



**Sumbow Enterprise Ltd v Mithamo & 3 others (Environment and Land Case E156 of 2022) [2026] KEELC 1599 (KLR) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1599 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E156 OF 2022**

**JA MOGENI, J  
MARCH 18, 2026**

**BETWEEN**

**SUMBOW ENTERPRISE LTD ..... PLAINTIFF**

**AND**

**DAVIS GITHINJI MITHAMO ..... 1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, RUIRU ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Land is a finite resource; however, the administrative record in this suit presents a structural impossibility of doubled acreage. This matter involves a dispute over two competing Certificates of Title emanating from two distinct Land Registers presented through the Green Cards, both purportedly subsisting over the same parcel of land.
2. Consequently, the Court is tasked with interrogating the root of title to determine which registration was irregularly or fraudulently obtained and at what specific point the nexus of ownership was severed. The Plaintiff filed on 30/11/2022 by the Plaintiff prays for:
  1. A declaration that the Plaintiff is the legal owner and absolute proprietor of land Title Number: Ruiru Kiu Block 2/2434 instead of the 1<sup>st</sup> Defendant and other owners of the subdivided New Numbers: 24228-24241.
  2. An Order cancelling and nullifying the Title Deed issued in the name of the 1<sup>st</sup> Defendant and all subsequent owners of the subdivided New Numbers 24228-24241.



3. An Order directing the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to rectify the register so as to reflect the name of the Plaintiff as the absolute proprietor and legal owner of Land Parcel number Ruiru Kiu Block 2/2434 together with the new numbers emanating from the subdivision done by Defendants and cancel the names of the 1<sup>st</sup> Defendant all his agents and assigns with new numbers comprising 24228-24241.
  4. A permanent injunction against the 1<sup>st</sup> Defendant and any other person claiming under him from entering, and/or in any other way purporting to interfere or deal in Land Parcel Number Ruiru Kiu Block 2/2434 and all the new subdivided Nos: 24228-24241.
  5. General Damages for trespass of all that parcel of land known as Ruiru/kiu 2 /2434.
  6. Interest on 5 above.
  7. Mesne Profits.
  8. Costs of the Suit.
  9. Any other order that the Court may issue to serve the interest to justice.
3. The 1<sup>st</sup> Defendant never entered appearance by filing a Statement of Defence. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants filed a joint Statement of Defence dated 18/01/2022 and denied all the averments in the plaint and event added that the suit offends the mandatory provisions of Section 13A of the Government Proceedings Act and that they were to raise a Preliminary Objection to have the suit struck out.
  4. During the interrogatory process the Defendants on many occasions did not attend Court. When the matter was fixed for hearing on 26/02/2025 when the parties appeared in Court on 18/10/2025 the Plaintiff's counsel confirmed readiness to have the matter heard. Hearing Notice was issued and served.
  5. A brief history of the case is that the Plaintiff seeks to establish its rightful and indefeasible ownership of land parcel Ruiru Kiu Block 2/2434 the suit property. The Plaintiff acquired the property from the Trustees of Thamenya Self Help Group for Kshs. 4,200,000, following rigorous due diligence. Title was issued in the Plaintiff's name on 31/01/2014, and the Plaintiff subsequently took vacant possession, fencing the land and maintaining peaceful occupation.
  6. The dispute arose in July 2020 when the Plaintiff discovered its fence vandalized and learned through a search at the Ruiru Lands Registry that a duplicate title had been irregularly issued to the 1<sup>st</sup> Defendant Davis Githinji Mithamo on April 23, 2019. Further investigations revealed that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants (Land Registrars) had created a parallel green card for the same property, enabling the 1<sup>st</sup> Defendant to attempt a subdivision into 14 plots.
  7. On 26/02/2025 during the call over the 1<sup>st</sup> Defendant was absent, the Counsel for the Plaintiff and counsel for the 2<sup>nd</sup> to 4<sup>th</sup> Defendant confirmed readiness for the hearing.

### **Plaintiff's Case**

8. Hearing of the suit proceeded undefended on 26/02/2025. Samson Maina testified as PW1. He adopted his witness statement and produced a list of documents consisting of 30 documents as exhibits and the Court adopted them as PWExh 1-30. He told the Court he was a businessman who supplies Medical Equipment and that he is a director of the Plaintiff company, Sumbow Enterprises Ltd.
9. He stated that he was the legitimate owner of the suit property having been issued with title on 3/01/2014 but that he had heard that there was a second title issued in 2019 which subdivided the mother title into multiple titles.



