



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
THIKA LAW COURTS
ELC APPEAL NO. 108 OF 2022

STEPHEN NJOROGE KIMANI

JOHN KINYUA & OTHERS.....
APPELLANTS

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....1ST
RESPONDENT

NATIONAL LAND COMMISSION.....2ND
RESPONDENT

RIGATI INVESTMENT COMPANY LIMITED.....3RD
RESPONDENT

GEORGE KAIRIANJA NGACHU.....4TH
RESPONDENT

**(An Appeal from the Judgment of Honorable J.A Agonda,
Principal Magistrate delivered on 20th January 2022 at the
Senior Principal Magistrate Court at Ruiru in ELC Case No.
137 of 2020 (Formerly Thika ELCM Case No. 687 of 2017))**

BETWEEN

STEPHEN NJOROGE KIMANI

JOHN KINYUA & OTHERS.....
PLAINTIFFS

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....1ST
DEFENDANT

NATIONAL LAND COMMISSION.....2ND
DEFENDANT

RIGATI INVESTMENT COMPANY LIMITED.....3RD
DEFENDANT

GEORGE KAIRIANJA NGACHU.....4TH
DEFENDANT

JUDGMENT

- 1) In her Judgement dated 20/01/2022 in Ruiru in **ELC Case No. 137 of 2020**, Hon. Agonda found that the 3rd and 4th Respondents were bona fide owners of Plot No. B3 Githurai Market RUIRU KIU BLOCK 6 (GATHARAINI/211) and decreed that the suit property belongs to the 3rd and 4th Respondents.
- 2) Aggrieved by this decision, the Appellant filed a Memorandum of Appeal dated 21/08/2024 seeking that this Appeal be allowed on the following grounds:
 1. THAT the learned trial Magistrate erred in law and in fact in finding that the property known as PLOT No. B3 Githurai Market (**RUIRU KIU BLOCK 6 GATHARAINI/211**) belongs to the 3rd and 4th Respondents herein, when they have no legal document to prove ownership of the said property.
 2. THAT the learned trial Magistrate erred in law and in fact in disregarding the evidence adduced by the Applicants.

3. THAT the learned trial Magistrate erred in law and in fact in ruling that the property can be transferred to the 3rd and 4th Respondent based on a non-existent letter of allotment.

4. THAT the learned trial Magistrate erred in law and in fact in relying on documents that are clear works of forgery.

3) This Appeal was canvassed by way of written submissions.

Appellants' Submissions

4) The Appellants who are the traders are challenging a 2022 Judgment that ruled in favor of the Respondents who they consider to be private investors.

5) A brief background will be useful here. The Appellants who are a group of traders who have operated at Githurai Open Market for over 20 years claim the land was set aside as public land by the late President Moi in 1993 following a tragic road accident involving traders.

6) They provided receipts for market fees paid to the Municipal Council of Ruiru to demonstrate that the land was treated as a public facility.

7) However, they submit, in 2017, the Area Chief summoned them, claiming they were trespassing. The 4th Respondent claimed ownership, asserting he purchased the land from the 3rd Respondent Rigati Investment Co. Ltd.

8) So, they contend that the trial Magistrate erred in four primary ways. The first being the lack of root of title and

they submit that the Respondents failed to produce a Title Deed or a valid Letter of Allotment. The 3rd Respondent claimed they acquired the land through Minutes of a County Council meeting, but the Appellants argue that Minutes do not constitute legal ownership.

- 9) Secondly, they point to inconsistent testimony given by the 3rd Respondent who gave conflicting accounts claiming in written statements that they got the land via Council Minutes, but testifying in Court that they bought it from a deceased individual in 1985.
- 10) The third issue is the legal status of Allotment Letters citing Supreme Court and High Court precedents such as **Torino Enterprises Ltd v. Attorney General SC Petition NO. 5 (E006) OF 2022** the Appellants argue that even if an Allotment Letter existed, it is merely an invitation to treat or an offer, not a transfer of interest in land. That Legal title is only conferred through registration.
- 11) The fourth issue they submitted was on the public vs private land. The Appellants argue that since the land is public, it could not be legally allocated to private entities without following the strict procedures of the Land Act 2012. They point out that the Municipal Council would not collect market fees if the land were private.
- 12) In conclusion the Appellants argue that the trial Court relied on non-existent documents and forgeries to find in favor of the Respondents. They maintain that they do not

claim to own the land themselves, but seek a declaration that it is public land so they can continue their trade without illegal eviction.

- 13) They are requesting the Court to set aside the 2022 Judgment and allow the Appeal.

