

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELC CASE NO. 777 OF 2015

SAMUEL NJUNG'E MUINAMIA.....
PLAINTIFF

VERSUS

OLIVER NJOROGE NGUMO.....
DEFENDANT

AND

NATIONAL LAND COMMISSION.....1ST INTERESTED
PARTY

KIAMBU COUNTY GOVERNMENT.....2ND INTERESTED
PARTY

JUDGMENT

1. The plaintiff filed the plaint dated 29th July, 2015 seeking judgment against the defendants for:-

a. Eviction order against the defendant, his authorized agents and/or servants.

b. Compensation for trespass and unlawful occupation of land.

c. Interest on (b) above.

d. Costs of this suit.

2. In the plaint, the plaintiff pleaded that he is the registered owner of the parcel known as Karai/Lussigetti/T. 1837, the suit property. He averred that the defendant trespassed onto his parcel of land without his express or implied permission and constructed a kiosk

on the same. Further, that the defendant continues to occupy the suit property despite several notices to vacate the same.

3. The defendant filed his defence and counter claim dated 2nd October 2015. While denying the contents of the plaint, he averred that the suit property was fraudulently acquired and registered in the name of the plaintiff, and to conceal this illegality, he subdivided it into four properties: Karai/Lusigetti/T.1837 to 40 to his detriment and that of other genuine allottees.
4. The defendant stated that he is one of the genuine allottees of the suit property who was allocated land by the defunct county council of Kiambu and that the suit property sits on his allotment. Further, that being an original allottee of the suit property through ballot, he erected a permanent structure thereon. That because of the fraudulent activities, he has been disentitled his rightful parcel of land, and together with other genuine allottees, they still retain physical possession, control and quiet use of the suit property.
5. In his counter claim, the defendant pleaded that the suit property was initially allotted to various people including the plaintiff as it was a public utility plot and assigned specifically to individuals as a shopping centre for Lusiggeti location, block parcel no. 438.

That within this block, he has plot no. 8A Nachu and 39 Nachu. He pleaded that plot 39 Nachu was directly allocated to him on 27th September, 1995 and plot no. 8A was legally transferred to him by a previous owner known as Stanley Ngugi Njoroge.

6. The defendant pleaded that the plaintiff illegally caused the registration of the suit property behind their back and further caused subdivision of the same to conceal with unlawful acts. He pleaded particulars of illegality, fraud and misrepresentation as follows:-

- a. Improperly receiving a title to the suit property originally Karai/Lusigetti/T.1840 not allocated to him and therefore defeating his legal rights and that of other genuine allottees.**
- b. Subdivision of Karai/Lusigetti/T. 1840 into four properties Karai/Lusigetti/T. 1837 to 40 to conceal and hide the trail of his corruption.**
- c. After caveats had been filed by the then county council of Kiambu due to the complaints by the public, the plaintiff filed ELC 172 of 2011 Samuel Njoroge Muinamia v County Council of Kiambu and District Land Registrar Kiambu purporting to remove the caveats. Kiambu county council filed its defence affirming its ownership of the property forcing the plaintiff to withdraw the suit against him for fear of being exposed in court.**

- d. Not disclosing to court that there is a case brought against county council of Kiambu over the suit property which the plaintiff has lost.*
 - e. Receiving the suit property which he was not entitled to receive.*
 - f. Causing himself to be registered as the owner of the suit property by passing off as genuine allottee to the suit property.*
 - g. Disentitling him and other genuine allottees their property and livelihood.*
 - h. Abusing the court process to rubber stamp his grabbing and illegal registration.*
 - i. Harassment and intimidation of the defendants and others with eviction.*
7. The defendant prays for the following orders in his counter claim:-
- 1. A declaration that the registration and transfer of plot no. Karai/ Lussigetti/T. 1804 and subsequent subdivisions into properties Karai/Lussigetti/T. 1837-1840 to Samuel Njunge Muinamia is unlawful, fraudulent, null and void and an order do issue to the Chief Land Registrar Kiambu for the cancellation/rectification of the aforesaid titles to reflect Oliver Ngumo Njoroge and other interested parties herein who are Bonafide and original allottees.*

