



REPUBLIC OF KENYA



**Ndiki v Sidai & 2 others (Environment and Land Appeal E012 of 2023)  
[2026] KEELC 1739 (KLR) (24 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1739 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E012 OF 2023**

**MD MWANGI, J**

**MARCH 24, 2026**

**BETWEEN**

**ISAAC KIRANGU NDIKI ..... APPELLANT**

**AND**

**MIRIAMBI OLE SIDAI ..... 1<sup>ST</sup> RESPONDENT**

**HANNAH MARIONI K. NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR KAJIADO ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal arising from the Judgment of Hon. V. Kachuodho {SRM} delivered  
on 24/03/2022 in Kajiado Chief Magistrate's Courts ELC Case No. 6 of 2010)*

**JUDGMENT**

**Introduction and Background**

1. The legal proceedings before the Kajiado Chief Magistrate's Court, ELC No. 6 of 2010, which are the subject of this appeal, were initiated by the Appellant against the Respondents through a plaint dated 14th January 2010. Later, the Appellant revised his claim by filing an Amended Plaint dated 23rd February 2023.
2. Through the amended plaint, the Appellant averred that he acquired L.R. No. Kajiado/Kitengela/5840, a resultant subdivision of Kajiado/Kitengela/3750, from its then registered owner, the 1st Respondent herein, for Kshs. 117,000 through an agreement dated 17th April 1996. The entire purchase price was paid to the 1st Respondent's appointed legal agent, Ruth Wairimu Kinuthia, trading as Pancity Investment Limited, who also signed the agreement.
3. The Appellant stated that he paid all dues, including brokerage fees, before acquiring physical possession of the suit property and commencing development therein upon obtaining its title on 2nd July 1996.



4. During a routine search of the title at the land registry in December 2009, he was stunned to learn that the title of the suit property had allegedly been illegally and fraudulently registered in the 2nd Respondent's name on 24th March 2009, despite him having actual possession of the land and holding a title deed.
5. The Appellant condemned the 3rd Respondent's refusal and failure to rectify the register to correct these anomalies asserting that the refusal exposed him to immense and irreparable loss and damage. The Appellant sought judgment against the Respondents for the following orders:
  - a. A declaration that L.R. No. Kajiado/Kitengela/5840, measuring two (2) acres or thereabouts, absolutely belongs to the Plaintiff.
  - b. An order directing the Land Registrar Kajiado to immediately rectify the register to vest the title in the name of the Plaintiff.
  - c. Costs of the suit.
  - d. Any other relief the court deems just to grant.
6. The 2nd Respondent responded to the Appellant's lawsuit through a Defence and Counterclaim dated 23rd January 2023, denying all accusations leveled against her and demanding strict proof thereof. She stated that her own lawsuit, initially instituted against the Appellant and the 3rd Respondent at the Machakos Chief Magistrate's Court (Civil Suit No. 80 of 2013), was subsequently transferred to the Kajiado Law Courts to be heard alongside the Appellant's claim.
7. Through her Counterclaim, the 2nd Respondent averred that she became the registered owner of the suit property after purchasing it from its registered proprietor, Daniel Katei Ibrahim. She asserted that at the time of purchase, the land was vacant, she was shown the beacons by the vendor, and she had conducted due diligence before obtaining the title on 2nd April 2009. As she prepared to begin construction in 2010, she discovered that the Appellant had trespassed into the land, erected semi-permanent structures therein, and was asserting ownership rights on the premise that he had acquired the land from Miriambi Ole Sodai (the 1st Respondent).
8. Despite the Appellant's claims, a search conducted by the 2nd Respondent at the Land Registry revealed that the Appellant's name had never appeared on the suit property's green card. Additionally, at the time the Appellant supposedly acquired the suit property (April 1996), its title had already been transferred to Daniel Katei Ibrahim on 25th July 1995.
9. The 2nd Respondent argued that the Appellant's wrongful occupation, use, and possession of the suit property had caused her loss and damage, in spite of her indefeasible rights as the registered owner. The particulars of loss and damage pleaded were: deprivation of the use and enjoyment of the property; degrading, defacing, and devaluing of the property due to the Appellant's structures; deterrence from access due to an erected perimeter fence; and attempted subdivision by the Appellant based on an illegally acquired title.
10. Consequently, the 2nd Respondent sought judgment against the Appellant for the following reliefs:
  - a. A declaration that the 2nd Defendant is the absolute registered proprietor of L.R. Kajiado/Kitengela/5840.
  - b. An order of permanent injunction restraining the Appellant, his servants, agents, or anyone acting on his behalf from trespassing, constructing, encroaching, alienating, disposing of, or interfering with the 2nd Defendant's ownership.



