



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CIVIL APPEAL NO. E013 OF 2024

**THE ESTATE OF MARY WANJIKU KIARIE (DECEASED).....
APPELLANT**

VERSUS

**FELISTA NGOIRI NJOROGE.....1ST
RESPONDENT**

**ALICE WANGUI KANJA.....2ND
RESPONDENT**

**THE LAND REGISTRAR THIKA.....3RD
RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4TH
RESPONDENT**

***(Being an Appeal from the Judgment of the Honorable
Oscar Wanyanga (SRM) delivered virtually on 28th
December 2023 in Thika MCELC/46/2019)***

BETWEEN

**FELISTA NGOIRI NJOROGE.....
PLAINTIFF**

VERSUS

**ALICE WANGUI KANJA.....1ST
DEFENDANT**

**THE LAND REGISTRAR, THIKA2ND
DEFENDANT**

**THE HON. ATTORNEY GENERAL.....3RD
DEFENDANT**

**THE ESTATE OF MARY WANJIKU KIARIE (DECEASED).....4TH
DEFENDANT**

JUDGMENT

1. This Appeal arises from the decision of the Senior Resident Magistrate in **MELC Suit No. 046 of 2019** (hereinafter referred to as **“the Trial Court”**) by Honourable Oscar Wanyaga (SRM), delivered on 28/12/2023.
2. The Appellant herein was the 4th Defendant in the Trial Court, where the Estate was sued alongside the 2nd, 3rd and 4th Respondents by the 1st Respondent, who sought among other orders a declaration that she is the bona fide owner of **RUIRU EAST/JUJA EAST BLOCK 2/1095**. The 1st Respondent also requested a permanent injunction restraining the 1st Defendant who is the 2nd Respondent in the Appeal from entering, disposing off or in any other way interfering with the 1st Respondent’s parcel **Ruiru East/Juja East Block 2/1095** including herself, agents, servants or anybody claiming to act with her authority. Additionally, the 1st Respondent sought an order compelling the 2nd Defendant who is the 3rd Respondent to rectify the register by removing the name of the 1st Defendant and replacing it with that of the Plaintiff. And a cancellation of the title deed held by the 1st Defendant over land parcel number **Ruiru East/Juja East Block 2/1095** among other orders.
3. In the Amended Plaint dated 15/09/2021, the 1st Respondent averred that she is the legal and registered owner of the

land parcel number **Ruiru East/Juja East Block 2/1095** having obtained title deed on 17/11/1989 the Suit Property herein. She stated that she was a member of Juja Farm which purchased land in Juja Kiambu County in 1975 which land was later subdivided for its members into land parcels measuring 3 acres and $\frac{1}{4}$ acre plots.

4. That upon following due process she obtained the title deed of the suit property measuring 1.408 hectares title number **Ruiru East/Juja East Block 2/1095**.
5. She avers to have discovered that without her knowledge and consent someone had started constructing a permanent building on her suit property. Upon investigation she states that she discovered that the 1st Defendant was now the registered owner of the suit property and her name was unlawfully, illegally and or irregularly entered into the register and a title issued.
6. She claims that she noted when she obtained the Green Card that 1st Defendant had fraudulently, illegally, irregularly and unprocedurally caused the suit property to be transferred in favour of the intended 4th Defendant and a title was issued on 11/11/2008.
7. She lists the particulars of irregularities by the 1st Defendant, 2nd Defendant and 4th Defendant at paragraph 11 of the Amended Plaintiff.
8. As stated in the Judgment, the Appellant filed their Statement of Defence dated 29/04/2022, in which they denied the 1st Respondent's claim and demanded strict proof thereof. In their Defence they claimed to be legal, legitimate

and registered owner of the suit parcel enjoying exclusive and uninterrupted possession, occupation and usage of the parcel since 2008 to the date when the matter was filed in Court.

9. Among the Defendants sued only the 4th Defendant filed a Statement of Defence and at the hearing the 4th Defendant testified as DW1. She denied being aware of a criminal case against her mother Mary Wanjiku Kiarie (deceased) where the Court in **Thika CR Case No. 667 of 2012** found the 1st Defendant guilty of the offence of obtaining registration by false pretences contrary to Section 320 of the Penal Code.
10. It was the evidence of DW1 - Virginia Gakuhi Kiarie the daughter of Mary Wanjiku Kiarie (deceased) that her mother duly paid the purchase price and the property was registered in her name on 11/11/2008.
11. The Respondent testifying as PW1 - Peter Njoroge Ngoiri son to the Plaintiff and holding a Power of Attorney issued by her reiterated the content of his witness statement that his mother bought the said suit property through the share she purchased in Juja Farms (1976) Limited. After balloting and issuance of title deeds he told the Court he has always had custody of the two title deeds for land parcels RUIRU EAST/JUJA EAST BLOCK 2/1095 and RUIRU EAST/JUJA EAST BLOCK 2/T. 5437.
12. Upon considering the matter, the trial Court, Hon. O.M. Wanyanga - SRM, in a Judgment delivered on 28/12/2023, entered Judgment in favour of the 1st Respondent, granting prayers (a), (b), (c), (d), and (e) and awarded costs to the 1st

Respondent and the Appellant to be borne by the 1st Defendant of the Re-Amended Plaintiff dated 6/04/2023.

