

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**

**ELC CASE NO. 35 OF 2024**

**(FORMERLY NAKURU ELC 82 OF 2018)**

**PATRISIA NJERI KAIRU (Suing on her behalf and as the administrators of estate of KAIRU KAHENGERI - Deceased) .....**  
**PLAINTIFF**

**VERSUS**

**JOHN NDEITHI GATHERU..... 1<sup>ST</sup>**  
**DEFENDANT**

**THE DISTRICT LAND REGISTRAR, NAIVASHA .....2<sup>ND</sup>**  
**DEFENDANT**

**PETER MUIGAI KARIUKI.....3<sup>RD</sup>**  
**DEFENDANT**

**DAVID KINAHE KAMAU.....4<sup>TH</sup>**  
**DEFENDANT**

**PETER MACHARIA WAWERU.....5<sup>TH</sup>**  
**DEFENDANT**

**THE HON. ATTORNEY GENERAL.....6<sup>TH</sup>**  
**DEFENDANT**

**JUDGMENT**

1. Vide a Plaint dated 19<sup>th</sup> February 2018 and amended on 28<sup>th</sup> October 2022, the Plaintiff herein sought the following orders:

- i. A declaration that all the transfers of Title No. Naivasha/Mwichiringiri Block 4/984 and 983 from the late Kairu Kahengeri and the Plaintiff, are illegal, fraudulent and unlawful.
- ii. A declaration that the Plaintiff and the estate of the late Kairu Kahengeri are the legal, lawful and rightful proprietors and/or owners of all that parcels of land known as Title No. Naivasha/Mwichiringiri Block 4/983 and Title No. Naivasha/Mwichiringiri Block 4/984, respectively.
- iii. An Order compelling the 2<sup>nd</sup> Defendant to cancel the Title

No. Naivasha/Mwichiringiri Block 4/983 issued on 26<sup>th</sup> April 2012 and Title No. Naivasha/Mwichiringiri Block 4/984 issued on 26<sup>th</sup> April 2012 to the 1<sup>st</sup> Defendant.

- iv. An Order that Title No. Naivasha/Mwichiringiri Block 4/983 and Title No. Naivasha/Mwichiringiri Block 4/984, the titles of the suit properties revert and be registered in favour of the Plaintiff and the deceased, respectively.
  - v. An Order revoking and striking off the name of the 1<sup>st</sup> Defendant from the register of the suit properties.
  - vi. An order for rectification of the register of the suit properties to reflect the Plaintiff and the deceased as the registered proprietors of the suit properties.
  - vii. The costs of the suit.
  - viii. Any other relief the honourable court may deem fit to grant.
2. The 1<sup>st</sup> Defendant filed his Amended Defence and Counterclaim dated 10<sup>th</sup> March 2023, wherein he denied the allegations contained in the Plaint, putting the Plaintiff to strict proof, while arguing that he had bought the parcel of land parcel No. Naivasha/Mwichiringiri Block 4/983 from one Peter Muigai Kariuki and David Kinahe Kamau, and parcel of land No. Naivasha/Mwichiringiri Block 4/984 from Peter Macharia Waweru and Peter Kinahe Kamau, who were the legally registered owners of the said property at the time.
3. He contended that before the suit properties were transferred, he had conducted a search on them and confirmed that Peter Muigai Kariuki and David Kinahe were the registered owners of Title Number Naivasha/Mwichiringiri Block 4/983, while Title Number Naivasha/Mwichiringiri Block 4/984 was registered in the names of Peter Macharia Waweru and Peter Kinahe Kamau. He stated that he bought the suit properties as a bona fide purchaser for value and was not aware of any rights held by the Plaintiff and Kairu Kahengeri in any of the properties. He further asserted that he purchased the properties legally, following the required due process and conducting his own due diligence.
4. That the title deeds of Naivasha/Mwichiringiri Block 4/983 and Naivasha/Mwichiringiri Block 4/984 had been issued to the 3<sup>rd</sup> and 4<sup>th</sup>

Defendants and the 4<sup>th</sup> and 5<sup>th</sup> Defendants respectively on 22<sup>nd</sup> March 2012. That the said suit properties were never in the names of the Plaintiff or one Kahiru Kahengeri. He maintained that, through a search, he had confirmed that he had purchased the suit properties from the registered owners in accordance with accepted Conveyancing principles, standards, and procedures, and that he had no knowledge of either the Plaintiff's or Kairu Kahengeri's interest in the land parcels at the time of purchase. He thus prayed that the Plaintiff's suit be dismissed with costs.

5. In his Counterclaim, the 1<sup>st</sup> Defendant reiterated the contents of his Defence and then argued that as a result of the Plaintiff's claim on the suit properties, his use and enjoyment of the properties had been frustrated. That indeed, on October 2013, the Plaintiff had lodged a caution on the properties barring the enjoyment and exercise of his full rights as the proprietor. That subsequently, he had suffered and continues to suffer loss, damages, prejudice and injustice despite being a bonafide purchaser who had acted in good faith.
6. He particularized his loss and damage as:
  - i. That the 1<sup>st</sup> Defendant has been deprived of the use and quiet enjoyment of the suit properties.
  - ii. The 1<sup>st</sup> Defendant has been deprived of value for his money despite being a bonafide purchaser of the suit properties.
7. He sought for the following Orders:
  - i. A declaration that the 1<sup>st</sup> Defendant is the legal, lawful and rightful owner and/or proprietor of all that parcel of land known as Naivasha/Mwichiringiri Block 4/983 and all that parcel of land known as Number Naivasha/Mwichiringiri Block 4/984.
  - ii. A declaration that the 1<sup>st</sup> Defendant is entitled to exclusive and unimpeded right of possession of the suit properties.
  - iii. A permanent injunction restraining the Plaintiff whether by herself, her servants, employees, agents, proxies or otherwise howsoever from interfering with the Plaintiff in the counterclaim's vacant possession, use and enjoyment of properties Naivasha/Mwichiringiri Block 4/983 and Naivasha/Mwichiringiri Block 4/984.

