

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC 457 OF 2009

SUSAN MUTHONI HAMILTON RIBBS

**[Suing as the Legal Representative of the
Estate of BARBARA TERESA HAMILTON]
PLAINTIFF**

VS

**MARIA NGENDO WARURU
DEFENDANT**

1ST

**PETER NJUGUNA NJATHI
DEFENDANT**

2ND

JUDGMENT

1. This matter was filed in 2009. The suit was first heard on 27/6/2019 when the Plaintiff testified and closed her case. However, the defence hearing scheduled for 10/3/2020 failed to proceed. Subsequently, the case file went missing, necessitating reconstruction. Finally, on 31/7/2025, the hearing commenced *de novo* with the evidence of the 1st Defendant being taken *de bene esse* on 23/9/2025.
2. The Plaintiff avers that the suit land belonged to her mother and that the same was illegally and fraudulently transferred by the 1st Defendant to the 2nd Defendant without her mother's knowledge and consent. The Plaintiff therefore sought orders as follows;
 - a. A declaration that the Title Deed issued to the 2nd Defendant in respect of all that property known as Title Number MUGUGA/GITARU/1849 is null and void;

- b. A declaration that the transfer of the suit property to the 2nd Defendant was fraudulent, carried out, and was done under false misrepresentation, hence is null and void.
 - c. An order directed at the 2nd Defendant to transfer the suit property to the Plaintiff and in the alternative order directed to the Deputy Registrar of the High Court at Nairobi to execute the said transfer of the suit property to the Plaintiff.
 - d. A declaration that the 2nd Defendant has no title or colour of right or interest in the Plaintiff's parcel of land known as Title number MUGUGA/GITARU/1849;
 - e. A permanent injunction to restrain the 1st and 2nd Defendants either by themselves, their servants and or agents from advertising for sale, selling, subdividing, construction thereon and or interfering with, or trespassing upon the suit property.
 - f. General damages for trespass.
 - g. In the alternative, the Plaintiff prays for general damages against the 1st and 2nd Defendants for the commercial value of the suit property.
 - h. Costs of this suit.
 - i. Interest on (f), (g) and (h) above at court rates;
 - j. Such other further or consequently relief and remedies which this Honourable Court may deem fit to award.
3. The 1st Defendant asserted that she transferred the suit land to the Defendant under a valid Power of Attorney and challenged the Plaintiff to strict proof. She added that the title was registered in the name of Barbara Teresa Hamilton, without paying the purchase price to the Vendor, Jeremiah Kanyuru. Consequently, it was mutually agreed among her, her brother Jeremiah Kanyuru, and Barbara that another buyer be sought to purchase the land. She stated that, under

the Power of Attorney she held, she lawfully transferred the land to the 2nd Defendant. She completely denied the Plaintiff's claims.

4. The 2nd Defendant argued that he is a bona fide purchaser for value without notice of any taint, and he also reiterated the defence of the 1st Defendant and denied the Plaintiff's claim.
5. At the hearing, **PW1 - Susan Muthoni Hamilton Ribbs** gave evidence and adopted her witness statement dated 22/6/2017 and produced documents marked as DEX No 1-11.
6. She stated that she is the daughter and administrator of the estate of Barbara Teresa Hamilton, the registered owner of the suit land. She explained that, in 1986, the deceased granted a general Power of Attorney, IP/A 19755/1, to the 1st Defendant to collect rent and manage the deceased's business and affairs in Kenya, as the deceased lived in the United Kingdom. However, the said Power of Attorney was revoked in 1999 under a deed of revocation, IP/A 33347/1. She stated that the revocation of the Power of Attorney was communicated to both Maria and Lucy Kashorda, the tenants.
7. In 2002, while visiting Kenya, the deceased purchased the land from Jeremiah Gichanga Kinyuru [Jeremiah], and a title deed was issued to her on 14/6/2002. Subsequently, she went to the United Kingdom, leaving the title in Jeremiah's custody. Later, she made efforts to retrieve the title from Jeremiah for development purposes. However, the title could not be traced. Unknown to her, the 1st Defendant fraudulently and through false misrepresentation obtained the title from Jeremiah and transferred it to the 2nd Defendant without her knowledge or authority. Upon learning of the fraudulent transfer, the deceased caused a caution to be registered against the said title on 10/4/2007 to prevent further dealings on the suit land.
8. The witness stated that she was aware that the Power of Attorney had been revoked and that the revocation had been brought to the attention of the 1st Defendant. The reason for the revocation was that

the 1st Defendant had failed to collect and remit the rent collected from a house she was managing at Riruta Estate, Nairobi, to her mother.