- c. An order that the semi-permanent structures constructed by the Plaintiff or any person on the property be demolished.
  - d. An order of eviction, evicting the Plaintiff from the suit property.
  - e. Costs and interest of the suit.
  - f. Any other relief this Honorable Court deems fit and just to grant.
11. The 1st and 3rd Respondents did not enter an appearance nor participate in the proceedings before the trial court despite summons to enter appearance having been properly served upon them.
  12. During the hearing before the trial court, two witnesses testified in support of the Appellant's case, and one witness testified for the 2nd Respondent. After considering the evidence, the learned Magistrate outlined four issues for determination: whether the 2nd Respondent acquired the property fraudulently; who the legal/registered owner of the suit property was; whether the Appellant was entitled to the orders prayed for in the Plaint; and whether the 2nd Respondent was entitled to the orders prayed for in the Counterclaim.
  13. The learned Magistrate found that the documentary evidence produced by the 2nd Respondent exhibited a clear sequence of registered ownership, beginning with the original owner (1st Respondent), transfer to Daniel Katei Ibrahim, and finally to the 2nd Respondent through a valid sale agreement. This proved that the 2<sup>nd</sup> Respondent was the registered owner and did not acquire it fraudulently. Furthermore, the green card contained no record of the Appellant's ownership. Crucially, the green card showed that on 17th April 1996, when the Appellant purportedly executed the sale agreement with the 1st Respondent, ownership had already passed from the 1st Respondent to Daniel Katei Ibrahim. Noting that the 1st Respondent lacked the necessary capacity to sell the property to the Appellant, the learned Magistrate concluded that the Appellant's remedy, if at all, lay strictly against the 1st and 3rd Respondents.
  14. The learned Magistrate additionally noted that the presentation book entries of 22nd February 1995 and 2nd July 1996 indicated only one transfer entry from the 1st Respondent to Moses Mwatha for a different parcel known as Kajiado/Kitengela/6150. The presentation book's particulars covering the period from 23rd February 1996 to 24th March 2009 were neither provided, nor were their authors or custodians called to verify the entries. Concluding that the Appellant failed to prove his case on a balance of probabilities, the learned Magistrate entered judgment in favor of the 2nd Respondent allowing her Counterclaim in its entirety on 30th March 2023.
  15. The trial court's verdict triggered the Appellant's appeal to this Court through a Memorandum of Appeal dated 26<sup>th</sup> April 2023, raising 17 grounds of appeal. The Appellant faulted the learned Magistrate for erring in law and fact by:
    - a. Declaring the 2nd Respondent the proprietor of the suit property.
    - b. Disregarding extracts of the presentation books from the Kajiado Land Registry, which were vital in determining lawful proprietorship.
    - c. Finding the 2nd Respondent was a bona fide proprietor despite failing to prove the root of her title.
    - d. Failing to appreciate that a transaction received in the presentation book reflects that a particular process was registered.