- iv. Costs of the suit.
  - v. Any other relief that the court may deem just and fit to issue.
8. In a rejoinder, the Plaintiff reiterated the contents of her Amended Plaint in arguing that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants were not the lawful owners of the suit properties since they had illegally and fraudulently transferred the same in their names and hence had no title to pass to the 1<sup>st</sup> Defendant. That subsequently, the 1<sup>st</sup> Defendant was not an innocent purchaser at all.
  9. That the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants had purchased the suit properties from persons purporting to be herself and her late husband, Kairu Kahengeri, without following the due process of the law, whereby they did not get the Land Control Board consent, and pay the required stamp duty for the sale transaction. The 1<sup>st</sup> Defendant failed to carry out due diligence in ascertaining the root title of the suit properties prior to the purchase thereof.
  10. Since she had a proprietary interest in the suit properties, she registered a caveat to protect both the properties and the estate of the late Kairu Kahengeri, ensuring they were not alienated or interfered with until the ownership issue was resolved.
  11. In her defence to the 1<sup>st</sup> Defendant's counterclaim, she maintained that she and the estate of her late husband, Kairu Kahengeri, were the lawful, legal, and rightful owners of Title Nos. Naivasha/Mwichiringiri Block 4/983 and Naivasha/Mwichiringiri Block 4/984, respectively. She argued that the 1<sup>st</sup> Defendant had no proprietary interest to warrant a plea for quiet possession. She also asserted that the transactions leading to the 1<sup>st</sup> Defendant's purchase of the suit properties were marred by fraud and therefore did not transfer good title to him.
  12. That the original title deeds to the suit properties had been stolen and replaced with copies on 5<sup>th</sup> May 2012 at which time she had verily believed that the title deeds were in her custody. That, in any case, she and the estate of the late Kairu Kahengeri were still the registered owners of the suit properties.
  13. That her claim was valid as her suit property was illegally and fraudulently disposed of by the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants, who unlawfully transferred it to the 1<sup>st</sup> Defendant. That, accordingly, as the rightful owner of the suit properties and on behalf of the estate of the deceased, she had a right to quiet use and possession of her property, which the 1<sup>st</sup> Defendant

was infringing upon.

14. The caution she had imposed on the suit properties was intended to protect her proprietary interest and that of the estate of the late Kairu Kihengeri. That no good title was passed to the 1<sup>st</sup> Defendant following the sale, and therefore, he had no proprietary interest in the suit properties. Accordingly, the 1<sup>st</sup> Defendant's claim to the suit property cannot be upheld, as allowing it would significantly prejudice and cause further loss and damage to the actual owner.
15. It was her contention that the 1<sup>st</sup> Defendant's Amended Statement of Defence did not raise any triable issues, and neither did the Counterclaim raise any reasonable cause of action against her and therefore both the amended Statement of Defence and Counterclaim should be dismissed with costs and judgment entered in her favour.
16. Whereas the 2<sup>nd</sup> and 6<sup>th</sup> Defendants entered an appearance, they did not file any Defence, while the 3<sup>rd</sup> to 5<sup>th</sup> Defendants neither entered an appearance nor filed any Defence. On 4<sup>th</sup> June 2025, judgment was entered against the 3<sup>rd</sup> to 5<sup>th</sup> Defendants.
17. The parties having complied with the pretrial directions, the matter proceeded for hearing on 4<sup>th</sup> June 2025, wherein James Kiambuthi Kairu, testified as PW1 to the effect that the Plaintiff and the deceased were his parents and that whereas the Plaintiff was alive, she was very old, while his father Kairu Kahengeri was deceased, hence the reason he was testifying on their behalf.
18. He produced the Power of Attorney dated 5<sup>th</sup> September 2024 as Pf Exh 1 and the letters of Administration as Pf Exh 2, confirming that the same were issued pursuant to a Succession Cause on behalf of the Estate of Kairu Kahengeri, in Succession Cause No. 43 of 2016 at the Engineer Law Courts. He then adopted his Witness Statement dated 11<sup>th</sup> November 2024 as his evidence-in-chief.
19. Thereafter, he explained that the current case involved two title deeds being No. Naivasha/Mwichiringiri Block 4/984 and 983, registered in the name of Kairu Kahengeri (Deceased) and the Plaintiff, which had been stolen, but the thief had subsequently been arrested and imprisoned. He presented copies of the titles as Pf Exh 3 (a -b) and explained that the theft had been reported to the police, who issued them with police abstract dated

17<sup>th</sup> May 2012, which he produced as Pf Exhs. 4 (a -b).

20. He named the thief as Mbiyu Henry Wanjiru, who was his brother's son and a grandchild of his parents. A criminal case had been instituted against him at Naivasha Court in Case No. 1673 of 2012, in which he was convicted and sentenced. That a Ruling to that effect had been delivered on 12<sup>th</sup> July 2013 while a judgement was delivered on 16<sup>th</sup> August 2013. He produced the said Ruling and Judgement as Pf Exhs. 5 (a -b). That they had also conducted a valuation on the suit properties vide a valuation report dated 28<sup>th</sup> October 2020, which he produced Pf Exh 6.
21. During cross-examination by the counsel for the 1<sup>st</sup> Defendant, he reiterated that the Plaintiff was his mother, while the deceased was his father. He also confirmed that he lives with his mother. They had noticed the titles were missing when two buyers (whose names he could not remember) approached them in 2012 to have the land (with missing titles) transferred to them. On that day, they had asked for his mother, after which they informed her that they wanted a transfer of the titles. That they had with them the original titles in his parents' names.
22. When he was referred to the 1<sup>st</sup> Defendant's list and bundle of documents, he pointed out that the title dated 26<sup>th</sup> April 2012, was in the name of John Ndeithi Gatheru, the 1<sup>st</sup> Defendant and was in reference to land parcel No. Naivasha/Mwichiringiri Block 4/983. The second title referred to land parcel No. Naivasha/Mwichiringiri Block 4/984 was dated 26<sup>th</sup> April 2012 and also in the 1<sup>st</sup> Defendant's name. He further testified that the people had other titles, which were not the ones in the 1<sup>st</sup> Defendant's list and bundle of documents.
23. He confirmed that he knew the 3rd to 5th Defendants as the individuals who had visited their home seeking their parents to transfer the titles. However, the documents they had at the time were not before the court because they had been stolen. He confirmed that, whereas the title regarding land parcel No. Naivasha/Mwichiringiri Block 4/984 in the names of Peter Muigai Kariku and David Kinahe Kariuki was dated 22<sup>nd</sup> March 2012, those were not the titles they possessed at the time, as the titles they had then were in his parents' names.
24. They had reported the theft of the titles at Ruiru Police Station because his mother lives in Ruiru. The thief was arrested and sentenced for stealing

the titles. He confirmed that although the 1<sup>st</sup> Defendant's titles were dated 26<sup>th</sup> April 2012, they had reported the theft to the police on 17<sup>th</sup> May 2012. He insisted that by the time they reported, the titles were still registered in his parents' names. He also confirmed that a Criminal Case was filed in Naivasha under No. 1673/2012 regarding the theft of the titles, in which the accused persons are Henry Mbiyu and George Ndungu alias Mwangi.

