered against the title to the suit land, she filed CM Murang'a ELC Case No. E047/2021 seeking their removal and her prayers were granted by the Court. She denies having committed any fraud in the acquisition of the suit land.
6. In his judgment, the learned trial magistrate found in favour of the 1st Respondent after the Appellant failed to demonstrate that her husband acquired the suit land lawfully.
7. Counsel for the parties filed written submissions dated 15th May, 12th June and 18th June respectively. The Appellant's counsel identified the nine of the grounds of appeal as the issues for determination. This being a first appeal, this court is required to review issues of both facts and law afresh and come to its own independent conclusion bearing in mind that the trial court had the advantage of seeing and hearing the witnesses first hand and make due allowance for this (See *Selle vs. Associated Motor Boat Company Limited* [1968] EA 123. Secondly, this Court must be cognizant of the fact that it should not interfere with findings of fact by the trial court unless there was no evidence to back them or the trial magistrate misapprehended the evidence and acted on wrong principles in arriving at his findings. See *Jabane vs. Olenja*[1968] KLR 661.
8. I have carefully considered the appeal in its entirety including the entire record, the grounds and the submissions by learned counsel for the parties and the law cited therein. I find that the grounds as identified by the Appellant's counsel will determine the case.
9. Regarding the first ground, I find that the learned trial magistrate did not err because the suit was not time barred.

Section 26 of the *Limitation of Actions Act* provides as follows.

“Where, in the case of an action for which a period of limitation is prescribed either –

- a. The action is based upon the fraud of the Defendant or his agent, or of any person through whom he claims or his agent or
- b. The right of action is concealed by fraud of any such person as aforesaid, or
- c. The action is for relief from the consequence of a mistake, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or mistake or could with reasonable diligence have discovered it.”

In this case, the 1st Respondent discovered the fraud in the year 2010. She immediately filed a caution on 12-3-2010. The caution was removed without the knowledge of the Respondents. In 2023, the



1st Respondent discovered that the caution had been removed. She filed this suit immediately. The 1st Respondent cannot be correctly accused of being time barred because every time she discovered fraud, she took immediate action. She was always on time.

10. It is my finding that fraud was proved against the Appellant to the high standard set in the case of *Ndolo vs. Ndolo* Civil Appeal No. 128 of 1995. The Appellant has no sale agreement between her husband and the seller of the land. She has no evidence of payment of the purchase price. No consent of the Land Control was filed and no transfer instrument from the seller to the buyer. All the above mentioned instruments are mandatory in every land transaction. Without all the above requirements no lawful acquisition of land could take place. To exacerbate the position of the Appellant, the alleged seller the 2nd Respondent denies ever selling the suit land to the Appellant. The only logical conclusion is that the Appellant's husband obtained title to the suit land fraudulently.

11. While it is true that the legal burden lay with the 1st Respondent to prove that she owned the suit land, I find that the evidential burden of proving that the title deed was acquired lawfully shifted to the Appellant. The 1st Respondent has records dating back to 29-12-1978 showing that she paid Kshs. 300/= to the 2nd Respondent for shares. She has other records to support her case. The official records prove that the family of Mandania Karii is the lawful owner of the suit land. Since the Appellant was also claiming ownership of the suit land, the burden shifted to her to explain how she acquired the land. As correctly submitted by the 1st Respondent's counsel, the Court of Appeal in the case of *Munyu Maina Vs. Hiram Gathiha Maina* [2013] eKLR, held that where a person's title is under challenge it is not enough to show the title deed as proof. He must go beyond this. The court said,

“...when a registered proprietor's root of title is under challenge, it is not sufficient to dangle his instrument of title as proof of ownership...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...”

This is what was expected of the Appellant in this case and she failed to prove that the title was acquired lawfully.