- 2. That property Karai/ Lussigetti/T. 1837 be cancelled/rectified and registered in the name of the defendant/plaintiff Oliver Ngumo Njoroge.**
 - 3. A permanent injunction to restrain Samuel Njunge Muinamia, his agents, servants, assigns and anyone claiming under him from entering into, fencing, building, selling, transferring and or dealing in any way that will prejudice the defendant/plaintiff's Oliver Ngumo Njoroge lawful use and occupation of Karai/Lusigetti/T. 1837.**
 - 4. Costs of this suit from the date of judgment and such other or further relief this honourable court shall deem fit and proper to grant.**
8. The plaintiff filed his reply to the defence and defence to the counter claim dated 21st October, 2015. In his reply to the defence, the plaintiff reiterated the contents of the plaint and stated that he was allotted the title Karai/Lussigetti/T. 438 by the defunct county council of Kiambu. He further stated that the allegations of fraud are malicious and a ploy to deprive him the rightful ownership of the suit property. In addition, that the alleged physical possession, control and quiet use of the property is encroachment and trespass, and the defendant should be compelled to vacate.

9. In his defence to the counterclaim, the plaintiff denied the allegations and stated that he has no knowledge of the plot numbers in the counter claim as he subdivided Karai/Lussigetti/T. 438 into Karai/Lussigetti/T. 1804 and 1805 and sold the latter to George Nyaga in 1998. He pleaded that ELC Case no. 172 of 2011 is relevant to this case as the court found that he is the registered owner of the suit property and entered judgment in his favour.
10. The plaintiff's case proceeded for hearing on 3rd February 2023. Samuel Njung'e Muinamia (PW1) adopted his witness statement dated 18th May 2017 and 2nd February 2023 as his evidence in chief. He produced the document contained in pages 2 to 30 which are 30 items and 12 items listed as item number 4 to 15 as P. exhibits 1 to 12 accordingly.
11. On cross-examination, PW1 admitted that the suit property was public land. He said that if the land was public land, it would be indicated in the title since he does not understand English language. However, he maintained that the suit property is his land. It was his testimony that he filed a matter at Kiambu law courts in 160 of 1991 (Samuel Njoroge Muinamia Vs County Council of Kiambu) since he heard that the suit land was to become a trading centre. At this time, there was no title and he only had an allotment letter. He stated that the judgment directed

that the land be held jointly and he then lodged an appeal vide HCCA No. 29 of 1996. PW1 testified that he did not have the money to pursue the case, and he later learnt that the appeal was dismissed.

12. PW1 further testified that he filed ELC 172 of 2011 against Kiambu County Council and Kiambu District Registry, in which he wanted the caveat removed, but he later withdrew the case. His reasons were that there was another caveat done seven (7) years earlier of plot no. 1804 and they had withdrawn it. In that case, i.e. 172 of 2011, the registrar did not testify.
13. Nonetheless, he got the first title in 1994 after his case was dismissed on 26th December, 1993. PW1 testified that he obtained the title documents from the administrator Kiambu County Council but the said administrator, Mr. Muraya did not inform him where he got the titles. It was his testimony that he is not aware that the document is a fraud.
14. PW1 disagreed that the land was given to many people and that parcel no. 438 is 6.2 hectares as per what is indicated on the title. He stated that others got 60 acres. On being shown the map in the defendant's bundle, he stated that parcel no. 438 is indicated as "a trading centre". That while there are other people on the land,

he blamed Kiambu County Council as the party who may have erred.

15. On further cross-examination, PW1 testified that he could not recall if the county council made a resolution to give him the land. However, he was given a receipt and minutes.
16. On re-examination, PW1 testified that he got the land from the defunct county council, the land being T.438 from the minutes of 8th August, 1981 and the letter was signed by PM J Kamau. Further, that he paid Kshs.1,000/- and he was issued with a receipt for plot T.438 which has the heading of county council of Kiambu. It was his testimony that the county council of Kiambu never said the letters are fake as it is signed by the county treasurer. Further, he stated that he entered the suit land in 1978, planted trees, removed stones as it was an open space. He added that it was the county council which allowed him to enter the same after he applied. According to him, the allotment was never withdrawn, and he has been on the suit land for 45 years. He testified that the letter written in 1991 found him on the suit land, and the judgment in case no. 160/1991, never stated that the suit land is not his, and neither did the county council.

