

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ELC NO 912 OF 2017

SIMON KURIA KANYORI.....
.....PLAINTIFF

VERSUS

CAROLINE JEMUTAI MUTUNKEI AND

NASERIAN MUTUNKEI (Suing as the legal administrators

of the Estate of JEREMIAH MUTUNKEI KIPONYI).....**1ST DEFENDANT**

ATTORNEY GENERAL (Sued on behalf of the

REGISTRAR OF LAND KAJIADO)2ND
DEFENDANT

J U D G M E N T

1. By the plaint dated 6th November 2017 the plaintiff Simon Kuria Kanyori sued the 1st and 2nd defendants seeking the following reliefs:-
 - (a) A declaration that the late Jeremiah Mutunkei Kiponyi acquired the title of Kajiado/ Kitengela/ 3334 fraudulently;
 - (b) A declaration that all the transaction carried out on the Kajiado/Kitengela/3334 by Jeremiah Mutunkei Kiponyi were fraudulent, illegal null and void.
 - (c) An order directing the 2nd Defendant to rectify the title by:-
 - (a) Cancelling the subdivision of the Kajiado/Kitengela 3334 into Kajiado/Kitengela/60583,

Kajiado/Kitengela/60584 and
Kajiado/Kitengela/60585; and

(b) Removing the name of the late Jeremiah Mutunkei Kiponyi as registered owner of Kajiado/Kitengela/3334 and replace it with that of Simon Kuria Kanyori.

(c) A mandatory order of injunction issued to the 1st Defendants, either by themselves, agents, employees or persons claiming as their agents, employees or persons claiming on their behalf or their instructions preventing them from entering, remaining in, charging, transferring, leasing, or otherwise disposing of or developing the property known as Kajiado/Kitengela/ 3334.

(e) Costs of the suit.

(f) Any other relief that the Honorable Court might deem just and fit to grant.

2. It is his case that he bought land Parcel No.Kajiando/Kitengela/3334 from the late Gakumo Kihoro and a title deed was issued in his name on the 26th November 1991. It is his contention that he has the original title deed.

3. It was upon the death of the original owner that he conducted a search at the Kajiado Land Registry and found

that the title had been closed on sub division into three portions; Kajiado/Kitengela/60583, Kajiado/Kitengela/60584 and Kajiado/Kitengela/60585.

4. It was then that he realized the original owner, Jeremiah Mutunkei Kiponyi had fraudulently transferred the said property to himself in connivance with the 2nd Defendant. He decided to file this suit.
5. Upon being served with the plaint, the 1st Defendant filed a statement of Defence and counter claim dated 17th January 2018. It is their case that they have lived on the suit property since 1978 and that the original owner Jeremiah Mutunkei Kiponyi and his daughter were buried thereon.
6. In the Counter Claim they state that they reside on the suit property and that any registration in the name of the 1st and 2nd Defendants (in the Counter claim) is fraudulent.

The particulars of fraud are set out in paragraph 22 of the statement by defence and counter claim as follows;

- (a) Purporting to issue title no. Kajiado/Olooitikoshi/Kitengela/339 irregularly and illegally to one Kahoro Gikumu knowing too well that the parcel belonged to the late Jeremiah Mutungei Kiponyi who has been in continuous occupation since the late 1970s.
- (b) Illegally and irregularly cancelling out the name of Jeremiah Mutungei Kiponyi's name

from the green card as regards land parcel number Kajiado/Olooitikoshi/Kitengela/339 and Kajiado /Kitengela 1608, which parcels belonged to the late Jeremiah Mutungei Kiponyi who is the bonafide legal and constructive owner of the subject parcels of land.

- (c) Harassing the 1st defendant and other persons upon the subject parcel of land including but not limited to out criminal proceedings against the 1st defendant with a view of forcing her out of the property.
- (c) Colluding with law enforcement officers to purport to claim the 1st defendant's parcel of land upon demise of Gakumo Kihoro and Jeremial Mutungei Kiponyi, the principal parties to this dispute who are no longer available to set the record straight.
- (d) It is the 1st defendant counter-claimant's case that the 1st and 2nd defendant to the counterclaim illegally and irregularly procured titles over the property of the late Jeremiah Mutungei Kiponyi and maliciously waited for his demise so as to fraudulently use their fraudulently obtained titles to divest the 1st defendant and other dependents of their lawful inheritance.