- e. Failing to recognize that the presentation book did not capture the transfer from the 1st Respondent to Daniel Katei Ibrahim on 25<sup>th</sup> July 1995, as entered in the green card, implying the green card entry was fraudulent.
  - f. Failing to find that the 25th July 1995 presentation book captured a transfer to Moses Mwatha for a different parcel, not the suit property.
  - g. Placing an undue burden on the Appellant to produce the entire presentation book from 1996 to 2009.
  - h. Dispensing with the appearance of the 3rd Respondent (Land Registrar) and failing to issue summons, thereby missing vital explanations regarding the origin of the two parallel title deeds.
  - i. Finding the 2nd Respondent was the bona fide proprietor based on the green card while disregarding the fact that both parties held titles issued by the same registry.
  - j. Concluding that the Appellant's lack of a green card entry automatically validated the 2nd Respondent's title.
  - k. Failing to find the 2nd Respondent's title defective due to discrepancies in the dates in the Part A - Property Section was opened.
  - l. Disregarding the rule of priority (first in time), given the Appellant acquired his title 13 years prior and was in possession.
  - m. Failing to fault the 2nd Respondent for not conducting proper physical due diligence, which would have revealed the Appellant's structures.
  - n. Finding the 2nd Respondent was a bona fide purchaser for value without proof of how the purchase price was paid.
  - o. Granting Counterclaim orders that had allegedly not been properly canvassed.
16. Premised on the above grounds, the Appellant prayed that the Appeal be allowed, the judgment of 30th March 2023 be set aside, a declaration be issued that the Appellant is the bona fide purchaser, and costs be awarded.
17. When this Court initially retired to make its findings on 16th June 2025, it established that evidence from the Kajiado Land Registry was critical for a decisive resolution of the matter, as the Registrar is the custodian of all land parcel files and supporting documents. Further noting the learned Magistrate's finding that the presentation book details had not been fully availed or verified, this Court summoned the Kajiado Central Land Registrar to appear as a witness on 3rd December 2025 and produce the parcel file for Kajiado/Kitengela/5840.
18. Rosemary Mwangi, a Land Registrar based at Kajiado Central Registry, produced the parcel file encompassing correspondence, the green card, and records of subsequent subdivisions. She testified that the green card for the suit property (measuring 0.8 ha) was opened on 23rd February 1995, with the title being issued to the 1st Respondent as the original registered owner. The land was subsequently transferred to Daniel Katei Ibrahim on 25th July 1995. Following a subsequent transfer to the 2nd Respondent on 24th March 2009, the title was registered in her name on 2nd April 2009. A restriction placed by the DCI on 27th April 2011 was later removed, and the title was eventually closed following subdivision on 4th September 2024.



19. During cross-examination, the Land Registrar clarified that while the presentation book entries are vital, not all transactions entered into the presentation book make it to the register (e.g. where documents are rejected for one reason or another). She unequivocally maintained that the Appellant's name had never been entered at any one time on the suit property's green card. According to the official registry records, from 25 July 1995 until 2009, Daniel Katei Ibrahim was the absolute registered proprietor of the suit property.
20. Following the conclusion of the Land Registrar's testimony, the court directed counsel for the parties to file written submissions.