17. PW1 further testified that there is Lussigeti Township Extension I and Lussigeti Township itself, and the last edition of this map was 21st May, 2010. It was his testimony that in that scheme where they got land, there were other allottees, and Lussigeti was the first allocation, followed by Extension I and the Extension II. He reiterated that his allocation letter is a correct one and was signed by PM. O. Kamau since he met him. Further, he obtained his title in 1994, which was issued by the county council of Kiambu. With the testimony of PW1, the plaintiff rested his case.
18. The defendant's case proceeded for hearing on 6th February, 2024. James Gikero Ngumo (DW1) stated that he is the administrator of the estate of the late Oliver Ngumo who was his father and who died in 2020 while the matter was in court. He adopted his witness statement dated 14th February, 2022 as his evidence in chief. He also produced 27 items contained in the list dated 12th January, 2023 and items 28 and 29 in the bundle of documents dated 30th January, 2023 as exhibits. He stated that item 26 is the map from Karai-Lussigeti Extension I, and for plot no. 438, it is indicated as a trading centre. He testified that the sub-divisions occurred from parcel 438 by the plaintiff.
19. On cross examination, DW1 testified that the map is for 1976, and that he got the suit land in 1994 from Kiambu county council.

With regard to the letters dated 5th October, 1978 he stated that the same was addressed to the plaintiff granting him open space, and the said allocation was done in 1978. On the title, DW1 testified that the same is for Kari/Lussigeti/T.438 and it is a trading centre. It was his testimony that his map predates the other documents (the allotment of 1978 and the title of 1994). DW1 informed the court that the suit land was once a trading centre, and therefore, it was public land.

20. DW1 testified that his late father had many plots including 43 "A" Nachu at the trading centre. According to him, the original owner got it in 1990, then sold it to his father. He stated that the trading centre was indeed subdivided and sold to various people. Further, that the county council allocated the land to schools etc and in their case, a woman sold the same to his father. Regarding the minutes of 28th August, 1981 he said that the suit land was allocated to the plaintiff by the then acting town clerk Kamau P.G. However, the minutes referred to do not make reference to the suit land. According to him, there exists other minutes which he did not present to the court, which indicated the allocation of the plots except for to T438. He stated that the plot mentioned is unknown to him as it relates to a place called Thigio which is far from Karai Lussigeti.

21. DW1 further stated that he informed the county council of Kiambu that the minutes referred to people in Limuru, but based on the documents filed by the plaintiff, the same are forgeries. While he was young during the time of allocation, DW1 informed the court that his father and other people informed him what happened and he also followed up the same with the relevant offices. While he has never worked with Kiambu county council, it was his testimony that plot T.438 was subdivided and 42 people got plots.
22. However, his issue is that the plaintiff now claims the whole area at the trading centre as his. DW1 stated that the compressed map of the plaintiff's plot number 1837, 1838, 1839, emanated from T438, and below 1837 the piece marked red is where his father had built in 1994. While admitting that his father purchased the plot 9 years after the plaintiff had obtained the allotment, he testified that they have not displaced the plaintiff.
23. DW1 further testified that people got plots in Lussigeti following the president's directives and that the allocations were on Nachu or Karai-Lussigeti Extension I. He said that the one tilted Nachu and Karai-Lussigeti Extension I is an extension of the initial allocation of Karai-Lussigeti. Further, that the county council also allocated open space for two trading centres. At Nachu, there is a

trading centre at plot T438 Karai - Lussigeti which the map refers to as a trading centre.

24. On re-examination, DW1 testified that the map shows plot T438 is a trading centre originally since 1976, which the plaintiff claims. He stated that he is on plot number 39 which his father bought from the original allottee, and according to him, there were around 52 plot allottees in plot T438. He testified that the plaintiff has now taken up all the land, and that some people were forcefully removed through eviction and only his father remained. With regards to the minutes, DW1 testified that the same are not genuine documents, and that the plaintiff took up T438, yet this was the market.
25. Peter Muiruri Kaguri (DW2) adopted his witness statement dated 14th September, 2022 as his evidence in chief.
26. On cross examination, he testified that his father was amongst the first allottees who were allocated Karai-Lussigeti/T438 when it as a trading centre. While his father's name was not on the list of allottees at page 29 of defendant's bundle, he stated that he was allocated plot number 56 because the plots were over 52. While the list contained 52 names, DW2 stated that there is an additional list, which is not in court. He further stated that T438

being a shopping centre, the plaintiff fraudulently took up all the land to the detriment of others. While contending that the minutes by the plaintiff are non-existent, DW2 testified that he applied for certified minutes from Kiambu county which refers to a boundary dispute for Kiara/Lussigeti/ T156.