25. He explained that the 3<sup>rd</sup> to 5<sup>th</sup> Defendants were not parties to the said criminal case because the two accused persons involved were the ones who had stolen the titles. He also confirmed that the 3<sup>rd</sup> to 5<sup>th</sup> Defendants did not visit their home. One of the two individuals who had gone to their home was called Ndungu. While they asked him about his parents, he did not inquire about their names at that time, but he could recognise them if he saw them. Nonetheless, he had heard one of them called Ndungu, who was one of the suspects in the criminal case.
26. The 3<sup>rd</sup> to 5<sup>th</sup> Defendants did not go with the titles or papers. His mother testified in the criminal case that her titles had been stolen and her land was sold. However, there was no sale of land because the title had not been transferred. He confirmed that the judgment in the criminal case was delivered on 16<sup>th</sup> August 2013. He also confirmed that the two titles date before the 2013 judgment, having been issued in 2012. He stated that they reported the theft in 2012 at the Naivasha Registry, but he could not recall whether they were given any document to prove they had reported it.
27. He confirmed that he was aware of the land transfer process and explained that he would first show the person buying the land the original title. Then they would provide the required documents, exchange identity cards, and submit them to the land registrar. However, if the land registrar did not have all the papers, he would not transfer the land. He admitted that he could not read well.
28. He testified that he did not know the 1<sup>st</sup> Defendant and was unaware of whether he had purchased the land from the 3<sup>rd</sup> to 5<sup>th</sup> Defendants. He maintained that the person who had stolen the title was his mother's grandson, who used to live with and care for her. He also confirmed that he was the one now living with his mother and stated that he did not know the relationship between Henry (the thief) and the 1<sup>st</sup> Defendant.
29. In re-examination, he confirmed that he was shown the titles bearing the

names of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants, which titles he reiterated had been transferred fraudulently to them. He maintained that the said titles had not been acquired legally, since where a wife wanted to sell land, she was obliged to obtain consent, identify the land, go to the land board, pay taxes and rates, and there must be photographs of the parties involved in the transactions as well as an ID. Additionally, a search must be conducted to establish ownership. He asserted that he had not been shown any evidence that the said process had been followed.

30. He reiterated that they had reported the theft of the titles in 2012 after people had gone to have his parents transfer the titles, but they did not know that the said titles had been stolen. He stated that he did not understand why the 3<sup>rd</sup> to 5<sup>th</sup> Defendants had not been charged, as he did not work with the Office of the Director of Public Prosecutions, nor was he responsible for deciding who should be charged. According to him, Mbiyu had stolen the titles. He confirmed that the Plaintiff had filed a suit against the 3<sup>rd</sup> to 5<sup>th</sup> Defendants.

31. In reference to Pf Exh 5 (b), he confirmed that the names of the 3<sup>rd</sup> to 5<sup>th</sup> Defendants had been mentioned. However, after reporting at the police station, he did not have control over when the judgment would be delivered. He also confirmed that he reported the loss of the tiles at the Land Registry.

32. When he was referred to Pf Exh 6 at page 37, he confirmed that it was a Search Certificate which, at the restriction section, included a caution dated 23<sup>rd</sup> October 2013. He stated that in this case, the 2<sup>nd</sup> Defendant was the Land Registrar. He also mentioned that he had not been shown any proof of funds paid for the land by the 1<sup>st</sup> Defendant. Therefore, he concluded that the process by which the land had been sold was not legal.

33. When he was examined by the court, he confirmed that Mbiyu, who had stolen the title, was sentenced and had served his term.

The Plaintiff closed its case.

34. The Defence case commenced with the testimony of John Nderitu Githau, the 1<sup>st</sup> Defendant herein, a resident of the United States of America, in the State of Connecticut. He testified that he did not know the Plaintiff but was familiar with his co-Defendants. He stated that Peter Mungai Kariuki, David Kiniahe, and Peter Macharia, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants, were the vendors of the parcels of land he had purchased, being Naivasha/Mwichiringi Block

4/983 and 984.

35. He had conducted due diligence when he was introduced to the sellers. He visited an Attorney's office in Naivasha, run by George Kimani Advocate, where an agreement was prepared. Afterwards, they were instructed to carry out a search at the Land Registrar's Office. It took approximately 2 to 3 days for the search results to be received. He then paid the purchase price to the vendors, and the titles were handed over, marking the start of the process. After payment, they returned to the Land Registrar to conduct a valuation and proceeded to the Land Control Board (LCB) for the transfer, after which the parcels of land were registered in his name. He was currently in possession of both parcels of land.

36. He adopted his witness statement dated 25<sup>th</sup> May 2018 as his evidence in chief and produced his filed bundle of documents in evidence as follows:

- i. A copy of the title deed to land parcel No. Naivasha/Mwichiringiri Block 4/983 measuring 1.173 hectares and dated 26<sup>th</sup> April 2012 registered his name as Df Exh.1.
- ii. A copy of a title deed to land parcel No. Naivasha/Mwichiringiri/Block 4/984 measuring 1.224 hectares, dated 26<sup>th</sup> April 2012, registered in his name as Df Exh. 2.
- iii. Sale Agreement dated 13<sup>th</sup> April 2012 between Peter Mwigai Kariuki and David Kamau, of Land Parcel No. Naivasha/Mwichiringiri Block 4/983 at a purchase price of Kshs.1,600,000/= drafted George N. Kimani Advocate as Df Exh. 3.
- iv. A Sale Agreement dated 13<sup>th</sup> April 2012 between Peter Macharia Waweru and David K. Kamau to Parcel No. Naivasha/Mwichiringiri Block 4/984 at a purchase price of Kshs. 1,600,000/= drafted by George N. Kimani, Advocate as Df Exh. 4.
- v. A copy of a title deed to land parcel No. Naivasha/Mwichiringiri Block 4/983 in the names of Peter Mwigai Kariuki and David K. Kamau dated 22<sup>nd</sup> March 2012, as Df Exh. 5.
- vi. A copy of a title deed to land parcel No. Naivasha/Mwichiringiri

Block 4/984, registered to Peter Macharia Waweru and David K. Kamau, and dated 22<sup>nd</sup> March 2012, as Df Exh. 6.