9. She stated that Maria was a close friend of her mother, and that her mother informed her of the Power of Attorney when she visited her in England in September 1986.
10. In cross-examination, she stated that regarding the details of the sale and transfer of the suit land between her mother and Jeremiah she was not involved in the transaction and, therefore, could not comment on specific details such as the purchase price, mode of payment, sale agreement, transfer, and so forth. She stated that the title was left in Jeremiah's custody, who also acted as the caretaker of the land on behalf of her mother. She was unaware whether her mother had purchased another parcel of land from Jeremiah.
11. She admitted that the letter dated 10/6/2003 was written by her mother; however, she stated that she did not know who the Kanyuru referred to in the letter was, as she has many people with the name 'Kanyuru' in her family. She was unaware of the specifics regarding the money mentioned in the letter. Overall, the letter does not discuss Jeremiah or any balance of a purchase price payable to Jeremiah. That the Power of Attorney had been revoked earlier in 1999. She confirmed that her mother had fully paid the purchase price, which explains why the title was registered in her name.
12. Regarding the letter dated 4/2/2002, she stated that Lucy Kashorda, the tenant, informed Maria that she was arranging to pay the rent, as evidenced by the attached cheque for Kshs 80,000/-.
13. **DW1- Maria Ngendo Waruru** relied on her witness statement dated 5/5/2018 and produced documents marked as DEX No 1-5 in support of her evidence. She stated that Barbara was her close friend and Jeremiah was her younger brother.

14. She stated that Barbara resided in the United Kingdom and authorised her via a Power of Attorney to oversee her affairs in Kenya. The general Power of Attorney was duly registered as IP/A 19755/1/ on 4/1986. Pursuant to this authority, she collected rent from Lucy, the tenant occupying Barbara's property in Riruta. Without any evidence, she stated that the rent payments were made through cheques issued in Barbara's name.
15. She stated that in 2002, Barbara returned to the country and bought the suit land from Jeremiah for Kshs 500,000/-. The title was registered in her name, subject to her transferring the purchase price upon her return to the United Kingdom. The title was kept in Jeremiah's custody as a lien or security pending the finalisation of the payment.
16. Barbara authored a letter to her dated 10 June 2003, stating that she had not paid the purchase price to Jeremiah and promising to remit the funds. On 13 June 2003, one of her acquaintances, Jane Kiano, issued a cheque for Kshs 20,000/- to Jeremiah. In November 2003, Barbara telephoned her and informed her that she could not raise the purchase price and agreed that the suit land be sold through her Power of Attorney. Jeremiah identified a buyer, the 2nd Defendant, who agreed to purchase the land. The new buyer agreed to refund Barbara the sum of Kshs 20,000, and she facilitated the transaction, culminating in the registration of the suit land in the name of the 2nd Defendant.
17. During cross-examination, she stated that she was unaware that the Power of Attorney had been revoked in 1999. She admitted that once revoked, her authority to act for Barbara ended, and any subsequent dealings would be null and void. She confirmed that Barbara purchased the suit land from Jeremiah. Without leading any evidence, she acknowledged that both Barbara and Jeremiah are

deceased and that Barbara informed her that the purchase price would be paid to Jeremiah after the title was registered in her name.