### **Appellant's Submissions**

21. In support of the appeal, counsel for the Appellant filed submissions dated 6th February 2026 in which three issues were identified for determination. These were: whether the 2nd Respondent is the bona fide proprietor of parcel number Kajiado/Kitengela/5480; whether the learned trial magistrate erred both in law and in fact in finding that the 2nd Respondent had proved her counterclaim against the Appellant on a balance of probabilities; and, whether the Appellant had established his claim on a balance of probabilities.
22. The Appellant contends that the 2nd Respondent failed to produce the title belonging to Daniel Katei Ole Ibrahim, the person from whom she alleged to have purchased the suit property from. It is further argued that the said Daniel Katei Ole Ibrahim was neither called as a witness nor joined as a party in the proceedings that the 2nd Respondent initially instituted at the Machakos Law courts. The Appellant also questions the credibility of the 2nd Respondent's assertion that the property beacons were pointed out to her despite the Appellant being in occupation of the land already.
23. The Appellant maintains that he lawfully acquired the suit property from the 1st Defendant, who was at the time the registered proprietor, pursuant to a sale agreement dated 17th April 1996 executed by the Appellant, the 1st Respondent, and the 1st Respondent's authorized agent. In a bid to substantiate this claim, the Appellant points out that he produced before the trial court an application to the Land Control Board together with a letter of consent dated 16th April 1996 authorizing the transfer of the suit property from the 1st Respondent to himself. It is further submitted that the full purchase price, transfer costs, and other statutory charges were paid to the 1st Respondent through her agent, as confirmed by the testimony of PW2 who informed the trial court that the payments were made to the 1st Respondent's trustees.
24. On the basis of the foregoing, the Appellant asserts that he complied with all the necessary legal procedures before obtaining the title deed of the suit property on 2nd July 1996, as evidenced by Entry No. 21 recorded in the presentation book. He further states that a search conducted after the issuance of the title confirmed that the property had been registered in his name and that his name remained reflected on the green card until it inexplicably disappeared many years later, and an entry made indicating that the property had been transferred to the 2nd Respondent instead by Daniel Katei.
25. The Appellant further submits that the presentation book extracts obtained from the Kajiado Land Registry and produced before the trial court clearly demonstrate the entries relating to the transfer of the suit property from the 1st Respondent to himself. Since these extracts were certified as true copies of the original records, the Appellant questions why the green card produced by the Land Registrar does not correspond with the entries contained in the presentation book despite the existence of documented procedures showing how he acquired the title.



26. Given that two conflicting sets of title and register documents relating to the suit property were presented before the trial court, the Appellant urges this court to interrogate the root of the title as emphasized in the decisions in *Florence Wairimu v Ruth Wanjiru & Two Others* [2020] eKLR and *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR. The Appellant also invites the court to be guided by the authorities in *Katende v Haridar & Company Limited* (2008) 2 E.A. 173; *Lawrence Mukiri v Attorney General & 4 Others* [2013] eKLR; *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] eKLR; and *Kahira v Hoimedale & 4 Others* (Environment & Land Case 581 of 2017) [2022] KEELC 4848 (KLR) (20 September 2022) in reaching a finding that the 2nd Respondent does not qualify as a bona fide purchaser for value.
27. The Appellant further submits that the trial Magistrate relied on inadequate evidence in entering judgment in favour of the 2nd Respondent, thereby occasioning a miscarriage of justice. According to the Appellant, the 2nd Respondent failed to prove the alleged fraudulent conduct on his part to the required standard of proof, as articulated in *Emfil Limited v Registrar of Titles Mombasa & 2 Others* [2014] eKLR and *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 Others* [2013] eKLR. On this basis, the Appellant urges this court to overturn the decision of the trial Magistrate and enter judgement in his favour.
28. It is also argued that the Land Registrar's testimony revealed that only the issuance of the title to the 1st Respondent was recorded in both the presentation book and the green card. By contrast, the entries relating to the 2nd Respondent appearing in the green card were not reflected in the presentation book. According to the Appellant, this discrepancy demonstrates that the 2nd Respondent failed to establish the legitimacy of her title. Furthermore, the 2nd Respondent did not produce any presentation book entry showing the transfer of the suit property from Daniel Katei Ole Ibrahim to herself.
29. In light of these circumstances, the Appellant maintains that the 2nd Respondent's title is invalid, defective, and liable to revocation since the process through which it was acquired was tainted by illegality, irregularity, and fraud within the meaning of Section 26(1)(b) of the *Land Registration Act*.