- vii. A copy of a Certificate of Official Search for land parcel No. Naivasha/Mwichiringi Block 4/983, dated 12<sup>th</sup> April 2012, showing the owners of the land as Peter Kariuki and David Kihanya Kamau, who became owners on 22<sup>nd</sup> March 2012, as Df Exh. 7(a).
- viii. An Application for Official Search dated 12<sup>th</sup> April 2012 for land parcel No. Naivasha/Mwichiringi Block 4/983 that had been done by Margaret Wairimu for confirmation, wherein Kshs.500/= was paid as Df Exh. 7(b).
- ix. A Certificate of Official Search for land parcel No. Naivasha/Mwichiringi Block 4/984 dated 12<sup>th</sup> April 2012 showing that the owners of the land were Peter Macharia Waweru and David Kihanya Kamau, and that they had become owners on 22<sup>nd</sup> March 2012 as Df Exh. 8(a).
- x. An application for search dated 12<sup>th</sup> April 2012 for land parcel No. Naivasha/Mwichiringi Block 4/984 that had been conducted by Margaret Wairimu, wherein Kshs.500/= was paid as Df Exh 8(b).

37. During cross-examination, he confirmed that he had been in the United States of America for 43 years but that he had signed the documents while in Kenya. He stated that his passport would prove he was in Kenya at the time of signing the documents. He explained that, in purchasing land, due diligence is essential, and the documents and searches he produced demonstrated that he had carried out proper due diligence. He added that he had been advised to conduct the search first. He also stated that he and Margaret Wairimu had fulfilled their due diligence by visiting the Registrar of Lands and submitting an application for a search.

38. When he was referred to Df Exhs. 3 and 4, he read out clause 6 and then stated that the law firm had no role in conducting the due diligence. He confirmed that he had not built anything on that land and that, when he visited the land, it was bare and undeveloped.

39. In reference to Df Exh. 5, he confirmed that the sellers had only obtained the land title for one month, the same as in Df exh. 6. He admitted that,

apart from the titles, he had not provided supporting documents for the individuals who sold them the land, such as their Identity Cards, KRA Pin Certificates, Transfer Forms, booking forms, or bank account details.

40. Upon being referred to Df exhs 3, 4, 5, and 6, he confirmed that the postal addresses therein belonged to the sellers, but he was not aware that the said sellers did not appear in court despite being served. He stated that he did not know whether it would have been better for them to explain earlier where they obtained the titles. He confirmed that he paid a total sum of Kshs. 3,200,000/= through cash and cheques for the two parcels of land. However, the said cheques were not among the documents he had produced. He admitted that Kshs. 3,200,000/= was a large amount of money.
41. He denied knowing Henry Mbiu, although he was informed about the theft of titles. He confirmed that the sellers were co-Defendants, hence he believed they would attend court, and he did not have their contact details as the transactions took place 13 years ago. He stated that the agreements had been prepared by George Kimani, Advocate. However, he admitted that the said advocate did not commit himself to having drafted the agreements. He also acknowledged that he did not possess the documents to prove he had paid stamp duty or obtained Land Control Board consent. He verified that 2% of Kshs.1,600,000/= is Kshs.32,000/= per land, but he did not have a valuation report in court. Additionally, he did not have an application for LCB consent in court.
42. When he was referred to Df Exhs. 3 and 4 and Pf Exh. 1, he confirmed that in Df Exh. 1 there was a land registry stamp dated 5<sup>th</sup> November 2024. However, his agreements did not bear the registry stamp. He confirmed that Pf Exh. 1 contained an assessed amount of stamp duty which was not in his documents. He also noted a franking stamp on Pf Exh. 1 that was missing from his documents. He stated that he did not have any affidavit of spousal status or consent, nor did he know the Plaintiff or her husband. He only knew the people who had sold him the land.
43. He confirmed that the two parcels differed in size, with land parcel No. Naivasha/Mwichiringiri Block 4/No. 983 measuring 1.173 hectares and Naivasha/Mwichiringiri Block 4/984 measuring 1.224 hectares, which was an approximate area. However, both parcels were sold at the same price of

Kshs. 1,600,000 each. At the time he purchased the land, the titles had just been issued the previous month, on 22<sup>nd</sup> March 2012, making both titles newly issued. He admitted that he did not know the previous owners, as it was not suspicious to him that the land had been sold after only one month, because the Land Registrar had assured him that the sellers were the rightful owners.

44. In reference to Df Exh. 7(a), he read Part B and confirmed that ownership had been acquired on 22<sup>nd</sup> March 2012. When he was shown Pf Exh. 2, the Death Certificate, he confirmed that the date of death of Kairu Kahungu was 10<sup>th</sup> October 2004. However, he testified that he did not know who Kairu Kahengeri was, adding that his lawyers had informed him of the Criminal Case after the filing of the current case.

45. Upon being referred to Pf Exh. 5(a) and (b), he maintained that he had been informed of the Criminal Case, suggesting that the title had been stolen, after the filing of the current case and that he was unaware of this at the time he was purchasing the land. He stated that he only became aware that Peter had been convicted of the theft of titles afterwards.

46. In re-examination, he confirmed that the vendors had been the 3<sup>rd</sup> to 5<sup>th</sup> Defendants and that the acreage was in hectares. He stated that it was not the first time he had purchased land. He explained that the land was sold as shares, thus there was no issue regarding the same amount being paid for different acreages. He mentioned that, in 2012, it was not compulsory to obtain spousal consent. He also stated that it was not necessary to register a sale agreement in the Lands Registry, hence it was not unusual for his sale agreement to lack stamps.

47. It was the vendor's duty to obtain the LCB consent to transfer, and since he was the buyer, it was not necessary for him to obtain it. As the valuation was conducted by the government valuer, he had no control over the value they assigned to the land.

48. When he was referred to Df Exh. 3 and 4, he read out paragraph 2 and confirmed that he was supplied with all the documents he had presented to the Land Registrar, after which he was registered as the owner. He stated that he had not been summoned by the Land Registrar concerning any dispute. He also confirmed that the custodian of the title was the Registrar of Lands, who had issued him the certificate of searches. He further

confirmed that each piece of land cost Kshs. 1,600,000/= and that he would not have received the registration documents had he not paid the full purchase price.

49. He presented the PINs and IDs of the vendors to be allowed to conduct the search. He reiterated that the land was vacant at the time he was buying, and it remains vacant. He confirmed that he had visited the land before purchase. He explained that, although he resides in the USA, he visits Kenya at least once a year. During most visits to Kenya, he purchases one parcel of land. Margaret was the person who introduced him to the sellers and showed him the parcel of land. That he had known Margaret since 2008.
50. At the close of the 1<sup>st</sup> Defendant's case, the parties were directed to file written submissions.