10. Upon cross-examination by Counsel for the 2<sup>nd</sup> – 4<sup>th</sup> Defendants, he told the Court the he conducted a search and did due diligence before purchase. That the Search was done on 8/11/2013 and a copy of the same is filed in Court at page 96. It was his testimony that the Sale Agreement dated 13/11/2013 at pages 76 to 78 show that they purchased the suit property.
11. He testified that he has alleged fraud and that he reported to Ruiru Police Station on 10/09/2020 under OB No. 47 as shown by the document at page 47. In his report he stated that he was accusing the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant but he no report on the investigation. That in fact the investigations have not concluded to date.
12. According to PW1, he stated that when he noted that he was not getting assistance from Ruiru Police Station he wrote on 4/10/2021 as per the document at page 89 to DCI Kiambu although he has not followed up with DCI on the progress.
13. He testified that according to the green card copy filed at page 94 the issuing authority for the title is shown to be Githunguri Ranching Company and also on page 95 it is the same company who issued the title on 9/04/2014. However, he distinguishes the two titles by stating that at page 94 there is a 1<sup>st</sup> allottee and that the parcel file was opened on 13/08/2012 and it was passed on to the Plaintiff on 26/06/2013. He testified to have not sued Githunguri Ranching Company.
14. On re-examination he told the Court that he was issued with the title by the Land Registry in January 2014 and that he has never sold the said land after being issued with title. He told the Court that Githunguri Ranching is not Land Registrar and that he has never transferred his land to anyone.
15. Hearing resumed on 4/06/2025 after an oral application for adjournment was granted to the Plaintiff.
16. PW2 - Daniel Muchoki Maina T/A Muchoki DM & Co. Advocates testified that he was an advocate and his number of registration being P105/4430/01. He testified that he did execute a witness statement dated 30/11/2022 which he adopted as his evidence in chief. He stated that he executed the Sale Agreement between the Plaintiff and a group that sold him the parcel of land being Ruiru Kiu Block 2/243/45.
17. That prior to the execution, he had carried out a search and confirmed that the group owned the parcel and thereafter they executed a transfer which procured the title for the Plaintiff.
18. According to him, it was later that the Plaintiff notified him that the 1<sup>st</sup> Defendant was claiming ownership to the suit property and that he went to the Land Registry where it occurred to him that there existed two green cards. The 1<sup>st</sup> green card which gave parcel to Thamenya Self Help Group was opened on 13/08/2012 whereas a parallel green card that gave the property to the 1<sup>st</sup> Defendant was opened 6 years later on 9/04/2013.
19. He then told the Court that it was his humble opinion that the 2<sup>nd</sup> green card was opened with the main aim of defrauding the Plaintiff of his suit property.
20. PW3 - Ashford Kinyua adopted his witness statement and he told the Court that he was the Chairman of Thamenya Self -Help Group and the he is the one sold the suit property together with other officials. Further that the suit property was sold to them by Rachel Wanjiku Macharia who had balloted. He produced 19 exhibits
21. He testified that he was told in 2014 that the suit property had an issue and they were summoned by DCI and he confirmed that he sold the suit property to Sumbow Ltd. That he was issued with the title deed in 2013 as the Self-Help Group. Furthermore, that they never sold the land to anyone else except to Sunbow Enterprises Ltd.



22. PW4- John Rimui Waweru adopted his witness statement dated 30/11/2022 and stated that the 1<sup>st</sup> person to get the suit property was Rachel Wanjiku Macharia. That the Register he was referring to is for Githunguri Ranching Company Ltd. He further stated that he wanted the Court to take the documents produced. That in Githunguri Ranching Constituency only members were balloting, then they would be issued with ballot card then it is recorded in the book for balloting.
23. According to him where the person who balloted is recorded in the ballot book then if they sell to another person then the seller's name is cancelled and the new member's name is entered in the ballot book. For him, he would like the suit property returned to Wanjiku Macharia.
24. With this the Plaintiff closed their case and a judgment date was reserved. The Court issued directions on filing of submissions.
25. The Counsel for the 2<sup>nd</sup> to 4<sup>th</sup> Defendants filed a Notice of Motion dated 09/06/2025 seeking to stay proceedings and to arrest the delivery of judgment, and to reopen the defense case for the 2<sup>nd</sup> Defendant to present their Defence.
26. The Court issued directions on canvassing of the application on 15/10/2025 and reserved a mention date to confirm filing of written submissions on 4/12/2025. When the matter came up on the instant date the Counsel for the 2<sup>nd</sup> to 4<sup>th</sup> Defendants made an oral application to withdraw the application and the Plaintiff did not raise any objection. So, the Notice of Motion Application dated 9/06/2025 was withdrawn and the date reserved for judgment was confirmed for 18/03/2026.