27. Further defence hearing proceeded on 8th April, 2024. DW2 testified that he recorded the witness statement in his capacity as the chairman of Nachu trading centre welfare group which has an interest in these proceedings. It was his testimony that he was asked by the defendant in this case to give evidence in support thereof. Besides this, DW2 stated that his father was one of the allottees who were paying rent, but he did not have any receipt confirming payment by his father. While stating that there are some receipts for the 1st defendant, it was his testimony that for the 56 allottees, the evidence is contained in case no. EPCC E004 of 2023.
28. DW2 did not have the letter of allotment confirming his father's allocation of the plot. He questioned the process of the registration of the title which was acquired in 1994 while there was a judgment dismissing his case delivered in 1993. On whether the matter was referred to the directorate of criminal

investigations (DCI), DW2 stated that he is aware of the same but could not recall when he recorded his statement.

29. Neither did he know whether an officer from the county council or the plaintiff recorded statements and if any action was taken. It was further his testimony that the first time they went to court was in the year 2023 when they filed case no. E075 of 2023 seeking orders to stop further development on that plot and for the title which was acquired fraudulently to be cancelled.
30. DW2 testified that in 1996, the plaintiff filed an appeal against the decision made in 1993 in 160 of 1991, but the same was dismissed in 1999. He stated that he had a letter from the deputy registrar to that effect but the same not produced in this case as he obtained it late. For case number ELC 172 of 2011, he was aware that the plaintiff sued the defunct county council of Kiambu and the land registrar and that the findings in that case was that the caution was removed.
31. On further cross examination, DW2 testified that case no. E075 of 2023 was finalised but he does not remember the date.
32. On re-examination, DW2 testified that their group (NACHU) is not part of this case. However, NACHU members have been listed in

this case as indicated at pages 28, 29, 30, 31 of defence bundle as they are the allottees of the plots. He stated that his role in this case is that his father was allocated a trading plot and he is a beneficiary and further to demonstrate that the land is part of a trading centre. Further, that they wanted the defendant to be recognised as a legitimate owner of that land where he is staying. With regard to the case in EPCC E004 of 2023, he stated that it was directed to be placed before this court on 11th April, 2024. He reiterated that they reported the matter to the DCI who went to the site and recorded statements. According to him, the same is at an advanced stage.

33. For the 56 individuals, DW2 testified that some of their parents who passed on were allocated plots and others are represented by individuals. For the receipts issued by the defunct council, he could not talk of their authenticity. However, it was his testimony that the intention of the larger portion was that it was mapped as a trading centre in 1976, and as it is, the same is now private property owned by the plaintiff who is kicking out all other beneficiaries except for the defendant who is still in occupation.

34. Patrick Mbari (DW3) introduced himself as the administration officer in charge of land administration at Kiambu County. He adopted his undated witness statement contained in the

defendant's bundle of documents as his evidence in chief. He also produced the documents contained in page 21 to 36 as exhibits for the defence.

35. DW3 testified that the from the plaintiff's bundle at page 19 and 18, the said documents are not part of council records. He stated that there was no resolution number 146/81, and that that he does not know where the plaintiff obtained it, but the same was not genuine besides being certified by the county. Similarly, they tried to trace the allotment letter of 5th October, 1978 in their records but they found none.
36. On cross examination, DW3 testified that he has worked with County Government of Kiambu from 1984 (when it was a Council) to 2013 and as a County from 2013 to 2022 when he retired, and later, he was given a contract as the county land administration officer. It was his testimony that he has worked with Kiambu County close to forty (40) years from 1984.
37. DW3 testified that he is familiar with land in Lussigeti and Nachu more so in terms of "open space", since there are areas which had similar references. It was his testimony that they had an open space adjacent to the suit property and that the term "open

space” is commonly used, because they are not committed to anything as they belong to the government.

38. DW3 was also aware that in 1957 to 1958, people were allocated 12 acres in that area, and that the areas between Lussigeti all the way to Kamangu used to be open space as it was rocky. Further, that there were also other areas that was open space between Mawaitaina towards Dacha, and at that time, those open spaces had not been surveyed. With reference to the allotment letter, DW3 testified that he does not know E.Kabiro and the department he was in as he could not locate the said letter.

39. DW3 testified that while they have files which are serialised, closed and kept in safe custody for future reference, there was a file in 1978 available which he checked but could not find the allotment letter dated 5th October, 1978. It was his testimony that together with members of staff, they looked for this particular file but it was not there. He did not take a statement from the person who looked for the file, but according to him, the said letter, minutes and title are fake. It was further his testimony that there are many letters signed by Kabiro but they don't resemble this particular letter of allotment.