### **Plaintiff's Submissions.**

51. Upon summarizing the factual background of the matter and reiterating the evidence adduced in court in detail, the Plaintiff based her submissions, dated 18<sup>th</sup> February 2026, on the following issues for determination:
- i. Whether the 1<sup>st</sup> Defendant's possession of the title documents for the suit properties justifies his ownership.
  - ii. Whether the 1<sup>st</sup> Defendant had sufficiently demonstrated that he obtained the suit properties as an innocent purchaser for value without notice of fraud after conducting the requisite due diligence.
  - iii. Who is the rightful owner of the suit property?
52. The Plaintiff argues that possession of a title deed alone does not justify ownership if the process of acquisition was flawed. That a title must be supported by evidence of a lawful origin. In Kenya's current legal climate, land registries are often scenes of crime, and multiple titles for one parcel are common. That a purchaser cannot simply dangle a title deed. They must prove they conducted thorough due diligence that went to the root of the title and that they did not participate in fraud. She relied on the decisions in the cases of:
- i. **Raphael Ngugi (Deceased) [2022] KEELC 1575 (KLR)** on the prevalence of land fraud.
  - ii. The Supreme Court holding in **Dina Management Limited**

**v County Government of Mombasa & 5 others [2023]**

**KLR** establishes a definitive case requiring owners to prove the legality of their title's origin.

- iii. **Kamere v Lands Registrar, Kajiado [2015] eKLR** and **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, which cases reinforce the need to go/look beyond the instrument of title.

53. The Plaintiff argued that to purchase land, one must conduct due diligence, and that a simple search at the Land Registry was not sufficient due diligence. The Plaintiff's submission was that lack of due diligence was evidenced by the facts that the 1<sup>st</sup> Defendant's admission that the titles were only a month old when he bought them showed ignorance of the red flag that had been raised, and further, the Defendant's advocates expressly excluded due diligence from their scope of work at Clause 6 of the Agreement, lastly the conviction of Henry Mbiyu for stealing the original titles proved that the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants had no valid titles to pass and therefore since the initial transfer was null *ab initio*, the 1<sup>st</sup> Defendant's titles were also void.

54. In support of her submissions, the Plaintiff relied on the following authorities:

- i. **Esther Ndegi Njiru v Leonard Gatei [2014] eKLR** which confirmed that a search at the registry is not enough; a purchaser must go further.
- ii. **Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] KEELC 151 (KLR)**, which established the requirements for a bona fide purchaser to possess a valid title, exercise due diligence, and provide valuable consideration.

55. The Plaintiff highlighted several mandatory legal requirements that were ignored by the 1<sup>st</sup> Defendant, which included: the absence of a Land Control Board (LCB) Consent stating that, since the land is agricultural, LCB consent was mandatory under Section 6 of the Land Control Act, the 1<sup>st</sup> Defendant admitted he never obtained it, rendering the sale void.

56. She also pointed out that parcel No. 984 was allegedly transferred in 2012 by Kairu Kahengeri, who had been dead since 2004. A dead person

cannot sign transfer documents.

57. Lastly, there had been financial irregularities to the effect that there was no evidence produced of stamp duty payment, valuation reports, or actual proof of payment of the Kshs. 3,200,000/= as the purchase price of both parcels of land. She relied on the following authorities in support of her submissions;

- i. **Alice Wambui Ndome v Muiiru Property Investment Ltd [2014] KEHC 2566 (KLR)** on the necessity of LCB consent.
- ii. **Kerini Saganya Mairura v Mecha Marita alias David Mecha Njoroge [2009] KEHC 3725 (KLR)**, which case held that lack of LCB consent renders an agreement void.
- iii. **Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No.252 of 2005 [2014] eKLR**, which provided that procedural flaws negate the doctrine of indefeasibility of title.

58. The Plaintiff asserted her ownership rights and counterclaim under Article 40 of the Constitution, arguing that since the 1<sup>st</sup> Defendant's title lacked a legal basis, it should be cancelled under Sections 79 and 80 of the Land Registration Act. She contended that the 1<sup>st</sup> Defendant's possession was adverse to her interests and thus constituted trespass. Additionally, she claimed he was not entitled to quiet enjoyment or injunctive relief because his ownership was founded on a fraudulent chain. She relied on the following authorities;

- i. **Arthi Highway Developers Ltd v West End Butchery Ltd & Others C.A Civil Appeal No. 246 of 2013 [2015] eKLR**, where it had been held that where a title was cancelled, subsequent titles based on it also fail.
- ii. **Willesden Investments Ltd v Kenya Hotel Properties Ltd (Civil Suit 367 of 2000 [2006] KEHC 673 (KLR) (Civ) (14 December, 2006) (Judgement)**. That held that a belief in ownership was not a defence against trespass.
- iii. **Gori Investments Ltd v Basco Products (K) Ltd & another (ELC 1528 of 2016) (2024) KEELC 7447 (KLR) (11 November, 2024). (Judgement)** where it had been

held that the remedy for infringement is eviction and return of possession.

59. In conclusion, the Plaintiff submitted that the 1<sup>st</sup> Defendant was a beneficiary of a fraudulent scheme and therefore his Counterclaim must be dismissed, and she be granted the prayers sought in her Amended Plaint, including costs. She relied on the Supreme Court's decision in the case of **Jasbir Singh Rai & 3 Others -vs- Tarlochan Singh Rai & Others (2014) eKLR.**

### **1<sup>st</sup> Defendant's Submissions.**

60. The 1<sup>st</sup> Defendant, vide his submissions dated 3<sup>rd</sup> March 2026, also summarized the factual background of the matter before framing his issues for determination as follows:

- i. Whether the Plaintiff has proved fraud, illegality or irregularity in the transfer of the suit properties to the 1<sup>st</sup> Defendant to the required standard of proof.
- ii. Whether the 1<sup>st</sup> defendant is a bona fide purchaser for value without notice of any defect in title.
- iii. Who should bear the costs of this suit.

61. The 1<sup>st</sup> Defendant's submissions argue that he is an innocent purchaser who adhered to the law and that the Plaintiff failed to legally demonstrate any link to fraudulent activity. He contended that the Plaintiff's case was unsubstantiated because she did not specifically plead or prove his involvement in the fraud, which is a serious allegation that must be solidly supported by clear and convincing evidence. It cannot be inferred or presumed. The Plaintiff should have demonstrated that he was personally involved or had knowledge of the fraud.

62. He pointed out that the Plaintiff admitted the titles were stolen by her own grandson (Henry Mbiyu) and argued that this foundational theft was an internal family matter that did not automatically implicate a subsequent purchaser.

63. He further argued that the suit was defective because the Plaintiff failed to sue Henry Mbiyu (the thief), whose conduct was the basis of the claim. He relied on the decisions in:

- i. **Teleposta Pension Scheme Registered Trustees vs**

**Inter Countries Importers and Exporters Limited and 4 others (2016) eKLR**, which case laid down the requirement for clear, cogent, and particularised evidence of personal involvement in fraud.