13. The Appellant was aggrieved by that Judgment and filed this Appeal vide the Memorandum of Appeal dated 01/02/2024 raising the following grounds:-

- 1) THAT the learned Magistrate erred in law and fact in declaring the 1st Respondent as the legal and bona fide owner of land parcel RUIRU EAST/JUJA EAST BLOCK 2/1095 despite the glaring fact that she did not adduce any evidence to demonstrate her acquisition of the said land parcel.
- 2) THAT the learned Magistrate erred in law and fact in finding that the 1st Respondent was a member of Juja Farm Limited which purchased the land that was later subdivided inspite of the 1st Respondent's failure to bring forward any evidence to support the same
- 3) THAT the learned Magistrate misdirected himself in law and in fact in holding that the Appellant based her ownership of RUIRU EAST /JUJA EAST BLOCK 2/1095 on the time she spent on that parcel of land and her occupation thereof; whereas the evidence on record shows that all material times the Appellant acquired the property when it was vacant undeveloped and free from any encumbrances.
- 4) THAT the learned Magistrate erred in law and fact in accepting the Respondent's case hook, line and sinker and totally ignoring and failing to appreciate the evidence brought forth by the Appellant towards her

procedural and lawful acquisition of RUIRU EAST/JUJA EAST BLOCK 2/1095 thereby arriving at an unjust, unfair and unlawful decision.

- 5) THAT the learned Magistrate erred in law and fact by overlooking the obvious fact that the Appellant was a bona-fide purchaser for value without notice thus arriving at an unfair and unjust decision to the detriment of the Appellant.
 - 6) THAT the learned Magistrate erred in law and in fact by failing to appraise himself with the evidence on record by granting the 1st Respondent the orders she sought which are unfair, punitive, unjust, unwarranted in the circumstances and also an injudicious exercise of his discretion.
 - 7) THAT the Judgment of the trial Court is inconsistent with the facts adduced, the established legal principles, the evidence on record, affront to the law in material respects and ought to be set aside.
14. **Reasons Wherefore the Appellant prays that:**
- i. **The Appeal be allowed with costs**
 - ii. **The Judgment dated 28/12/2023 be set aside and substituted with an order dismissing the Respondent's Suit with costs**
 - iii. **The Honorable Court be pleased to grant such other orders that this Court may deem just and expedient**

15. On 20/05/2025, the Court directed that the Appeal be canvassed by way of written submissions. The Appellant and

the 1st Respondent complied and filed their written submissions dated 8/09/2025 and 01/10/2025 respectively.

Appellant's Submissions

16. The Appellant contends that the trial Court failed to properly evaluate the evidence, leading to an erroneous conclusion. Invoking the principle in **Selle -vs- Associated Motor Boat Company Limited [1968] EA 123**, the Appellant reminds the Court that an Appeal is a retrial; thus, the Appellate Court is mandated to subject the evidence to a fresh, exhaustive scrutiny and draw its own conclusions.
17. The Appellant asserts rightful ownership through a procedural purchase for value without notice. Key arguments include the fact that they did due diligence. That in 2008, the Appellant conducted an official search and obtained a Green Card from the Thika Lands Registry. These records confirmed the land's history moving from the Government of Kenya to the 2nd Respondent who is the Vendor in 2002.
18. Secondly, citing **National Land Commission -vs- Afrison Export Import Limited & 10 Others [2019] eKLR**, the Appellant argues they went beyond a mere search by investigating the root of title and the history of the property which act pointed to the conclusivity of search which shows ownership.
19. The purchase according to the Appellant followed the Land Control Act, by abiding with the procedure through obtaining necessary consents and paying via cheque. The Appellant relies on **Munyu Maina -vs- Hiram Gathiha Maina [2013] eKLR**, arguing they have successfully gone

behind the instrument of title to prove the legality of the acquisition.

20. Furthermore, the Appellant has maintained exclusive, uninterrupted possession since 2008, developing a functional secondary school on the site.

21. Therefore, the Appellant argues that the 1st Respondent's claim is unsubstantiated for several reasons. To begin with there is what the Appellant refers to as identity discrepancies. This is because the 1st Respondent claims ownership through membership in Juja Farms Limited, yet the company register lists P.N. Ngoiri Shareholder No. 233, which does not match the 1st Respondent's name, Felista Ngoiri Njoroge. No evidence was provided to bridge this identity gap.