### **2nd Respondent's Submissions**

30. In her submissions dated 16 December 2026, the 2nd Respondent raises a single issue for determination, namely whether the Appellant's title should be upheld.
31. The 2nd Respondent submits that an examination of the root of the title will demonstrate that the Appellant's title was unlawfully obtained. She argues that at the time the Appellant purported to purchase the suit property, ownership had already been transferred to Daniel Katei Ole Ibrahim on 25 July 1995, and therefore the 1st Respondent lacked the capacity to sell the property to the Appellant in 1996. His title cannot therefore be a valid title.

### **Issues for determination**

32. As a first appellate court, this Court is obligated to reconsider and re-evaluate the trial court record in its entirety. The role of an appellate court was succinctly deliberated upon by Mativo J. in *Mursal & Another v Manese* [2022] KEHC 282 (KLR), in the following words;

“A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”



33. Having carefully considered the Appellant's entire record of appeal alongside the Memorandum of Appeal, the rival submissions, and the testimony of the Kajiado Central Land Registrar, this Court distills the dispute into one overarching question: Who between the Appellant and the 2nd Respondent is the lawful, bona fide registered proprietor of the suit property (L.R. No. Kajiado/Kitengela/5840)?
34. To effectively and comprehensively resolve this primary question, the Court frames the following specific sub-issues for determination:
- i. Whether the 1st Respondent had the legal capacity to validly transfer the suit property to the Appellant on 17th April 1996.
  - ii. Whether the Appellant discharged the requisite legal burden of proving that the 2nd Respondent's title was acquired illegally, unprocedurally, or fraudulently as envisioned under Section 26(1)(a) and (b) of the *Land Registration Act*.
  - iii. Whether the learned trial Magistrate erred in law and fact by relying on the primary register (the green card) over the presentation book entries to establish the true root of title of the suit property.
  - iv. Whether the learned trial Magistrate erred in allowing the 2nd Respondent's Counterclaim and granting the attendant orders of eviction, demolition, and permanent injunction.

### **Determination**

35. It is trite law that this Court, sitting as a first appellate court, is statutorily and constitutionally enjoined to subject the entire evidentiary record of the trial court to a fresh, exhaustive, and independent scrutiny. Individually, the Appellant and the 2nd Respondent have vehemently contested each other's title to the suit property, L.R. No. Kajiado/Kitengela/5840. Each party asserts that the other's title instrument was procured illegally, unprocedurally, and through fraudulent means. The Appellant persistently beseeches this Court to safeguard his proprietary rights, predicating his claim on a purported lawful acquisition on 2nd July 1996. Conversely, the 2nd Respondent advances a formidable competing claim, asserting her absolute proprietorship based on a title registered in her name on 2nd April 2009, following a purchase from one Daniel Katei Ibrahim.
36. In resolving a dispute where two parallel title documents exist over the same geospatial entity, the question of validity cannot be answered by merely looking at the face of the title deeds. The law demands a rigorous interrogation of the historical trajectory of the titles to ascertain their foundational legitimacy. The Court of Appeal in *Munyu Maina vs Hiram Gathiha Maina* [2013] KECA 94 (KLR), provided the authoritative guiding principle in such scenarios stating that:
- “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.”
37. Guided by this overarching jurisprudential beacon, I shall now proceed to systematically analyze and resolve the issues framed for determination.



## **I. Whether the 1st Respondent had the legal capacity to validly transfer the suit property to the Appellant on 17 April 1996.**