- ii. **Patel v Shah & another (Environment and Land Case 1 of 2023)**, where it had been held that fraud must be distinctly pleaded against the party holding the title.
- iii. **Sunrise Vision Self-Help Suing through its officials Titus Mutwota (Secretary) and Bernard Wambua (Vice-Chair) v Ndehi & another [2026] KEELC 618 (KLR)**, on the necessity of joining parties whose presence is required to settle all questions in the suit, pursuant to Order 1 Rule 10(2) of the Civil Procedure Rules.

64. The 1<sup>st</sup> Defendant then proceeded to challenge the validity of the Power of Attorney issued to the Plaintiff's son, who testified as PW1 to the effect that the said Power of Attorney granted in 2024 could not be used to testify on personal knowledge of events from 2012. He asserted that PW1's evidence had diminished value because the donee (PW1) could not retroactively represent the Plaintiff's state of mind or observations from 14 years prior. Hre relied on the decision in **Kabogo vs Dakika Limited [2026] KEHC 1647 KLR**, where it had been held that a Power of Attorney cannot act retrospectively to validate testimonial evidence of past events.

65. The 1<sup>st</sup> Defendant maintained that he was bona fide purchaser of the suit properties and was therefore protected by the doctrine of a "bona fide purchaser for value without notice." That he had dealt with the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants because they were the officially registered owners in the Land Register at the time of the sale.

66. He highlighted a critical timeline to the effect that he was registered as the owner of the properties on 26<sup>th</sup> April 2012, whereas the Plaintiff only reported the theft to the police on 17<sup>th</sup> May 2012 and therefore, at the time of purchase, there was no public record or "notice" (actual or constructive) of any defect in the title. He cited the cases of;

- i. **Jeruto v Stanbic Bank Kenya Limited & another (Civil Appeal E211 of 2024) [2025] KEHC (KLR) (Civ) (26 June 2025) (Judgement)** on the protection of a purchaser

who relies on the Land Register.

- ii. **Katende v Haridar & Company Limited [2008]2 EA 173**, the classic authority defining a bona fide purchaser as one who acts in good faith and pays valuable consideration.

67. In conclusion, the 1<sup>st</sup> Defendant submitted that since the Plaintiff failed to prove any illegality on his part, his title should remain indefeasible. The Plaintiff's suit should be dismissed with costs, which follow the event. Reliance was placed on the decision in **Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited [2016] KECA 56 (KLR)**.

### **Determination.**

68. I have carefully considered the matter before me, including the evidence, submissions, cited authorities, and the relevant law. I have also noted that no evidence was tendered by the 2<sup>nd</sup> to 6<sup>th</sup> Defendants herein who chose to stay away from the proceedings. Based on the overview of the case, I find that the Plaintiff, acting on her own behalf and on behalf of the estate of her late husband, Kairu Kahengeri, seeks to recover two parcels of land, namely Naivasha/Mwichiringiri Block 4/983 and 4/984.

69. Her core argument was that the original title deeds were stolen by a relative, her grandson Mbiyu Henry Wanjiru, in 2012 and that they had not discovered the theft of the titles until persons went to her home that same year, 2012, seeking that they transfer the titles into their names. At the time, the people were in possession of the original stolen titles. Subsequently, they reported the matter to the police, where the thief was arrested and arraigned in court via Naivasha Cr Case No. 1673 of 2012, in which he was convicted and sentenced in a judgment delivered on 16<sup>th</sup> August 2013.

70. The Plaintiff therefore argued that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, who had sold the land to the 1<sup>st</sup> Defendant, had obtained their titles fraudulently through the thief, and since they never had a valid root of title, they could not legally transfer the property to the 1<sup>st</sup> Defendant.

71. The Plaintiff further argued that the quick sale of the two properties was marred by illegalities, including a lack of Land Control Board (LCB) consent, failure to pay stamp duty, and absence of spousal consent. She also reported the theft to the police in May 2012, and a caution was

subsequently placed on the properties in October 2013 to protect her interests. She thus sought a declaration that the transfers were fraudulent, and that there be cancellation of the 1<sup>st</sup> Defendant's titles, and an order for the land to revert to the Plaintiff and the deceased's estate.

72. The 1<sup>st</sup> Defendant's case, on the other hand, had been that he was a bona fide purchaser of the parcels of land for value without notice of any fraud. That he had followed all legal procedures, wherein, before purchasing the land, he had conducted official searches at the Land Registry, which confirmed the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as the registered owners at the time (having been registered as proprietors on 22<sup>nd</sup> March 2012).

73. That he purchased the two parcels in April 2012 for a total of Kshs. 3,200,000/= via agreements drafted by an advocate. Subsequently, he received his titles on 26<sup>th</sup> April 2012.

74. He argued that the Land Registrar's records were the ultimate authority and that, since the Registry showed the vendors as owners, he had no reason to suspect that the titles were stolen or that the Plaintiff had any claim. In his counterclaim, he asserted that the Plaintiff's caution had frustrated his use of the land and sought a declaration that he is the rightful owner of the parcels of land. He also sought a permanent injunction to issue, preventing the Plaintiff from interfering with his possession. That he had been in possession of the land since the purchase, and that the land remains vacant as it was initially.

75. Having summarized the evidence as adduced during the trial, I find the issues arising herein for determination as follows: -

- i. Whether the 1<sup>st</sup> Defendant was an innocent purchaser for value.
- ii. Whether the 1<sup>st</sup> Defendant's registration as proprietor of the suit properties was lawful or obtained through fraud.
- iii. Whether the Plaintiff is entitled to the orders sought in her Plaint.

76. I note that these properties were initially registered under the repealed Registered Land Act which is now governed by The Land Act, 2012 and The Land Registration Act, 2012. Indeed, the law is very clear on the position of a holder of a title deed in respect of land. Section 26(1) of the Land

Registration Act provides as follows:

*“The Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of the proprietor shall not be subject to challenge, except –*

*a. On the ground of fraud or misrepresentation to which the person is proved to be a party*

*b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme’*

77. As may be observed, the law is extremely protective of title and provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation, to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.
78. The purpose of Section 26 (1)(b) is to remove protection from an innocent purchaser or title holder. It means that the title of an innocent person is impeachable as long as that title was obtained illegally, unprocedurally, or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The aim of Section 26 (1)(b) is to protect the true title holders from losing their titles due to subsequent transactions.
79. Although in the case of **Republic v Senior Registrar of Titles Ex parte Brookside Court Limited (2012) eKLR**, it was held that, statutorily, the sanctity of title to land is assured and protected under Sections 24, 25 and 26 of the Land Registration Act, the court is also aware of the attribute of Section 26(1) (a) and (b) of the Land Registration Act, which provides that a Title to land shall not be absolute and indefeasible because it can be impeached where it is shown to have been obtained

through fraud, misrepresentation, illegally, un-procedurally or through a corrupt scheme

80. Indeed, the Court of Appeal in the case of **Munyu Maina vs. Hiram Gathiha Maina [2013] eKLR**, had held as follows:

*“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”*

81. In this case, the Plaintiff challenged the 1<sup>st</sup> Defendant’s title to the suit parcels of land, No. Naivasha/Mwichiringiri Block 4/983 and 984, asserting that they had been obtained illegally and fraudulently. Accordingly, she contended that the titles should be cancelled and reverted to their original proprietors, who were herself and the estate of her deceased husband, Kairu Kahengeri.