18. Regarding whether the title was being held as a lien, she admitted that she has not produced any documentary evidence in support. She acknowledged that Jeremiah did not file any suit or complaint claiming that his land was transferred to Barbara before payment was made. In particular, with reference to the letter dated 10/6/2003, she stated that Barbara did not claim she was unable to pay the purchase price for the land. She also admitted that she did not provide any evidence to show that the sum of Ksh 20,000/- was part payment of the purchase price. Furthermore, she stated that she did not have any phone recordings or evidence of telephone conversations between herself and Barbara instructing her to sell the suit land to the 2nd Defendant.
19. She stated that she signed the transfer and land control board consent on as an agent for Barbara, unaware of the revocation of the Power of Attorney. She confirmed that the sale agreement was made between Jeremiah and Barbara. She was not provided with any evidence to support the revocation. She acted on the basis of a telephone conversation to transfer the land to the 2nd Defendant.
20. **DW2 - Peter Njuguna Njathi** testified and relied on his witness statement dated 5/3/2018, and he produced documents marked as DEX No 7-14.
21. He stated that he acquired his initial plot, specifically parcel 1848, in 2001 from Jeremiah, whom he was introduced to by a land broker in Kikuyu Town. In 2004, Jeremiah approached him and offered the parcel for sale. He accepted and entered into a formal agreement with Jeremiah, obtained approval from the land control board, and Maria transferred the land to him under a Power of Attorney. The title was registered in his name in 2004. He took possession of the land, erected a fence around it, and began

cultivation. Jeremiah informed him that the land had been sold to Barbara, who did not fulfill the payment requirement; therefore, he was selling it to recover his money.

22. During cross-examination, he stated that Maria contacted Barbara by telephone in his and Jeremiah's presence, and subsequently, it was agreed that the property would be sold to him. He also admitted that he lacks evidence to demonstrate that Barbara purchased the land for Kshs 500,000/-. Furthermore, he did not contact Barbara regarding the Power of Attorney or the statements made by Maria and Jeremiah concerning the property subject to the suit. He was unaware that the Power of Attorney had been revoked. He could not explain why Jeremiah was selling land to him when the title was in Barbara's name. Without providing any documentary evidence, he stated that he paid Jeremiah in cash.

The written submissions

23. As to whether Barbara was the lawful owner of the suit land, Counsel for the Plaintiff answered in the affirmative. Barbara purchased the land in 2002 and obtained title in the same year. That the uncontested registration conferred upon her the indefeasible title under Section 28 of the Registered Land Act, now repealed.
24. Secondly, it was submitted that Barbara revoked the Power of Attorney in favour of Maria in 1999, and the said revocation was registered as IP/A No 33347/1. That upon registration of the revocation of a Power of Attorney, the revocation becomes valid and effective, and consequently, any dealings by the donee on the strength of a revoked instrument are null and void ab initio.
25. Thirdly, Counsel for the Plaintiff submitted that under the provisions of Section 51 of the Registration of Titles Act, once a Power of Attorney has been revoked and the revocation registered, the Land Registrar shall not give effect to any transfer or other instrument signed pursuant to that power. They argued that the transfer

instruments executed by the 1st Defendant after the revocation of the Power of Attorney remain illegal and fraudulent, and the resulting title in the name of the 2nd Defendant is a product of illegality and must be cancelled and revoked.

26. On the issue of trespass, Counsel for the Plaintiff submitted that having entered into the suit land without any justifiable cause, the 2nd Defendant is merely a trespasser. His entry, fencing, and occupation were without the consent and authority of Barbara, the owner of the land, and such conduct amounts to trespass. Having occupied the premises for 21 years, the Plaintiff has suffered loss and damage, which warrant the granting of a permanent injunction, together with general damages for trespass.
27. Counsel for the Defendants argued that the 1st Defendant was unaware that Maria's Power of Attorney had been revoked, and therefore, her act of selling the land to the 2nd Defendant on behalf of Barbara was not fraudulent at all. That Barbara, too, in instructing Maria to sell the land, acted as though the Power of Attorney was still in force. The 2nd Defendant, too, was unaware that the Power of Attorney had been revoked; therefore, he was an innocent purchaser without notice of the Plaintiffs' claim. He was present when the discussion on the sale of the land took place between Jeremiah, Maria, and Barbara. Furthermore, no evidence was produced by the Plaintiff to show that the title was procured from Jeremiah fraudulently and no explanation was given as to the reason why Jeremiah held the original title if indeed payment had been made.
28. Furthermore, the revocation of the Power of Attorney was not communicated to Maria at all. In 2002, Barbara engaged her in the pursuit of rent from her Riruta property, and on 10/6/2003, she did not inform her that the Power of Attorney had been revoked. From the contents of the tenant's letter dated 4/2/2002, it is clear that the tenant was also unaware of the revocation of the Power of Attorney.