38. In his endeavour to demonstrate a valid root of title and prove that his acquisition was legal and formal, the Appellant heavily relied upon a sale agreement dated 17th April 1996. The said agreement lists the 1st Respondent, Miriambi Ole Sodai, as the vendor, and Ruth Wairimu Kinuthia (trading as Pancity Investments Ltd) as the appointed agent who received the purchase price of Kshs. 117,000.
39. However, a fatal blow is dealt to the Appellant’s narrative by the unequivocal, expert, and independent evidence tendered by the Kajiado Central Land Registrar, Rosemary Mwangi. The Registrar produced the primary, foundational registry document—the green card for L.R. No. Kajiado/Kitengela/5840. A meticulous examination of this official record reveals that while the 1st Respondent was indeed the initial registered proprietor as of 23rd February 1995, she had subsequently transferred her entire absolute interest in the suit property to Daniel Katei Ibrahim on 25th July 1995.
40. The legal implications of this chronological sequence are profound and inescapable. As of 17th April 1996—the date the Appellant purportedly executed his sale agreement—the 1st Respondent was entirely bereft of any legal or equitable interest in the suit property. She had already divested herself of ownership nearly nine months prior. Under the foundational bedrock of property law encapsulated in the maxim *nemo dat quod non habet* (no one can give what they do not have), the 1st Respondent wholly lacked the legal capacity to alienate, transfer, or sell the land to the Appellant.
41. Consequently, since the principal (the 1st Respondent) had no title to pass, her appointed agent (Pancity Investments Ltd) could not magically pass a valid title to the Appellant. The purported transfer of April 1996 was an exercise in futility; it was a nullity and void *ab initio*. The Appellant effectively acquired a non-existent, phantom title because the vendor was a stranger to the property at the time of the purported transaction.

## **II. Whether the learned trial Magistrate erred in law and fact by relying on the primary register (the green card) over the presentation book entries.**

42. The Appellant strenuously faults the trial court for disregarding extracts from the presentation book and placing absolute reliance on the green card. This argument, while passionately advanced, betrays a fundamental misunderstanding of the Torrens system of land registration applicable in Kenya. The Land Registrar’s testimony explicitly clarified the dichotomy between these two records. While the presentation book serves as an initial logistical log for the receipt of conveyancing instruments, not all such logged transactions materialize into actual registration. Instruments are routinely rejected for non-compliance with statutory formalities. Therefore, the green card remains the ultimate, conclusive, and authoritative mirror of proprietorship.
43. The Appellant’s contention that he conducted due diligence prior to his purchase is entirely decimated by the official registry records. Had the Appellant conducted a proper, diligent search of the actual register (the green card) prior to handing over his purchase monies in April 1996, he would have invariably discovered that Daniel Katei Ibrahim—and not the 1st Respondent—was the absolute proprietor at that time.
44. The Supreme Court of Kenya recently, comprehensively addressed the paramountcy of the register and the strict duty imposed on purchasers in *Standard Chartered Financial Services Limited v Manchester*



Outfitters (Suiting Division) Limited Now Called King Woolen Mills Limited & 2 others [2025] KESC 68 (KLR), stating that:

“Proprietary rights are so important that *the Constitution* recognizes them as a fundamental human right save in instances where those rights are found to have been unlawfully acquired. A purchaser intending to buy land is bound not only by the principles of caveat emptor (buyer beware) or nemo dat non-quad non habet (that no one can give what one does not have), but also by the Torrens principles on due diligence. By looking into the details in the register, one would see the status of a charged property.”

45. A prospective purchaser cannot claim the protection of equity while acting with indolence. The trial Magistrate was perfectly entitled—and indeed legally obligated—to rely on the green card over the presentation book. The Land Registrar confirmed under oath that the Appellant’s name has never appeared on the suit property’s green card.
46. Furthermore, glaring evidentiary anomalies in the Appellant’s own supporting documentation further strip his claim of any procedural credibility. For instance, the Land Control Board consent letter produced by the Appellant lacks an issuance date, rendering it highly suspicious in a conveyancing transaction where timelines are strictly dictated by statute. Even more fatally, the sale agreement relied upon by the Appellant misidentifies the parcel number as “5480” instead of the actual suit property number “5840”. Such fundamental documentary defects further validate the conclusion that the Appellant’s purported acquisition was irreparably flawed.