7. They therefore seek the following reliefs: -

- (a) A declaration that the late Jeremiah Mutungei Kiponyi is the legal owner of Kajiado/Kitengela/334 and Kajiado/Ololoitikoshi/Kitengela/339
- (b) An order directing the 2nd Defendant to rectify the record by cancelling the titles issued to the 1st and 2nd defendants to the counter-claim
- (c) A mandatory order injunctioning the 1st and 2nd defendants to the counter-claim, their agents, employees or servants from trespassing onto, remaining on and encroaching upon the 1st defendant's lawful property.
- (e) Costs of this suit and counterclaim.
- (f) Any other relief that this Honorable Court may deem just to grant.

8. The matter was then set down for hearing. It was to start with the plaintiff's case. The plaintiff did not prosecute his case as he was not present at the hearing despite being served with the hearing notice dated 5th May 2015. The court was satisfied that the plaintiff was duly served and directed that the matter proceeds. The plaintiff's suit was then dismissed for want of prosecution and the 1st Defendant allowed to proceed with the counterclaim.

EVIDENCE OF THE 1ST DEFENDANT

- 9.PW1, Caroline Jemutai Mutunkei, one of the administrators of the estate of the late Jeremiah Mutunkei Kiponyi, adopted her witness statement dated 18th December 2017 as her evidence in chief. She also produced the documents in the bundle of documents dated 18th December 2017 and 17th January 2018 as exhibits in the case. She told the court that her late husband did not sell land to the plaintiff as the family resides thereon.
10. She further stated that the suit property was registered in the name of her late husband up until his demise. She urged that the prayers in the Counter claim be allowed.
11. When cross examined by Ms Kubai for the 3rd, 4th and 5th Defendants (in the counterclaim) she admitted that the suit property was sub divided into three portions with all the titles in her husbands name. She reiterated that the family resides on the suit property.
- She also stated that the 4th Defendant (in the counterclaim) had done no wrong.
12. On re-examination, she reiterated that she had no problem with the land Registrar, the 4th Defendant (in the counterclaim.)
13. Ms Kubai for the 3rd – 5th Defendants (in the Counterclaim) told the court that she would not be calling any witnesses but would file written submissions.

THE 1ST DEFENDANTS' (PLAINTIFF IN THE COUNTER CLAIM) SUBMISSIONS

14. They are dated 25th September 2025. They raise four (4) issues for determination: -

(a) Whether Jeremiah Mutunkei (Deceased) was the bonafide owner of the suit properties known as Kajiado /Olooitikoshi/Kitengela 339 and Kajiado/Olooitikoshi/Kitengela/ 339.

(b) Whether the suit property known as Kajiado/Olooitikoshi/Kitengela 33f was fraudulently transferred to Gikumo Kihoro

(c) Whether the 1st and 2nd Defendants have any interest in portions, and/ subdivisions of land within Kajiado/Olooitikoshi/Kitengela 338 at Kajiado/Olooitikoshi/Kitengela /339.

(d) Whether the Plaintiff's case ought to be dismissed with costs to t Defendants?

15. The Plaintiff defendant in counter claim submitted that the record from the green card confirmed that the late Jeremiah Mutunkei was the registered owner of the suit properties before his name was cancelled out and title issued to one Gakumo Kihoro on 13th February 1989. Reliance is placed on section 25 (1) of the land Registration Act, 2012.

16. It is further submitted that no evidence has been tendered by the Plaintiff or Defendants to dislodge or impeach the root of the deceased's title.

Reliance is placed on the case of ***Chemusian Company Limited -vs- Cosmic Enterprises Limited & another (Environment & Land Case 107 of 2019) (2022) KEELC 2671 (KLR)***

17. It is submitted that fraud has been described as the making of deliberate misrepresentation for purposes of unlawfully obtaining an advantage over another.

Reliance is placed on **section 26 (1) of the Land Registration Act, 2012** and the case of ***Vijay Morjaria -vs- Nansing Madhusing Darbar & Another (2000) eKLR***

18. It is also submitted that there was no sale or transfer of Kajjado/Olooitikoshi/Kitengela 339 to Gakumo Kihoro and that the family has had uninterrupted occupation of the land since 1972 as their family home.