Respondents' Submissions

- 14) The Respondents in their submissions dated 10/03/2025 argue that the Appellants have slept on their rights and are not serious litigants.

- 15) The original Judgment was delivered on 20/01/2022. Despite being granted a 90-day stay of execution, the Appellants failed to file a proper Appeal within the required time.

- 16) The Respondents claim the Appellants have filed multiple previous Appeals **ELC Appeal No. E13/2022** and **E46/2022** which were either dismissed or not prosecuted. They argue that this is a tactic to keep the matter in Court indefinitely without seeking a final resolution.

- 17) A central pillar of the Respondents' argument is that the question of ownership is already settled. That according to them, the 4th Respondent asserts he holds a valid Title Deed to the suit property being Ruiru/KIU Block 6/1790. Therefore, it is their prayer that the 4th Respondent should be declared the legitimate owner and an order for the Land Registrar to reflect the 4th Respondent's name on the title.

- 18) Further that an order to issue for the Appellants to grant vacant possession within 90 days and costs of this Appeal to be paid by the Appellants.
- 19) Citing cases like **Selle & Another V Associated Motor Boat Company Ltd & Others, [1968] EA 123; Peters V Sunday Post Limited [1958] EA 424** the Respondents remind the Court of its duty as a first appellate Court that:
- a) It must conduct a retrial by re-evaluating the evidence.
 - b) It should exercise caution and respect the trial judge's findings of fact, as the trial judge had the advantage of hearing and seeing the witnesses firsthand.
- 20) The Respondents do acknowledge in their submissions that when ownership is challenged, then one must go beyond the instrument of title to prove the acquisition was legal and formal.
- 21) They contend that they have proven the root of their title through the evidence adduced in the lower Court, even if a specific Letter of Allotment was not on the record.
- 22) They assert the 4th Respondent is a bona fide purchaser for value who acquired the land legally from the 3rd Respondent.
- 23) They emphasize that this title was issued and approved by the relevant authorities being the 1st Respondent, Kiambu

County Government and the National Land Commission being the 2nd Respondent.

- 24) They maintain that the land is private property, not public land, and characterize the Appellants as illegal encroachers and organized groups seeking to invade private property. According to the Respondents the Appellants are motivated by financial gain rather than legal merit.
- 25) The Respondents contend that the Appellants allegedly collect approximately Kes 200,000 per month in rent from structures on the disputed land. And that by filing continuous applications, the Appellants are preventing the 4th Respondent from enjoying the fruits of his Judgment by taking possession of the land while they continue to profit from it.
- 26) Therefore, according to the Respondents granting leave to appeal would be an academic exercise because the Appellants have no documents to support their claim to the land.
- 27) That as a matter of fact the permanent structures on the land were built by the 4th Respondent as far back as 1993. Thus, the Appeal has no chance of success given that the statutory bodies mentioned at paragraph 23 have already recognized the 4th Respondent's ownership.
- 28) The Respondents allege that whereas the Appellants claimed the Respondents' documents were forgeries. The Respondents counter this by citing **Vijay Morjaria v**

Nansingh Madhusingh Darbar & Another [2000] KECA 5 (KLR). Where the Court of Appeal stated that fraud cannot be inferred from circumstances; it must be specifically pleaded and strictly proved with a higher standard of evidence than ordinary civil cases.

29) They argue the Appellants failed to provide the necessary evidence to meet this high threshold, making the allegations of forgery legally unsustainable.

30) The Respondents conclude that the Appellants have failed to prove their case on a balance of probabilities. They maintain that the evidence on record is sufficient to support the trial Court's decision and pray that the appeal be dismissed with costs.

Analysis and Determination

31) This summary synthesizes the legal authorities and arguments presented by both the Appellants and the 3rd and 4th Respondents regarding the dispute over Plot No. B3 Githurai Market.

32) The Appellants cited the cases of **Mbuthi v Osman & Another (Environment & Land Case E004 of 2022) [2024] KEELC 387 (KLR) (1 February 2024)** in which the Court stated that Ownership must be proved through an unbroken chain of documentary evidence leading to the root of the title. Another case they cited is the case of **Torino Enterprises Ltd v. AG (supra)** in which Court stated that

an allotment letter is not a title; it is merely an invitation to treat or an offer that does not confer interest in land.