Barbara misled the 1st Defendant by claiming that her Power of Attorney was still in force, and she cannot be allowed to turn around and rely on its revocation. Under regulation 17 of the Land Registration Act, a donor of a Power of Attorney must give notice of their intention to revoke the power to the donee and to all persons likely to be affected by it. Although there are authorities stating that since a revocation of a deed of Power of Attorney is a public document, a party should have conducted a search to verify its validity, Counsel argued that the said authority does not apply to this dispute.

Analysis and determination.

29. Having considered the pleadings, the evidence adduced during the hearing and the written submissions, the issues for determination are as follows;
- a. Whether the 1st Defendant was aware of the revocation of the Power of Attorney, and what was the legal effect of the act of disposing of the suit land to the 2nd Defendant.
 - b. Whether the Plaintiff has proven fraud, misrepresentation, and illegalities in the transfer of the suit land from the 1st to the 2nd Defendant.
 - c. Whether the 2nd Defendant was a bona fide purchaser for value without notice.
 - d. Whether the title in the name of the 2nd Defendant should be cancelled and revoked.
 - e. Whether the plaintiff has proved trespass and whether she is entitled to general damages.
 - f. Costs of the suit
30. The background of this case is that Maria and Barbara were childhood friends who grew up together. Barbara married an Englishman and moved to England. It is not in dispute that on

4/2/1986, Barbara donated a general Power of Attorney to Maria dated 31/1/1986. The said Power of Attorney was registered on 4/2/1986 as IP /A No 19755/1. Unchallenged evidence was led by Maria that one of the key responsibilities under the Power of Attorney was the collection of rent from Barbara's house in Riruta.

31. The Plaintiff provided uncontested evidence that the Power of Attorney in favour of Maria was revoked in 1999 and registered as IP/A 33347/1 on 14/1/1999.

Issues Nos. a and b

32. I will determine the two issues together as the answer to issue No a will also determine issue No. b.

33. The relevant provisions of the former Registration of Titles Act (now repealed) that provides for donation of the Power of Attorney in regard to transfer or other dealings with land are sections 50 and 51 which states as follows:

50. The proprietor of any land, if not a minor, a lunatic or a person of unsound mind, may appoint any person to act for him in respect of the transfer or other dealing with the land in accordance with this Act by executing a power in form M in the First Schedule, and a duplicate or an attested copy thereof shall be deposited with the registrar, who shall enter in the register a memorandum of the particulars therein contained and of the date and hour of its deposit with him:

Provided that—

(i) a Power of Attorney executed in due and customary form and giving sufficient powers in the opinion of the registrar may be registered as though executed in form M;

(ii) a Power of Attorney registered before the date of this Act in accordance with the provisions of the Registration of Documents Act, or the Government Lands Act, shall be deemed to be duly registered for the purposes of this section, provided it has been so registered prior to any act thereunder being effected in respect to land registered under this Act; but nothing in this section shall make valid a power otherwise invalid, or any transaction under it, by reason of that action.

51. A Power of Attorney may be revoked by an instrument of revocation in form N in the First Schedule, and after the registration of revocation of the power the registrar shall not give effect to any transfer or other instrument signed pursuant to that power:

Provided that—

(i) a revocation executed in due and customary form may, at the discretion of the registrar, be registered as though executed in form N;

(ii) a revocation of any Power of Attorney referred to in paragraph (ii) of the proviso to section 50 shall be registered in accordance with the provisions of the Act under which the Power of Attorney is registered.

34. Section 116 of The Land Registration Act [Cap 300] provides as follows;

(1) Upon the application of the donor or the donee of a Power of Attorney which contains any power to dispose of any interest in land, such Power of Attorney shall be entered in the register of

powers of attorney and the original, or with the consent of the Registrar a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.