82. The 1<sup>st</sup> Defendant, a resident of the USA, put up a defence and counterclaim arguing that he is a bona fide purchaser for value without notice, having legally purchased the suit property from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants vide a sale agreement of 13<sup>th</sup> April 2012 at a purchase price of Ksh 3,200,000/=. He had conducted an official search at the Land Registry that showed the vendors as the legal owners of the parcels of land. His defence rests on the principle of indefeasibility of title where he argues that a buyer is entitled to rely on the Land Register. That he was registered as the owner in April 2012, before the Plaintiff had even reported the theft to the police in May 2012, and that he claims he had no way of knowing the titles were tainted.

83. Fraud is a serious matter which must be proved to the required standard. In **Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others (Petition 32 (E036), 35 (E038) & 36 (E039) of 2022 (Consolidated)) [2023] KESC 105 (KLR) (15 December 2023)**

**(Judgment)**, the Supreme Court had at paragraphs 80, 82 and 83 observed as follows:

*"...However, it is trite law that fraud which, depending on the circumstances is recognized as a criminal offence, must be pleaded and strictly proved. In addition, although the standard of proof of fraud in civil matters is not proof beyond reasonable doubt, it is higher than proof on a balance of probabilities as required in other civil claims."*

84. I have no doubt in my mind that the Plaintiff herein distinctly pleaded the facts on which fraud was alleged against the 1<sup>st</sup> Defendant. The next step, however, was for her to prove those allegations to the required standard, that the 1<sup>st</sup> Defendant's titles to parcel No. Naivasha/Mwichiringiri Block 4/983 and 984 was acquired illegally, as it is settled law that fraudulent conduct must be distinctly alleged and distinctly proved.

85. The 1<sup>st</sup> Defendant relied on his titles as proof of ownership; however, it is now well established that when the registered proprietor's root title(s) is challenged, merely presenting/dangling the instrument of title is insufficient. The registered proprietor must go further to demonstrate the legality of the title, proving that the acquisition was lawful, formal, and free from any encumbrances, as held by the Supreme Court in the case of **Dina Management Limited vs. County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** where the Court held as follows:

*"As held by the Court of Appeal in **Munyu Maina v Hiram Gathiha Maina Civil Appeal No 239 of 2009 [2013] eKLR**, where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.*

*To establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right*

from the first allotment, as this is the bone of contention in this matter.”

86. The Court of Appeal in the case of **Jacob Wekesa Bokoko Balongo vs. Kincho Olokio Adeya & another [2020] eKLR** held as follows:

*“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of **Fahiye & 2 others - v- Omar & 4 others [2014] 2KLR, 224**, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In **Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (OS))**, it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of **Champaklal Ramji Shah & 3 Anors -v- AG & Anor, HCCC No. 145 of 1997**, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”*

87. While this court recognises that specificity is generally preferred, there are exceptions where the nature of the fraud is clear, and the details are implied through surrounding circumstances or when fraudulent conduct is obvious. To prove her case, the Plaintiff's evidence showed that she and her deceased husband were the registered owners of the suit properties through

the production of title deeds as Pf exh 3 (a-b), which showed that, whereas LR No. Naivasha/Mwichiringiri Block 4/983, measuring 1.173 hectares, was registered to her on 7<sup>th</sup> September 1987, parcel No. Naivasha/Mwichiringiri Block 4/984, measuring 1.224 hectares, was registered to her deceased husband, Kairu Kahengeri, also on 7<sup>th</sup> September 1987.

88. To establish the criminal foundation of theft of the Root Title, she presented evidence that the original titles were stolen by her grandson, Henry Mbiyu. Through a police abstract dated 17<sup>th</sup> May 2012 and, more significantly, the Judgment and Ruling from Naivasha CMCrC No. 1673 of 2012, she demonstrated that her grandson was convicted of stealing the titles. This proved that the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants, who had been the vendors of the suit properties, could not have obtained valid titles from a thief and therefore had nothing to pass to the 1<sup>st</sup> Defendant under the principle of *nemo dat quod non habet* (one cannot give what they do not have).
89. Indeed, another damning piece of evidence concerned Title No. Naivasha/Mwichiringiri Block 4/984, where the Plaintiff produced letters of Administration issued pursuant to a Succession Cause on behalf of the Estate of Kairu Kahengeri, showing that her husband, Kairu Kahengeri, died on 10<sup>th</sup> October 2004. The 1<sup>st</sup> Defendant claimed that the vendors bought the land from the registered owners in early 2012. The Plaintiff argued it was biologically and legally impossible for a man who had been dead for 8 years to sign transfer documents or attend a Land Control Board meeting in 2012.
90. Third, the Plaintiff's evidence brought out the fact that the 1<sup>st</sup> Defendant failed to investigate 'red flags' and turned a blind eye to obvious suspicious circumstances, which legally constitutes constructive notice of fraud when the vendors who had only been registered as owners of the parcels of land for one month (since 22<sup>nd</sup> March 2012) sought to quickly dispose them to him in the month of April 2012. That, in the light of such "new" titles, a search at the registry was insufficient. The 1<sup>st</sup> Defendant also admitted that he did not look into the history of the land or the "root" of how the vendors acquired it so quickly.