Reliance is placed in the cases of ***Joan Nyokabi Ndungu -vs- Stanley Mutimu Njogu & 2 others (2019) KEELC 4134 (KLR); Patel -vs- Mwangi (2022) KEELC 12603 (KLR).***

19. It is the 1st Defendant's contention that the alleged transfer to Gakumo Kihoro was fraudulently, illegally, and unprocedurally obtained.
20. It is also submitted that it is a well settled Principle that a fraudulent title cannot be the basis of a good title. That having established that the purported transfer to Gakumo Kihoro was fraudulent and unprocedural, it follows that any subsequent

transactions purportedly emanating from the root are equally tainted and cannot confer valid title.

Reliance is placed on the cases of ***Sehmi & Another -vs- Tarabana Company Ltd & 5 others (2025) , KESC 21 (KLR); Mureithi & Another -vs- Mwangi & 3 others (2025) KEELC 25 (KLR)***

21. It is submitted that **section 3(3) of the law of Contract Act** provides that any transaction on land must be substantiated by a written agreement for sale. Reliance is placed in the cases of Patel ***-vs- Mwangi (Supra); Esther Ndengi Njiru & Another -vs- Leonard Gatei Mbugua (2020) eKLR.***
22. That therefore the 1st and 2nd Defendants to the counterclaim have no legally recognizable interest in the sub divisions of Kajjado /Olooitikoshi/Kitengela/338 and 339.
23. It is submitted that the plaintiff having failed to attend court to prosecute his case, the same ought to be dismissed with costs to the 1st Defendant and the 1st Defendants Counterclaim ought to be allowed.

THE 3RD-5TH DEFENDANTS' (IN THE COUNTER CLAIM) SUBMISSIONS

24. They are dated 23rd October 2025. They raise two issues for determination.
 - (i) **Whether the transfer from Jeremiah Mutungi Kipnyi to Gikumo Kihoro was fraudulent.**
 - (ii) **Who bears the costs of the suit?**

25. It is submitted that Jeremiah Mutunkei Kiponyi was the registered owner of the suit property which he later transferred to Gakumo Kihoro, after presenting the requisite documents to the Land Registrar's office.

Further that the 4th Defendant did not encourage any fraud and carried out his duties as expected, in accordance with due process and law.

26. It is also submitted that for one to be able to impeach a title, fraud must be proved. Reliance is placed on the cases of **R.G Patel -vs- Laiji Mkanji (1957) E.A 314; Alfred Sagero Omweri -vs- Kennedy Omweri Ondieki (2015) eKLR.**

27. It is submitted that the 1st Defendant and the plaintiff (in the counter claim) had to substantially link and trace elements of fraud to the 4th Defendant herein.

Further, that the land Registrar registers documents as presented by parties as long as the same are prepared in accordance with the law.

28. It is submitted that no evidence has been adduced by the plaintiff (in the counterclaim) to show that the 4th Defendant was involved in the alleged fraud. Reliance is placed on **section 107 of the Evidence Act** and the case of **Nyangoto Ogendi Nyamwamu -vs- Charles Orora Mabeya (2018) KEELC 2285 (KLR); Syano-vs- Syano & Another (2025) KEELC 6542 (KLR).**

29. It is submitted that no fraud has been proved against the Land Registrar hence the 3rd - 5th Defendant's ought not to be condemned to pay costs of this suit. Reliance is placed on the cases of ***Morgan Air Cargo -vs- Evrest Enterprises Limited (2014) eKLR; Cecilia Karuru Ngayu -vs- Barclays Bank of Kenya (2016) eKLR.*** They pray that the suit be dismissed with costs.