- 40.** DW3 further testified that according to the contents of this letter, it communicated something whereas land is not allocated through the letters like this. Instead, the minutes do the allocation. It was his testimony that he could not have had authority to allocate land as he consulted minutes binders, and once one has applied for county land, that application must be tabled before the relevant council committee which was mandated to allocate land and a minute to that effect is always available.
- 41.** With regard to the minutes at page 16 of plaintiff's bundle, (minutes of 28/08/1981) which refers to allocation of T438 to Samuel Wainaina signed by Kamau P.M.G. acting county clerk, he stated that this document could not be found in their records. He testified that there are records of various minutes of the defunct council that are kept in an office which deals with minutes only, and they are in binders, which are closed when they are too full. That even for such a minute of 1981, it would be in a certain volume. He further stated that he checked this one himself and he found no such minutes as the one at page 16 of plaintiff's bundle.
- 42.** Further defence hearing proceeded on 27th March, 2025. DW3 testified that he was aware that the plaintiff sued the defunct council in ELC case no. 172 of 2011 for the removal of the

caution, and according to him, the plaintiff withdrew the case before it was heard. It was also his testimony that the county council was not aware of the outcome of the case, and only realized that the after devolution came into place that there was this case that was ongoing. DW3 admitted that the county government has never pursued the plaintiff.

43. With regard to case no. 160 of 1991, DW3 testified that the finding of the court was that the plaintiff had not proved ownership of the suit land and his case was dismissed. He stated that the county council wrote to the DCI but he could not remember the details, and neither has he seen any response. All he could remember is that the county government had agreed to invite the DCI to visit the land, but the DCI cancelled the visit. He was also not aware of the visit to the site by the national land commission. Besides all this, DW3 informed the court that Karai/Lussigetti/T1804 is part Karai/Lussigetti T extension 1 and 2, and that extension one (1) is far. Further, that Nachu is another registration section altogether.

44. With regard to plot 43 A at Nachu, DW3 testified that the defunct county council had designated an area to build Nachu market, and as per the map produced by the plaintiff at page 30, he could not see anything marked Nachu. He further stated that the original

438 was a piece of land reserved for a market, and that he was not aware of any documents allocating the land to the plaintiff. He further stated that there was Mr. Njuguna Thairo, Mr. Muraya and Kamau PMG who were working for the county council. He stated that the extracts of the minutes, the receipt of payment, and the letter of allocation could not be traced.

45. DW3 was also aware that T. 438 was sub-divided into parcels nos. 1804 and 1805, and 1804 which was further sub-divided into four (4) other parcels despite the council's objection. He stated that the sub-division was done before the court order.
46. On re-examination, DW3 reiterated that the suit land was set aside as public land meant for a trading centre, and that the documents by the plaintiff are not part of their records. It was his testimony that the plaintiff did not bring the documents to the county government for authentication. It was further his testimony that Kiambu CMCC 160 of 1991 did not confer ownership of the plot to the plaintiff, and that they placed restriction on the land to ensure that the land is safe.
47. He agreed that there was a case to remove the caution which they objected as the land belonged to the public. Further, that the land was sub-divided but the restriction was later reinstated. He

stated that Nachu is an old name, and despite the area being designated as Karai/Lussigetti, the locals refer to the area as Nachu as it is the same ground. He testified that in 1990, the defunct county council sub-divided the land and allocated them to some allottees, and according to their records, there were initially fifty two (52) plots, but currently, the plots are about fifty eight (58) because of further sub-division. This reference was made in respect of plot no. 438. With the testimony of DW3, the defence rested their case.

48. The plaintiff filed written submissions dated 24th October, 2025. The defendant filed his written submissions dated 15th December, 2025. I have carefully analysed and considered the pleadings, the evidence tendered and the testimonies of all the witnesses. I have also considered the written submissions filed. In my view, the following issues arise for determination by this court:-

1. *The import of Kiambu CMCC no. 160 of 1991, and ELC case no. 172 of 2011.*

2. *Whether the property known as Karai/Lussigetti/T. 1837 was acquired unlawfully through fraudulent means.*