12. Looking at the fourth ground of appeal we have evidence from the family of Mandania Karii that he was a member of the 2nd Respondent. This evidence is corroborated by none other than the Chairman of the 2nd Respondent himself. There is more evidence that the members of the 2nd Respondent were all from Gatundu in Kiambu County and none of them was from Murang'a where the Appellant's husband said to have hailed from. The Appellant is on record as saying that she does not know any of her neighbours. There is credible evidence to show that the family of Mandania Karii is in occupation of the land and that is how the caretaker learnt that the Appellant wished to sell the land. I find that the trial magistrate did not err and there is sufficient evidence to prove that membership No. 78 was allocated the suitland. The evidence of the Chairman of the 2nd Respondent is sufficient especially while considering that the Appellant is relying solely on the title deed of the suit land to prove ownership.

13. I find no merit in the 5th issue raised by the Appellant. To say that the land was in the name of Government in 1996 and that Appellant's husband was registered as the owner in 1988 is not a contradiction. It is the 1st Respondent proving the fraud perpetrated by the Appellant's husband because as at 1996 the land was still in the name of the Government but the Appellant's husband has a fraudulent title deed which purports to have been issued in 1988, eight years before 1996. This is one of the explanations that the Appellant was expected to give as to how he came to own the suit land before the Government owned it, yet it belonged to the Government first and then to the members of the 2nd Respondent.



14. The suit land belonged to the Government first and then to members of the family of Mandania Karii. The title deed was expected to be issued to the lawful heirs of Mandania Karii. Nobody else stood between the Government and the family of Mandania Karii. To argue that Leah Mukami Mandania was never registered as owner of the land and therefore she could not pass the title to her beneficiaries assumes that it is only registered land that can be transmitted by a Succession Court. It is immaterial that Leah Mukami died before she could be registered as the owner of the suit land. Using the grant, the 2nd Respondent could still transfer the land to the lawful heirs of Leah Mukami Mandania. The trial magistrate did not err in this regard.
15. As for the 7th issue, I have already found in paragraph [12] of this judgment that it is the family of Mandania Karii that is in occupation. The trial magistrate did not therefore err.
16. Coming to the penultimate issue, I find that the trial magistrate was entitled to enquire as to how the caution was lifted in Murang'a CM ELC Case No. E047/2021. There was glaring evidence that Samuel Ndirangu Njoroge the Chairman of the 2nd Respondent died in the year 2015 yet on 23-12-2022, more than seven years after his death, he was being sued by the Appellant in respect of the caution. How did she serve him?

At paragraph 13(c) of the amended plaint dated 30-6-2023 one of the particulars of fraud on the Appellant is stated as follows.

“The 1st Defendant strategically sued the former Chairman of the society, Samuel Ndirangu Njoroge, now deceased, having knowledge that the said person was dead prior to filing the said case where she sought for the removal of the cautions on the subject parcel”

This pleading is underlined in red. The Appellant could not have missed it. Yet, in her amended defence dated 5-12-2023 and filed in Court on 11-3-2024 which is almost nine(9) months later, she says absolutely nothing about this very serious accusation. If she had a good explanation for this obvious fraud, she would have put it down in the amended defence. It is also clear that the Appellant's evidence in her witness statement lacks content and depth. It is very shallow and totally unconvincing. The way the cautions were lifted was a trial issue and the trial magistrate could not avoid it. After all, we know that the lifting of the caution was not on merit because we know that the Respondent in the suit was never served because he was long dead. The manner of lifting the caution proves obvious and deliberate fraud on the part of the Appellant compounding the earlier fraud perpetrated by her husband, Kariuki Kamau.

17. Finally on the issue of proof, I have already found at paragraph [10] of this judgment that the 1st Respondent together with the 2nd Respondent proved fraud not just on a balance of probabilities but to the high standard set in the case of Ndolo vs. Ndolo (Supra). I need not repeat.
18. For the reasons already given, I have no doubt in my mind that the learned trial magistrate arrived at the right conclusion on all the key issues in the case before him. I find no merit at all in the Appellant's Appeal which I dismiss with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 28TH DAY OF JULY, 2025.

M.N. GICHERU

JUDGE.



Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant’s Counsel – Absent

Respondent’s Counsel - Absent

1st and 2nd Respondents – Present in person