### **Plaintiff's Submissions**

27. The Plaintiff argues that its title, issued in 2014, predates the 1<sup>st</sup> Defendant's 2019 registration by five years. Under Sections 24(a) and 25(1) of the [Land Registration Act](#), 2012, registration confers absolute and indefeasible ownership. The Plaintiff relies on the first in time principle established in *Wreck Motors Enterprises v Commissioner of Lands & 3 Others* [1997] eKLR where the Court held that where two parties claim the same parcel, the first registration takes precedence. Additionally, in *Gitwany Investment Ltd v Tajmal Ltd & 3 Others* [2006] eKLR the Court reaffirmed that the first title in time prevails unless acquired through fraud.
28. The Plaintiff asserts in his submissions that the 1st Defendant's title is a product of fraud and is therefore void ab initio. Under Section 26(1) of the [Land Registration Act](#), a title is only impeachable on the grounds of fraud or misrepresentation. The Plaintiff cites the case of *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others* [2015] eKLR where the Court established that the doctrine of indefeasibility does not protect a title founded on forgery or illegality.
29. In the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR it was the Court's position that once a title's root is challenged, the proprietor must prove the legality of its acquisition. The 1<sup>st</sup> Defendant failed to enter an appearance or provide any transfer instruments.
30. Furthermore, in the case of *Esther Ndegi Njiru & Another v Leonard Gatei* [2014] eKLR arrived at a decision confirming that fraud unravels everything and cannot be shielded by the plea of a bona fide purchaser.
31. Thus, the Plaintiff contends that 3<sup>rd</sup> and 4<sup>th</sup> Defendants breached their statutory duties under Sections 14 and 79 of the [Land Registration Act](#) by failing to maintain the integrity of the register. This administrative recklessness violates Article 40 of [the Constitution](#) of Kenya, which protects the right to property.



32. In the case of *Republic v Land Registrar, Thika & Another Ex Parte Wambui* [2021] eKLR the Court highlighted the Registrar's duty to verify records before issuing new titles. In addition, the Court underscored the public duty of registrars to safeguard the sanctity of the land register which it made its decision in the case of *Funzi Island Development Ltd & 2 Others v County Council of Kwale & 2 Others* [2014] eKLR.
33. The Plaintiff further notes that the Land Registrar's own witness statement admits to the existence of two parallel green cards, which is a legal nullity. Although it was not presented in Court.
34. Evidence from the Trustees of Thamenya confirmed they never sold the property to the 1<sup>st</sup> Defendant, proving that their corporate documents were used fraudulently to facilitate the 2019 registration.
35. The Plaintiff maintains that it has proven its case on a balance of probabilities. Relying on Section 80(1) of the *Land Registration Act*, the Plaintiff seeks an order for the rectification of the register and the cancellation of the 1<sup>st</sup> Defendant's fraudulent title. This position is supported by the cases of *Elijah Makeri Nyang'wara v Stephen Mungai Njuguna & Another* [2013] eKLR and *Nyamu Gutu Mureithi v Peter Chege Wainaina & 2 Others* [2022] eKLR, where Courts ordered the cancellation of titles procured through registry manipulation and the reinstatement of the rightful owners.
36. In conclusion the Plaintiff submits that the 1<sup>st</sup> Defendant's registration is an illegal duplication that undermines the sanctity of land ownership. Consequently, the Plaintiff prays for declaratory and injunctive relief to restore the integrity of the land register and protect its Constitutional property rights.
37. As earlier stated, the 2<sup>nd</sup> -4<sup>th</sup> Defendants filed joint submissions. I am aware that written submissions from a Defendant who called no witnesses but cross-examined the Plaintiff have low probative value regarding new facts, as submissions are not evidence. Whereas I will still summarize the submission herebelow, the Court will primarily base its decision on the unchallenged or tested evidence of the Plaintiff, with the Defendant's submissions acting only as a critique of that evidence if at all.