ANALYSIS AND DETERMINATION

30. I have considered the pleadings the evidence on record the written submissions and the authorities cited. The issues for determination are :-

- (i) Whether Jeremiah Mutunkei Kiponyi was the registered owner of the suit properties Kajiado/Olooitikoshi/Kitengela /338 and Kajiado/Oloooitikosh/Kitengela/339**
- (ii) Whether Kajiado/Olooitikoshi/Kitengela /339 was fraudulently transferred to the Gakumo Kihoro.**
- (iii) Whether the 1st and 2nd Defendants in the counterclaim have any interest in the sub division of land within Kajiado/Olooitikoshi/Kitengela/338 and 339 respectively.**
- (iv) Who should bear costs of this suit?**

31. It is not in dispute that the late Jeremiah Mutunkei Kiponyi was the registered owner of the original parcels Kajiado/Olooitikoshi/Kitengela /338 and 339.
32. The 1st Defendant has also demonstrated that the family resides on the suit parcels. It is the 1st Defendant's contention that the suit property was fraudulently transferred to Gakumo Kihoro, on the 13th February 1989.
33. I have gone through the entries in the Green card. It appears there are no documents supporting the said transfer to Gakumo Kihoro. There are documents showing that he purported to subdivide the parcel No 339 into Kajiado/Olooitikoshi/Kitengela/3334 and 3335. It was the Plaintiff's case that he bought parcel No Kajiado/Kitengela/3334 from the said Gakumo Kihoro. As stated earlier he did not prosecute his case which was then dismissed for want of prosecution.
34. I agree with the 1st defendant's (plaintiff in counter claim) submissions that by operation of law the suit property vested on the estate of Jeremiah Mutunkei Kiponyi upon his demise.
35. It is not clear how Gakumo Kihoro was registered as the owner. It could only have been done fraudulently.

In the case of ***Vijay Morjaria -vs- Nansing Madhusing Darbar & Another (2000) eKLR***, the court held 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 as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

36. The 1st Defendant has set out the particulars of fraud in paragraph 22 of the statement of Defence and counterclaim.

There are no documents to confirm the sale and transfer of the parcel No Kajiado/Olooitikoshi/Kitengela/339 to the said Gakumo Kihoro. This could only mean that the title was transferred fraudulently. There is no consent from the Land Control Board validating the said sale.

In the case of ***Patel -vs- Mwangi (2022) KEELC 12603 (KLR)*** the court observed that the plaintiff demonstrated that there were no transfer forms, no proof of payment of stamp Duty and the transactions at the Land Registry bore signs of forgery. The Defendant on the other hand, could not produce any valid sale agreement or genuine transfer documents. The court was satisfied that those defects indicated fraud, and held that the Defendant’s title was impeachable under section 26 of the Land Registration Act.

37. I agree with the 1st Defendant’s (the plaintiff in the counterclaim) submissions that the transfer in favour of Gakumo Kihoro was

effected fraudulently, illegally and unprocedurally and the title is impeachable.

I therefore find that Kajiado/Olootikoshi/Kitengela/339 was fraudulently transferred to Gakumo Kihoro.

38. It therefore follows that the 1st and 2nd Defendants in the Counter claim cannot have any valid claim or interest on the sub divisions of Kajiado/Kitengela/Olootikoshi/Kitengela/338 and 339 respectively.
39. As the plaintiff failed to attend Court to prosecute his case, I find that he bears costs of the suit.
40. I find that the 1st Defendant (plaintiff on the counter claim) succeeds with counterclaim.
41. Accordingly, I find that the 1st defendant's case has been proved on a balance of probabilities.
42. Accordingly, I grant the following orders: -
 - (a) That plaintiff's case is dismissed with costs
 - (b) That 1st Defendant's counterclaim succeeds in the following terms:-
 - (i) That a declaration is hereby issued that the late Jeremiah Mutunkei Kiponyi is the legal owner of Kajiado/Olootikoshi/Kitengela/338 and 339 respectively.
 - (ii) That an order is hereby issued directing the 4th Defendant (in the counterclaim) to rectify their record by cancelling the titles issued to the 1st defendant, 2nd Defendants in the counterclaim.

- (iii) That a permanent injunction is hereby issued restraining the 1st and 2nd defendants (in the counterclaim) their agents, employees, servants from trespassing, remaining as or encroaching on the 1st defendant's property.
- (iv) That costs of the suit and counterclaim be borne by the plaintiff.

Judgment dated, signed and delivered virtually at Nakuru this 18th day of March 2026.

L KOMINGOI

JUDGE

In presence of :-

No appearance for the Plaintiff

Ms. Korir for Mr. Kiprop for the 1st Defendant

Ms. Kubai for the 2nd Defendant.

Court Assistant: Nelima