- (2) Every such Power of Attorney shall be in the prescribed form or such other form as the Registrar may in any particular case approve, and shall be executed and verified in accordance with sections 109 and 110.
- (3) The donor of a Power of Attorney registered under this section may at any time give notice to the Registrar in the prescribed form that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.
- (4) Any interested person may give notice in writing to the Registrar that a Power of Attorney which has been registered under subsection (1) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.
- (5) Subsections (3) and (4) do not apply to a Power of Attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.
- (6) If owing to the length of time since the execution of a Power of Attorney or for any other reason the Registrar considers it desirable, Gift to person under disability. Powers of Attorney CAP. 300 Registered Land 60 [Rev. 2010 he may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the Power of Attorney until satisfactory evidence is produced. Effect of registered

Power of Attorney. Transmission on death of joint proprietor.
Transmission on death of sole proprietor or proprietor in
common.

Section 117.

(1) A Power of Attorney which has been registered under Section 116 and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.

(2) Any person making any payment or doing any act in good faith in pursuance of a Power of Attorney registered under Section 116 shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

35. Regulation 17 of the said Act provided as follows;

“17. General Power of Attorney

A person who wishes to register a general Power of Attorney shall present a request to the Registrar in Form LRA 5 set out in the Sixth Schedule.

18. Specific Power of Attorney

A person who wishes to register specific Power of Attorney shall present a request to the Registrar in Form LRA 6 set out in the Sixth Schedule.

19. Irrevocable Power of Attorney

A person who wishes to register an irrevocable Power of Attorney shall present a request to the Registrar in Form LRA 7 set out in the Sixth Schedule.

20. Revocation of Power of Attorney

A person who wishes to revoke a registered Power of Attorney may present a request to the Registrar in Form LRA 8 set out in the Sixth Schedule.

36. The Power of Attorney, the subject of this suit, was a general Power of Attorney which permitted the donee, among other things, to receive rents and issue receipts thereof, to buy and sell movable and immovable property, and to defend any action on behalf of the donor.
37. From the nature of the Power of Attorney, the donees' powers were extensive. In her witness statement, Maria admitted that the general Power of Attorney was for collecting rent from Barbara's house in Riruta. It is not in dispute that Barbara owned a house in Riruta, which was leased to a tenant named Lucy Kashorda.
38. Evidently, this relationship continued until 1999 when Barbara revoked the said Power of Attorney via a revocation registered as IP/A 33347/1. The effect of a revoked Power of Attorney is that the actions of the donee after revocation are null and void, except where it is proven that third parties had no notice.
39. It is the 1st Defendant's case that she was unaware of the revocation of the Power of Attorney. She claims that, under the said Power of Attorney, she sold the land to the 2nd Defendant. Aside from the registered Power of Attorney, no evidence has been presented to the court to support any communication regarding the revocation to

the 1st Defendant. The court will then consider the parties' conduct to determine whether the revocation was brought to the attention of the donee, Maria.

40. It is not in dispute that the negotiations leading to the purchase of the suit land were conducted between Jeremiah and Barbara in 2002 when Barbara visited Kenya. This was uncontested by Maria. Barbara became the registered owner of the suit land on 14/6/2002. Clearly, the transaction did not involve Maria at all; her Power of Attorney had been revoked in 1999, about 4 years before.
41. It was Maria's assertion that, during Barbara's presence in the Country, she informed her that the tenant was not paying rent and had defaulted for a while. If Maria had indeed continued to act as a donee collecting rent, she would have been known of the tenant's overdue payments. In this case, Barbara is informing her of the rent arrears. Additionally, evidence such as a cheque dated 12/2/2002, issued by the tenant in favor of Barbara, corroborates that Maria was not acting as Barbara's agent. Otherwise, the cheque would have been issued in her name as Barbara's representative.
42. Maria has alleged that Barbara did not remit the purchase price for the suit land to Jeremiah. It is claimed that the title was registered in her name and placed in Jeremiah's custody as a lien. However, no evidence has been presented to substantiate this claim. Furthermore, Maria testified that neither she nor Jeremiah initiated any legal action to recover the purchase price nor lodged any complaint with the relevant authorities. The conclusion is that Jeremiah received full payment for the land, which explains its registration of the title in Barbara's name. The amount of Kshs 20,000/- in the form of a cheque drawn by Jane Kiano dated 13/6/2003 in the name of Jeremiah does not state the nature of the payment nor that it was a part payment of the purchase price. The court is not persuaded that it had anything to do with the purchase price.