91. The Plaintiff also contended that, apart from the anomalies mentioned above that led to the 1<sup>st</sup> Defendant's acquisition of title to the suit land, there had been non-compliance with mandatory statutory procedures. Specifically, the 1<sup>st</sup> Defendant had neither obtained consent from the Land Control Board for the transaction involving him and the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants, nor had he paid any stamp duty. This rendered their controlled land transaction void under Section 6 of the Land Control Act, and as was held in the case of **Alice Wambui Ndome** (supra). Indeed, the 1<sup>st</sup> Defendant admitted during cross-examination that he neither possessed nor obtained LCB consent.
92. The Plaintiff also highlighted the absence of transactional documentation between the 1<sup>st</sup> Defendant and the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants, noting that he did not produce the standard documents accompanying a legitimate land sale, including KRA PIN certificates or Identity Cards of the sellers, valuation reports for stamp duty, stamped or franked sale agreements. Furthermore, there was no proof of payment, such as cheques or bank statements, to confirm that the Kshs. 3,200,000/= was actually paid.
93. The Plaintiff thus proved that there had been a broken chain of ownership. By proving the first link in the chain, which was the transfer from the deceased and the Plaintiff to the vendors (3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants), was forged and stolen, she successfully argued that the 1<sup>st</sup> Defendant's title—no matter how official it looked—was a 'fruit of a poisonous tree.' It thus follows that if the transaction was legally void, the resulting titles were fraudulent or illegal.
94. Where there was proof that there had been a broken chain of ownership, to support the 1<sup>st</sup> Defendant's registration as the proprietor of the suit properties, can it be said that he was an innocent purchaser?
95. **The Black's Law Dictionary 9<sup>th</sup> Edition** defines a bona fide purchaser as:

*"One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior*

*adverse claims.”*

96. On the other hand, the Supreme Court in **Sehmi & another v Tarabana Company Limited & 5 others [2025] KESC 21 (KLR)** had at paragraphs 58, 59, 61, 62 and 63 observed as follows:

*“It is a fundamental principle of the law of property in land that a purchase of a legal estate for value without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. **The onus of proof however lies upon the person claiming to be a bona fide purchaser.** Three main ingredients must be present for a claimant to mount a successful defence based on the doctrine. These are, **innocence, purchase for value, and a legal estate.***

*The element of innocence means that the purchaser must act in good faith. His conduct must not raise any doubt as to whether indeed, he did not have any notice or knowledge as to the existence of a rival interest in the suit land. If for example, it comes to light that during the process of purchase, the claimant engaged in conduct that was unconscionable in the eyes of equity, such conduct would weaken his claim of innocence as to the existence of a rival interest. The element of innocence also connotes the exercise of diligence expected of any reasonable purchaser. **The claimant must demonstrate that he acted diligently and conducted a reasonable inquiry into the status of the estate or land that he sought to purchase.***

*...Purchase for value means that consideration in money or money’s worth was paid by the claimant in return for the land. The purchaser must actually pay all the money before receiving notice of the existence of the equitable interest over the suit land. **Mere execution of the instrument of conveyance of the legal estate before notice is received***

**without payment of money, will not avail to the claimant the defence of innocent purchaser.** A person who takes land without giving value in exchange must take it with all its burdens, equitable as well as legal. Even a person who has given value will be bound if before he obtained the land, he knew of the existence of equitable interest.

For our purposes, the purchase must be in reference to a legal estate vis a vis an equitable interest in the suit land. In other words, the contending interests must be a legal estate and an equitable interest in the land. **Fully stated therefore, the doctrine means that an innocent purchaser of a legal estate in land without notice of an equitable interest in the said land, takes free from the encumbrance of the latter interest...**

The doctrine is a classic example of the time hallowed maxim; "equity follows the law". And so aptly stated, legal rights are good against all the world; equitable rights are good against all persons except a bona fide purchaser of a legal estate for value without notice. **It is worth emphasizing that the innocent purchaser doctrine only protects the purchaser against those basing their claims upon an equitable interest in the suit land"** (emphasis mine)

97. From the evidence herein adduced, I find that the 1<sup>st</sup> Defendant did not carry out a proper due diligence to establish the lawful owner of the suit properties, and although he claimed to have conducted a search at the Land registry, to ascertain the ownership and title of the suit property, there was no sale agreement from the original first registered owners of the suit lands, and the transfer documents thereto produced in court, the vendors of the suit land did not testify, the 1<sup>st</sup> Defendant did not testify on his knowledge of the vendor's identities save that they had sold to him the parcels of land. No steps were taken to verify their identities, nor were any taken to physically ascertain the actual landowners from neighboring residents. No copies of the executed transfer forms or receipts for payment of the stamp duty and transfer fees were produced. The 1<sup>st</sup> Defendant's laxity in investigating the titles to the suit lands led to his misadventure, and he cannot now turn

around and claim that he acquired proprietary rights from impostors who were incapable of passing on such rights in the first instance. I therefore find that the 1<sup>st</sup> Defendant was not a purchaser for value without notice.

98. Having not obtained a transfer from the registered proprietors, but having dealt with fraudulent persons in the likes of Peter Macharia Waweru, David Kinahe Kamau, and Peter Muigai Kariuki, persons who had no claim to the suit property, the 1<sup>st</sup> Defendant could not therefore invoke indefeasibility of title as the transfer of the same to him was null and void.

99. Accordingly, upon careful consideration of the evidence adduced, the documents, the submissions and the authorities cited, and pursuant to the provisions of Section 26 (1) (b) of the Land Registration Act, Section 80 (1) of the Land Registration Act comes into play, and provides that:-

*“Subject to sub Section (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”*

100. From the above provisions, it is clear that the court has the power to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made, or omitted by fraud or mistake. There having been sufficient evidence adduced, as earlier stated, in support of the Plaintiffs’ claim to impugn the 1<sup>st</sup> Defendant’s titles, I find that the said titles must be revoked in line with the maxim *fraus omnia corrumpit* (Fraud unravels everything). I thus dismiss the 1<sup>st</sup> Defendant’s Counterclaim dated 10<sup>th</sup> March 2023 in its entirety for lack of merit and enter judgment in favour of the Plaintiff as follows:

- i. A Declaration is hereby issued that all the transfers of Title No. Naivasha/Mwichiringiri Block 4/984 and 983 from the late Kairu Kahengeri and the Plaintiff, are illegal, fraudulent and unlawful.
- ii. A declaration is also issued that the Plaintiff and the estate of the late Kairu Kahengeri are the legal, lawful and rightful proprietors and/or owners of all that parcels of land known as

Title No. Naivasha/Mwichiringiri Block 4/983 and Title No. Naivasha/Mwichiringiri Block 4/984, respectively.

- iii. The 2<sup>nd</sup> Defendant shall, within 30 days of this judgment, cancel Title No. Naivasha/Mwichiringiri Block 4/983 and Title No. Naivasha/Mwichiringiri Block 4/984, both issued on 26<sup>th</sup> April 2012 to the 1<sup>st</sup> Defendant, and revert them to the Plaintiff and the deceased respectively, as the registered proprietors of the suit properties.
- iv. The Plaintiff shall have costs of the suit and the Counterclaim.

**Dated and delivered via Teams Microsoft at Naivasha this 9<sup>th</sup> Day of April 2026.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT- JUDGE**