#### **2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Submissions**

38. The 2<sup>nd</sup> Defendant, the Attorney General, 3<sup>rd</sup> Defendant, the Chief Land Registrar, and 4<sup>th</sup> Defendant, Land Registrar, Ruiru participated in the proceedings primarily through the cross-examination of the Plaintiff's witnesses. Notably, despite filing a defense and a witness statement by Mr. Tram Robert Mbuba, these Defendants failed to call any evidence or produce any witnesses to testify in support of their case. Consequently, the Plaintiff's evidence remains largely uncontroverted and the case proceeded as an undefended matter regarding the Defendants' positive case.
39. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants' submissions focus on the administrative role of the Land Registry. They essentially argue that the registration of the 1<sup>st</sup> Defendant was done in the ordinary course of business based on documents presented to the registry. However, in their submissions they have tried to explain the legal anomaly of maintaining two concurrent and distinct Green Cards, where the first opened in 2012 favoring the Plaintiff's chain of title and the second in 2019 favoring the 1<sup>st</sup> Defendant.
40. They have submitted and shielded themselves from liability by implying that the Registry acts on the face of documents presented. They have however not provided a statutory or factual justification for the unlawful opening of a duplicate register for an already registered parcel of land, which is a direct violation of Sections 6 and 79 of the *Land Registration Act*, 2012.



41. Ultimately, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants have failed to discharge the burden of proof required to sustain their defense. Their submissions are legally insufficient to defeat the Plaintiff's indefeasible title or to justify the creation of a parallel title.

### **Analysis and Determination**

42. Based on the pleadings and evidence adduced, the central legal questions for this Court are:
- i. Between two competing titles over the same parcel, which holds legal precedence?
  - ii. Was the 1<sup>st</sup> Defendant's registration procured through fraud or procedural illegality?
  - iii. Did the 3<sup>rd</sup> and 4<sup>th</sup> Defendants breach their statutory duties under the *Land Registration Act, 2012*?
  - iv. What is the legal effect of the 2<sup>nd</sup> to 4<sup>th</sup> Defendants' failure to adduce evidence?
43. The core of this dispute lies in the existence of two parallel Green Cards for land parcel RUIRU KIU BLOCK 2/2434. The Plaintiff's title was issued in 2014, while the 1<sup>st</sup> Defendant's was created in 2019. Under Kenyan law, the sanctity of a title is protected by Section 26(1) of the *Land Registration Act*, but this protection is not a cloak for double registration. The Court will follow the long-standing principle of *qui prior est tempore, potior est jure* meaning he who is first in time is stronger in law. This principle signifies that the first person to acquire an interest, claim, or right especially in property or equity has priority over subsequent claimants. This principle ensures that the earliest transaction holds superior legal standing
44. In *Wreck Motors Enterprises v Commissioner of Lands & 3 Others* [supra], the Court of Appeal held that where two titles exist for the same land, the first in time prevails. Similarly, in *Gitwany Investment Ltd v Tajmal Ltd & 3 Others* [supra], the Court emphasized that the subsequent title is a nullity unless the first can be proven fraudulent.
45. The Plaintiff established a clear chain of ownership from the original allottee who is Rachel Wanjiku Macharia to the Trustees of Thamenya Self Help Group, and finally to itself. Conversely, the 1<sup>st</sup> Defendant's title appeared five years later without any evidence of a lawful transfer from the Plaintiff or the previous owners.
46. The Court applies the root of title test from *Munyu Maina v Hiram Gathiha Maina* [supra], which mandates that a registered owner must prove the legality of how they acquired the land once challenged. Since the 1<sup>st</sup> Defendant neither entered an appearance nor produced an allotment letter, his title is deemed a product of fraud. As held in *Esther Ndegi Njiru v Leonard Gatei* [2014] eKLR, fraud unravels everything.
47. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants, Land Registrars are statutory custodians of land records. The creation of a second Green Card for a parcel already in the register is a glaring administrative and legal anomaly.
48. Under Sections 14 and 79 of the *Land Registration Act*, the Registrar has a duty to maintain a clean register. Failure to verify existing records before issuing a new title constitutes gross negligence. In *Republic v Land Registrar, Thika & Another Ex Parte Wambui* [2021] eKLR, the Court ruled that Registrars have a duty to ensure no duplicate titles are issued. Their actions here violate Article 40 of *the Constitution*, which protects against the arbitrary deprivation of property.
49. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants cross-examined the Plaintiff's witnesses but failed to call their own witness, Mr. Mbuba to the stand. They instead filed submissions. In law, submissions are not evidence; they



are mere marketing of a party's case. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants' submissions carry minimal probative value. This is because it is a settled principle of law that a party who fails to call evidence in support of its pleadings is deemed to have abandoned those pleadings. In *Autar Singh v. City Council of Nairobi* [2014] eKLR, the Court held that where a party fails to testify, the Court is entitled to find that the allegations in the Plaintiff or Defense have not been proved.