43. It was further alleged that Barbara informed Maria via a letter dated 10/6/2003 that she was unable to pay the purchase price and that she was going to remit the funds. I have examined the letter closely, and I find no reference to sending money to Jeremiah; instead, Barbara mentioned sending documents soon and money to Lloyd Masika. There is also no mention of the suit land at all. The letter does not instruct Maria to sell any land either.
44. Ultimately, the Court is persuaded on a balance of probabilities that Barbara revoked the Power of Attorney in 1999 and caused it to be registered, and that the 1st Defendant was aware of this revocation.
45. Regarding the second issue, the Court shall review the documentary evidence submitted during the hearing. The sale agreement dated 16/3/2004, executed by Jeremiah, is considered inconsequential because, at that time, the suit land was owned by Barbara, and Jeremiah had no vested interest in the suit land to transfer to the 2nd Defendant. I have already dismissed the assertions that Barbara did not pay the full purchase price.
46. Regarding the transfer dated 24/2/2004, it is important to note that it was executed by Maria in her personal capacity and not under a Power of Attorney. If she was unaware of the revocation of the Power of Attorney, she would have used the authority granted by it, including referencing its registration details, as is customary. She acted in her own name because she must have known that her Power of Attorney had been revoked. She cannot now rely on an authority she did not acknowledge in the transaction. Therefore, executing the transfer renders the instrument invalid, as she lacked the authority to act, since the Power of Attorney had been revoked in 1999. This also applies to the Land Control Board Consent obtained for the transaction. The transfer was executed on 24/2/2004, before the sale

agreement on 16/3/2004. This raises questions about the validity of the documents.

47. It is on record that when Barbara learned of the illegal transfer of her land, she quickly lodged a caution on the property, which was registered on 10/4/2007.

48. In the case of *Agri Seedco Ltd. v. Christine Chepchirchir Baig & Another* [2019] eKLR, the Court held that under Section 51 of the Registration of Titles Act (now repealed), the Registrar of Lands could not give effect to the conveyance or transfer or any other instrument signed pursuant to the revoked Power of Attorney. Thus, the land transaction entered into by the Appellant in regard to the suit property became invalid and ineffective.

49. In the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, Tunoi, JA. (as he then was) 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 distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

50. Section 26 of the Land Registration Act cited above provides two instances where a title can be challenged. The first is on the ground of fraud and/or misrepresentation to which the person is proved to be privy to and/or a party and secondly where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme

51. The Court concludes that the transfer of the suit land by the 1st Defendant to the 2nd Defendant was made without the consent and knowledge of Barbara, the registered owner and therefore constitutes

a fraudulent, illegal, null, and void transaction. I shall make the relevant orders at the end.

Whether the 2nd Defendant was a bona fide purchaser for value without notice.

52. Is the 2nd Defendant a Bonafide purchaser for value without notice? The Uganda case of Katende Vs Haridas & Company Limited (2008) 2 EA 174 defined a bonafide purchaser as thus;

“a Bonafide purchaser is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the Bonafide doctrine he must prove the following; he holds a certificate of title; he purchased the property in good faith; he had no knowledge of the fraud; he purchased for valuable consideration; the vendors had apparent good title and he purchased without notice of any fraud

53. In the case of Samuel Kamere Vs Land Registrar (2015) EKLR the Court of Appeal held that;

“in order to be considered a bonafide purchaser for value, a person must prove that he had acquired a valid and legal title, secondly that he carried out the necessary due diligence to determine the lawful owner from whom he acquired legitimate title and thirdly that he paid valuable consideration for the purchase of the suit property.” (emphasis

54. It is trite when the root of a proprietor’s title is under challenge the registered proprietor must travel beyond the instrument and proof the legality of how he acquired the title and show that the acquisition was legal formal and free from any defect or malady. See the decision of the court in Munyu Maina Vs Hiram Githiha Maina [2013] eKLR where the court stated as follows;

“ 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 in challenge 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 including any and all interests which need not be noted on the register.”