### **III. Whether the Appellant proved that the 2nd Respondent’s title was acquired illegally, unprocedurally, or fraudulently under Section 26(1)(a) and (b) of the *Land Registration Act*.**

47. In an attempt to salvage his case, the Appellant contends that the 2nd Respondent’s title ought to be impeached and canceled pursuant to Section 26(1)(a) and (b) of the *Land Registration Act* on allegations of fraud and illegality. However, the law demands a robust, specific, and elevated standard of proof for such grave allegations. The Court of Appeal in *Vijay Morjaria vs Nansingh Madhusingh Darbar & another* [2000] KECA 223 (KLR) set out the immutable threshold for allegations of fraud stating that:

“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.”

48. Applying this stringent standard, I find that the Appellant utterly failed to tender any cogent, direct, or circumstantial evidence demonstrating specific fraudulent acts committed by the 2nd Respondent. Merely pointing to unverified presentation book entries, or highlighting the Kajiado Land Registry’s administrative opacities, does not equate to strictly proving fraudulent connivance on the part of the 2nd Respondent.
49. In sharp contrast, the 2nd Respondent successfully and comprehensively discharged her evidentiary burden of proving her root of title. She demonstrated a seamless, logical, and officially documented chain of transfer: from the original owner (the 1st Respondent) to Daniel Katei Ibrahim in 1995, and subsequently from Daniel Katei Ibrahim to herself. She produced a valid sale agreement dated 24th November 2008, proving a consideration of Kshs. 640,000 was paid. This chain of ownership is entirely corroborated by the official green card entries and the expert testimony of the Land Registrar.



Consequently, the 2nd Respondent's status as a bona fide purchaser for value without notice of any defect is unassailable, and her title enjoys the full protection of the law

#### **IV. Whether the learned trial Magistrate erred in allowing the 2nd Respondent's Counterclaim.**

50. Having conclusively established that the 2nd Respondent is the absolute, lawful, and indefeasible registered proprietor of L.R. No. Kajiado/Kitengela/5840, the resolution of the Counterclaim becomes a straightforward matter of statutory application. Under the *Land Registration Act*, registration vests in the proprietor the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto. It naturally follows that she is entitled to the quiet, undisturbed possession and enjoyment of her property as guaranteed by Article 40 of *the Constitution* of Kenya.
51. In light of the 2nd Respondent's indefeasible title, the Appellant's entry onto the land, his continued occupation, and the erection of semi-permanent structures thereon amount to blatant, actionable trespass. The Appellant has no color of right to remain on the premises. Consequently, the learned trial Magistrate did not err in the slightest by allowing the Counterclaim in its entirety. The orders of eviction, the mandatory injunction compelling the demolition of the encroaching structures, and the permanent injunction restraining the Appellant from further interfering with the suit property were legally sound, proportionate, and entirely justified remedies to cure the ongoing trespass.
52. Upon a holistic evaluation of the pleadings, the documentary exhibits, and the oral testimonies adduced before the trial court and this appellate forum, the inescapable conclusion is that the Appellant fell victim to a flawed transaction, acquiring a fundamentally defective title from a "vendor" who lacked the legal capacity to sell. Conversely, the 2nd Respondent possesses a valid, lawfully acquired title that is demonstrably rooted in the official land register.
53. I find no legal, factual, or procedural basis to interfere with the well-reasoned and legally sound judgment of the learned trial Magistrate. The trial court's application of the law to the facts was impeccable.
54. Accordingly, the Appeal lacks merit and is hereby dismissed in its entirety. The judgment of the trial court delivered on 30th March 2023 is upheld and affirmed.
55. As costs follow the event, the costs of this Appeal are awarded to the 2nd Respondent.  
Orders accordingly.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24<sup>TH</sup> DAY OF MARCH 2026**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kariuki for the 2<sup>nd</sup> Respondent

Ms. Tabitha Muthoni for the Appellant

N/A by the 1<sup>st</sup> & 3<sup>rd</sup> Respondents

Court Assistant: Mercy

**M.D. MWANGI**

**JUDGE**