22. Secondly there is what the Appellant refers to as lack of root of title which while relying on **Hubert L. Martin & 2 Others -vs- Margaret Kamar & 5 Others [2016] eKLR** and **Harrison Kiambuthi Wanjiru -vs- District Land Registrar Nairobi [2022] eKLR**, the Appellant submits that merely dangling a title deed is insufficient. The 1st Respondent failed to produce Share Certificates, ballot records or evidence of payment to Juja Farms Limited.

23. He terms this an improper evidence which the trial Court allegedly erred by relying on forensic and government printer reports that were never formally produced by witnesses, denying the Appellant the right to cross-examination.

24. The Appellant maintains they were an innocent purchaser

for value. While the 1st Respondent relies on a criminal conviction of the vendor (2nd Respondent) in **Thika MCCR/667/2012**, the Appellant notes that they were not a party to those criminal proceedings. Further, that the Criminal Court lacks jurisdiction to determine land ownership, a power vested exclusively in the Environment and Land Court under Section 13(2)(a) of the Environment and Land Court Act and he cited the case of **Gitonga -vs- M'Mwirichia [2023] eKLR** in this averment.

25. Per Section 25 of the Land Registration Act, the Appellant's title should be shielded as there is no evidence, they were aware of any alleged fraud by the vendor at the time of purchase.

26. The Appellant concludes that the eviction and demolition orders are punitive, excessive and unduly harsh. They urge the Court to allow the Appeal and set aside the lower Court's Judgment to serve the interests of justice and fairness.

1st Respondent's Submissions

27. The 1st Respondent in their submissions opposes the Appeal and urges the Court to uphold the Judgment in **Thika MC.ELC/46/2019**. The Respondent maintains that the trial Court correctly applied the **Torrens Principle** and the doctrine of ***Nemo dat quod non habet*** in declaring her the legal owner of land parcel **RUIRU/JUJA EAST BLOCK 2/1095**.

28. It is the contention of the 1st Respondent that she has proven root of title and quiet possession. She asserts that she has been a member of Juja Farms Limited since 1975.

Following the Company's subdivision of land among its 5,000 members, she was issued Title Deeds for two parcels, the suit property and a second parcel (T.5437).

29. She argues that her son has been in continuous custody of the original Title Deed since its issuance in 1989. She maintains she never displayed any intention to alienate the property and enjoyed quiet possession until 2011, when she discovered the Appellant's encroachment.

30. The crux of the Respondent's submissions is that the 2nd Respondent (the vendor who sold the land to the Appellant) had no valid title to pass.

31. Citing the cases of **Katana Kalume & Another v Municipal Council of Mombasa & Another [2019] eKLR** and the Court of Appeal decision in **Diamond Trust Bank Kenya Ltd v Said Hamad Shamisi & 2 Others [2015] eKLR**, and using the cake analogy, the Respondent argues that no one can give a better title than he himself possesses. Since the 1st Respondent already held the title, the 2nd Respondent had ***no cake in hand*** to give to the Appellant.

32. The Respondent emphasizes that the 2nd Respondent was found guilty in **Criminal Case No. 667 of 2012** for obtaining registration by false pretenses. Evidence from the Ministry of Lands and Government Printers during that trial confirmed the 1st Respondent's title was genuine, while the 2nd Respondent's title was not.

33. The 1st Respondent challenges the Appellant's status as an innocent purchaser. She argues that the Appellant failed to conduct thorough due diligence by not examining the Green

Card, which would have revealed the true history of the property and the 1st Respondent's prior ownership.

34. He also cited the case of **Zacharia Wambugu Gathimu & Another -vs- John Ndungu Maina [2019] eKLR** and submits that while the law protects titles, such protection is removed when the title is acquired illegally, unprocedurally, or through a corrupt scheme to which the party was a beneficiary.

35. The Respondent addresses the Appellant's challenge regarding her membership in the land-buying company and avers that the Trial Court correctly found she was a member because her second parcel (T.5437), purchased simultaneously, remains undisputed in her name. Furthermore, the former Chairman of Juja Farms Limited testified in the criminal proceedings, confirming her membership.

36. The 1st Respondent submits that the Appellant's registration is a nullity born of fraud. She argues that the Appellant's only remedy would have been to seek compensation from the 2nd Respondent; however, since no Counterclaim was filed, the Court cannot grant the Appellant relief. Consequently, the 1st Respondent prays for the dismissal of the Appeal with costs.

Analysis and Determination

37. The dispute before this Court centers on the ownership of land parcel **RUIRU EAST/JUJA EAST BLOCK 2/1095**. The Appellant seeks to overturn the trial Court's decision, which declared the 1st Respondent the bona fide owner, ordered

the Appellant's eviction, and directed the demolition of a Secondary School built on the suit property.