55. It was the case of the 2nd Defendant that he was unaware that the 1st Defendant’s Power of Attorney had been revoked. He testified that Maria called Barbara in his and Jeremiah's presence and agreed to sell the suit land to him. He however did not produce any evidence in support. Having been aware that Maria held a Power of Attorney, it was his duty to conduct due diligence to confirm that it was still in force. Having elected to deviate, he cannot convince this court that he exercised any due diligence. Had he carried out a simple search on the title, he would have discovered that the suit land was transferred to Barbara 4 years ago and that Jeremiah had no interest to convey, as per the sale agreement of 16/3/2004. He would also have discovered that the Power of Attorney had been revoked in 1999 and that Maria had no authority to execute the documents on behalf of Barbara.

56. In the case of Ali Mohamed Ali v Abdulhamid Mohammed Ali Said [2021], ECLR, the Court determined that a donor is not legally required to provide personal notice of revocation to the donee or third parties because the registration of the revocation instrument serves as constructive notice to the public.The Court states that “According to Section 51 of the Registration of Titles Act, the act of registering a revocation is self-executing, meaning it immediately bars the Registrar from giving effect to any further transfers signed under that power

without the necessity of a court order or additional personal notifications.” Ultimately, because the donee’s authority ceases immediately upon the registration of revocation, any subsequent transactions are considered fraudulent and void, as third parties are not protected under the doctrine of innocent purchasers if they fail to verify the status of the power of attorney.

57. Furthermore, the 2nd Defendant did not present any evidence to substantiate that the purchase price was paid. He stated that he paid Jeremiah in cash for land belonging to Barbara. However, there was no acknowledgment of this; therefore, there is insufficient evidence to persuade the court that any consideration was indeed exchanged. If such consideration did occur, it was illegal, fraudulent, and null and void, given that the land did not belong to Jeremiah, and Maria lacked the authority to act on behalf of Barbara, as her Power of Attorney had been revoked in 1999.

Whether the Plaintiff has proved trespass and whether she is entitled to general damages.

58. Having held that the registration of the suit land in the name of the 2nd Defendant was without any legal justification, the occupation, fencing, and cultivation of the suit land by the 2nd Defendant amounts to trespass. I find that the Plaintiff has proven trespass.

59. Since trespass is actionable per se, the Court concludes that the Plaintiff is entitled to general damages as claimed. The court has considered the duration of the trespass and therefore awards a reasonable sum of Kshs 2.0 Million (Two Million Only) in favour of the Plaintiff.

Whether the title in the name of the 2nd Defendant should be cancelled and revoked.

60. Having found that the title held by the 2nd Defendant is a product of fraud, the same is a candidate for cancellation under

section 80 of the Land Registration Act. The relevant section states as follows;

“80. (1) 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.

(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

61. Final orders for disposal

- a. A declaration be and is hereby made that the transfer of the suit property to the 2nd Defendant was fraudulent, is null and void. Consequently, the title in the name of the 2nd Defendant be and is hereby cancelled and revoked forthwith.
- b. It is hereby declared that the suit land belongs to Barbara Teresa Hamilton, deceased.
- c. The Land Registrar is hereby ordered to rectify the title by cancelling all entries and the title in the name of the 2nd Defendant and instead revert the registration of the title to the name of Barbara Teresa Hamilton, deceased.
- d. The Deputy Registrar of this Court is hereby mandated to execute all the documents necessary to effectuate the orders of the court.
- e. A declaration be and is hereby issued that the 2nd Defendant has no title or colour of right or interest in the Plaintiff's parcel of land known as Title number MUGUGA/GITARU/1849;

- f. A permanent injunction to restrain the 1st and 2nd Defendants either by themselves, their servants and or agents from advertising for sale, selling, subdividing, construction thereon and or interfering with, or trespassing upon the suit property be and is hereby issued.
- g. General damages for trespass in the sum of Kshs 2.0 Million in favour of the Plaintiff.
- h. Costs of this suit and interest on (g) above at court rates in favour of the Plaintiff.

62. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI
JUDGE

Delivered Online in the Presence of:

1. Mr Bhanji for the Plaintiff
2. Mr Gikonyo for the Defendants
3. C/A- Ms Yvette.