50. The Plaintiff provided cogent oral and documentary evidence of the root of title. By failing to call the Land Registrar to explain the creation of the 2019 Green Card, the Defendants left the Plaintiff's allegations of gross negligence and administrative fraud unchallenged.
51. Whereas the Defendants' Counsel cross-examined the Plaintiff's witnesses, cross-examination alone cannot fill the vacuum left by the failure to lead evidence-in-chief. As stated in *Edward Muriga t/a Muriga Wholesalers v. Nathaniel G. Munyi* [2005] eKLR, evidence that is not challenged by way of rebuttal evidence is generally accepted as true.
52. The 2<sup>nd</sup> Defendant remains vicariously liable for the statutory breaches of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. Without evidence to prove they acted within the law; their submissions cannot override the constitutional protections of property under Article 40.
53. The Defendants' position is further weakened by the holding in *Republic v Land Registrar, Thika & Another Ex Parte Wambui* [2021] eKLR, which imposes a positive duty on Registrars to verify the authenticity of records. Their submissions attempt to treat the double registration as a mere administrative error, but in the absence of evidence to explain away the fraud, the Court must lean towards the Plaintiff's version of events.
54. In the eyes of the law, a Certificate of Title, the Green Card is more than a mere piece of paper; it is an indestructible shield of ownership. However, when two such shields exist for the same coordinates of earth, the law faces a paradox.
55. The Torrens system of land registration was designed to bring certainty to chaos. Yet, the presence of two Green Cards for a single parcel of land represents a rare and fundamental short circuit in that system. This Court having been persuaded that the balance of convenience tilts to affirming the Plaintiff's claim it holds that to resolve the administrative collision it will weigh in on the equity of the first-in-time against the integrity of the public register.
56. The Court finds that the Plaintiff has proven its case on a balance of probabilities. The 1<sup>st</sup> Defendant's title was irregularly and fraudulently obtained, facilitated by the statutory breach of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The existence of a parallel register is a nullity in law.
57. The Plaintiff has sought for Mesne profits. In many cases, mesne profits are considered the same as damages for trespass. However, Court precedents indicate that if a Court grants general damages for trespass, it may not grant a separate award for mesne profits to avoid double compensation.
58. The Black's Law Dictionary 9th Edition defines mesne profits as:

“The profits of an estate received by a tenant in wrongful possession between (2) two dates”  
and in the Concise Oxford English Dictionary 12th Edition, mesne profits has been defined as:

“The profits of an estate received by a tenant in wrongful possession and recoverable by the Landlord.”



59. Mesne profits are classified as special damages. The principle is that special damages must be both pleaded and proved. The Plaintiff made a claim of mesne profit as one of his prayers in his plaint he did not quantify or justify his claim.

60. To this end, I am persuaded by the decision of the Court of Appeal in Peter Mwangi Mbuthia vs. Samow Edin Osman & Naftali Ruth Kinyua Civil Application No. NAI No.38 of 2004 where it was held that,

“As regards the payment of mesne profit, we think the Applicant has an arguable appeal. No specific sum was claimed in the plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded .... That being so, it must be very hard on the Applicant to be forced to pay an amount which had not even been pleaded in the first place, and on which the first respondent offered no evidence at all.”

61. It is therefore my finding that since the Plaintiff did not plead or prove his claim for mesne profits and rent, he is not entitled to the same

### **Disposal Orders**

62. The Court hereby Orders that:

- a. A declaration is issued that the Plaintiff is the sole, lawful, and absolute proprietor of Ruiru Kiu Block 2/2434.
- b. The title deed issued to the 1<sup>st</sup> Defendant and any subsequent titles emanating from the subdivision Nos. 24228–24241 are hereby nullified and cancelled.
- c. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants are directed to rectify the Land Register at Ruiru to reflect the Plaintiff as the sole owner and delete all entries related to the 1<sup>st</sup> Defendant.
- d. A permanent injunction is granted restraining the 1<sup>st</sup> Defendant, his agents, or assigns from interfering with the suit property.
- e. The 1<sup>st</sup> Defendant is ordered to pay general damages for trespass of Kesh 2,000,000.
- f. Interest of (e) above from the date of this Judgment until payment in full.
- g. The cost of the suit shall be borne by the Defendants jointly and severally.

It is ordered.

**DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 18<sup>TH</sup> DAY OF MARCH 2026.**

.....

**MOGENI J**

**JUDGE**

In the presence of:

Miss Kerubo for the Plaintiff

1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants – Absent

Melita - Court Assistant