- 33) Further they cited the case of **Stephen Mburu & 4 Others v Comat Merchant Ltd & Another [2012] eKLR Environmental & Land Case No. 45 of 2012**. In the referenced case the Court reaffirmed that an allotment letter is a transient right and not a document of absolute ownership.
- 34) The last case cited by the Appellants is the case of **Dr. Joseph N. K. Arap Ng'ok v. Justice Moijo Ole Keiyua & 4 Others C.A.60 of 1997 [unreported]** where the Court stated that A letter of allotment does not constitute a contract and confers no interest in land until conditions are met and registration occurs.
- 35) In response, the Respondents who focused in their submissions on issues of appellate procedure and fraud cited the cases of **Selle v. Associated Motor Boat Co. (supra)** and contended that a first appellate Court must re-evaluate evidence but give due allowance to the trial judge who saw the witnesses. Further they relied on the case of **Peters v Sunday Post Ltd (1958) EA 424** where the Court stated that an appellate Court should be cautious when differing from a trial judge on questions of fact.
- 36) At the same time, they relied on the case of **Munyu Maina vs Hiram Gathiha Maina [2013] eKLR** where the Court stated that when a title is challenged, the holder must

go beyond the instrument to prove the legality of how they acquired it.

37) I already referred to the case of **Vijay Morjaria v. Nansingh Madhusingh (supra)** which they cited and the principle they sought to articulate at paragraph 28. Finally, they relied on the case of **Ndolo v Ndolo [2008] 1 KLR (G&F) 742** and submitted on the Court position that the burden of proving forgery is higher than a balance of probabilities, though lower than beyond reasonable doubt.

38) The key issues that emerge from this appeal are in my considered view the following:

a) Whether suit property as a public land/market was set aside by the State, or was it private land available for alienation to the 3rd Respondent?

b) Whether the 3rd and 4th Respondents have proved a legal chain of title in light of the missing allotment letters and conflicting oral testimony regarding the 1985/1995 acquisition?

c) Given the evidentiary standard of fraud did the Appellants strictly prove the allegations of forgery regarding the Respondents' documents?

d) Whether, given the legal weight of allotment a Court can declare ownership based on council minutes and an allotment letter that was not produced in evidence?

Court's Perspective & Analysis

- 39) The Court, sitting as a first appellate Court, is tasked with a fresh re-evaluation of the record as was stated in **Selle v. Associated Motor Boat Co. (supra)**.
- 40) Now, the 4th Respondent relies on a Certificate of Title. However, as established in **Munyu Maina v. Hiram Gathiha Maina (supra)** a title is not a sacred cow if the root is challenged. The 3rd Respondent's evidence of acquisition is contradictory because he cites the council minutes in pleadings but a private sale from a deceased person in oral testimony. Under the Supreme Court's holding in **Torino Enterprises, (supra)** cited by the Respondents in their submissions, even if an allotment letter existed which does not exist or was not produced here, it would not confer title. The Respondents failed to show the unbroken chain required as was stated by the Court in **Mbuthi v. Osman (supra)**.
- 41) On the issue of public interest and use, the Appellants provided market fee receipts from the Municipal Council. This strongly suggests the land was treated as public property. Public land cannot be alienated without following Sections 9 and 12 of the Land Act 2012. There is no evidence that the land was formally degazetted or converted from public to private use.
- 42) The Appellants pleaded fraud. While the Respondents are correct that fraud must be strictly proved **Vijay Morjaria (supra)**, the total absence of a primary document, the

allotment letter to support the title's issuance creates a legal vacuum that goes to the legality of the title, not just the presence of fraud.

Final Determination

43) From the analysis above I am persuaded to find that the trial Court erred by declaring the 4th Respondent the legitimate owner in the absence of a verified root of title and by disregarding the evidence of the land's public nature which was evidenced by the market receipts.

44) I therefore issue the following orders:-

i) The Appeal is allowed.

ii) The Judgment and Decree of the Senior Principal Magistrate's Court at Ruiru dated 20/01/2022 is hereby set aside in its entirety.

iii) A declaration is hereby issued that Plot No. B3 Githurai Market is public land reserved for an open-air market.

iv) The Land Registrar is directed to cancel any titles or subdivisions emanating from Ruiru/KIU Block 6/211 that are held by private individuals.

v) A permanent injunction is hereby issued restraining the Respondents from evicting the Appellants or interfering with the trade activities on the suit land.

vi) Costs of this Appeal and the lower Court suit are awarded to the Appellants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH
MICROSOFT TEAMS ON THIS 10TH DAY OF MARCH 2026.**

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**MOGENI J
JUDGE**

In the presence of:-

- for the Appellants
- for the 1st Respondent
- for the 2nd Respondent
- for the 3rd Respondent
- for the 4th Respondent
- Melita..... for Court Assistant

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**MOGENI J
JUDGE**