38. Having considered the evidence presented in the trial Court, the Memorandum of Appeal and the submissions by the parties, I am of the view that the following key issues if well addressed will settle this Appeal:

- a) *Whether the 1st Respondent established a valid legal origin for her ownership which is the root of title.*
- b) *Considering the doctrine of Nemo Dat Quod Non Habet, whether the 2nd Respondent who is the vendor had any valid interest to transfer to the Appellant.*
- c) *Whether the Appellant's title is protected as bona fide purchaser for value despite the alleged fraudulent origin of the vendor's title.*
- d) *Who bears the cost of the Appeal?*

39. The parties present two diametrically opposed versions of legal acquisition. The Appellant relies on procedural due diligence, asserting that she followed the **Torrens System** of registration by conducting a Search in 2008 which showed the 2nd Respondent as the owner. Conversely, the 1st Respondent relies on priority in time, holding a title deed issued in 1989.

40. The Appellant argues that the 1st Respondent merely dangled a title deed without proving how she became a member of Juja Farms Ltd, citing identity discrepancies, Felista vs. P.N. Ngoiri. **Black's Law Dictionary** defines Title as:-

"The legal link between a person who owns property and the property itself."

41. In **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, the **Court of Appeal** held:

"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 ... the proprietor must go beyond the instrument and prove the legality of how he acquired the title."

42. The 1st Respondent countered this by demonstrating a consistent root of title through her second undisputed parcel Number T.5437 and the testimony of the Juja Farms Chairman. The Trial Court found this sufficient to bridge the identity gap.

43. Relying on the doctrine of *Nemo Dat Quod Non Habet*, the 1st Respondent's strongest pillar is the principle that one cannot give what they do not have. She emphasizes that the 2nd Respondent's title was a nullity from the start due to fraud, as confirmed in **Thika MCCR/667/2012**.

44. The Supreme Court of Kenya in **Dina Management Limited v County Government of Mombasa & 5 Others [2023] KESCP 28 (Interpretive)** underscored that a title rooted in illegality cannot be sanitized by subsequent transfers. This reinforces the **Court of Appeal** decision in **Diamond Trust Bank Kenya Ltd v Said Hamad Shamisi [2015] eKLR**, which noted that the protection of property,

(no one can give better title than they possess) often holds sway over the protection of commercial transactions.

45. The Appellant advanced the bona fide purchaser defense and relies on Section 25 of the Land Registration Act, arguing her title is indefeasible because she was an innocent purchaser. However, the Environment and Land Court (ELC) and the Court of Appeal have recently narrowed this shield. In **Zacharia Wambugu Gathimu v John Ndungu Maina [2019] eKLR**, the Court held that:

"The protection can be removed and title impeached when the same is obtained by fraud ... and where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme."

46. The 1st Respondent argues the Appellant's due diligence was shallow because a deep dive into the Green Card would have revealed the 1989 registration. This mirrors the Environment and Land Court position in many cases that a purchaser must investigate the *entire* history of the land, not just the current entry.

47. This Court finds that while the Appellant may have acted in subjective good faith, the root of title held by the 2nd Respondent (the Vendor) was non-existent. Under the doctrine of ***Nemo dat quod non habet***, the 2nd Respondent could not transfer a valid interest in 2008 when the 1st Respondent had already been the registered owner since 1989.

48. The Appellant's argument regarding the ELC's exclusive jurisdiction over land is correct; however, the trial Court sat as an ELC - equivalent Magistrate Court and was entitled to take judicial notice of the criminal conviction as evidence of the fraud that birthed the Appellant's title. The sanctity of title cannot be used to protect a registration that was achieved by extinguishing a pre-existing, valid title through fraud.

49. The Appellant's remedy lies in a suit for damages against the 2nd Respondent for breach of the covenant of title, but it cannot be found in the dispossession of the 1st Respondent.

My Final Orders

- i) The Appeal is hereby dismissed in its entirety.***
- ii) The Judgment and Orders of the Trial Court in Thika MC.ELC/46/2019 are hereby affirmed.***
- iii) The Appellant is granted a stay of execution for a period of 90 days from the date hereof to allow for the orderly removal of school equipment and the relocation of students, after which the Eviction and Demolition Orders shall take effect.***
- iv) Costs of this Appeal are awarded to the 1st Respondent.***

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS THIS 23RD DAY OF MARCH 2026.

MOGENI J

JUDGE

In the presence of:-

..... Appellant
.....1st Respondent
.....2nd Respondent
.....3rd Respondent
.....4th Respondent
Melita..... Court Assistant

MOGENI J
JUDGE

ORIGINAL