3. *Whether the plaintiff is entitled to the orders sought.*

4. *Whether there is merit in the counterclaim.*

5. Who is entitled to costs.

- 49.** On the first issue, the pleadings filed at Kiambu principal magistrates court vide CMCC no. 160 of 1991 were not availed to this court by the defendant, yet the same was adversely mentioned as the first dispute raised by the plaintiff concerning the suit land. From the decree dated 16th December, 1993 it appears that the plaintiff had sought orders against the defunct county council of Kiambu for the repossession of Karai/Lussigetti/T. 438, and in the alternative, a different allocation to be made. He also sought for compensation for development of the said plot. The court found that the plaintiff had not proved his case on a balance of probabilities and thus dismissed the same with costs. A plain reading of these orders without pre-empting what may be contained in the pleadings, is that the plaintiff could not prevent the defendant from repossessing plot no. T. 438.
- 50.** With regard to ELC case no. 172 of 2011, the plaintiff sought the removal of the caution that was placed by the defunct county council of Kiambu and the District Land Registrar in parcels no. T. 1837,1838, 1839 and 1840. The defunct council filed its defence, and the plaintiff later withdrew the suit against it. Again, the

pleadings in this matter were not presented to this court for this court to have better particulars. As such, the court proceeded to remove the said cautions since the plaintiff's claim was uncontroverted. The question then is, does the judgment pronounced in ELC case no. 172 of 2011 have any relevance to the present suit? I think not. The plaintiff pleaded in his counterclaim that it was relevant to the extent that it was found that he is the registered owner and therefore judgment was found in his favour.

51. However, the former suit was on the cautions that were placed on the suit land. In the present suit, the plaintiff seeks eviction orders against the defendant for trespass and unlawful occupation. In response thereto, the defendant filed a counterclaim challenging the said ownership on grounds that the title was obtained through fraudulent means. Having said that, and bearing in mind that the court in CMCC 160 of 1991 found that the plaintiff had not proved his case on a balance of probabilities, and there being no appeal that set aside these orders, the first wrong attempt made by the plaintiff was to proceed and obtain a title that was issued on 30th November, 1994.

52. This then brings me to the history or the root of the title owned by the plaintiff. The plaintiff pleaded that he was allocated title no. T.

438 by the defunct county council of Kiambu through a letter dated 5th October, 1978. The letter dated 5th October, 1978 is illegible but refers to an open space which is given to the plaintiff. It follows thereafter, that a council meeting was held on 28th August, 1981 informing members that at last, an allocation had been found for the plaintiff. The plaintiff later subdivided the suit land giving rise to T. 1804 and 1805 which titles were issued on 21st September, 1998. Parcel no. 1804 was later subdivided resulting into parcels nos. T.1837, T1838, T1839 and T1840.

53. The plaintiff now seeks eviction of the defendant who is said to be in occupation of T.1837. In his testimony, PW1 informed the court that he obtained the title documents from the administrator of Kiambu county council known as Mr. Muraya who did not inform him where he got the titles. Besides the letter dated 1978 and the minutes of the meeting held sometime in 1981, the plaintiff did not have any other documents showing how this allocation was done.
54. The defendant on the other hand put a strong defence arguing that the title allegedly owned by the plaintiff T. 438 is actually a trading centre as per the map, and more so, it is public land which was allocated to many people for use as a marketplace known as Nachu Trading Centre. In support thereof, the defendant

produced a publication by the national land commission in the local dailies on 3rd March, 2017.

55. The testimony by DW2 was in my view limited to more of hearsay owing to the fact that he did not support his arguments with any evidence save to state in re-examination that they wanted the defendant to be recognised as a legitimate owner of the land where he is staying.
56. The testimony and the evidence by DW3 disclosed the fraudulent activities that surround the acquisition of the suit land by the plaintiff. None of the documents produced by the plaintiff was found in their records. In fact, DW3 with vast experience in land administration within Kiambu county, questioned the process of allocation of this land terming the same as non-existent. DW3 brought out clearly that the area where the suit land is situated is known as Nachu which the defunct council left as an open space but remained its property. Perhaps this explains why the letters of allotment produced refer to Nachu trading centre. Vide the letters dated 9th June, 2021 the county government of Kiambu reiterated that property known as T. 438 was reserved for a trading centre, and that the plaintiff had been allocated open space plot no. 1629.

57. In my analysis, and upon review of the documents produced, it is my finding that the property known as T. 438 which gave rise to T. 1804 and 1805 is a trading centre. Further, the subsequent subdivision of T.1804 to parcels T. 1837, 1838, 1839 and 1840 was unlawful and could only have been procured through fraudulent means. I say so for the reason that the plaintiff did not adduce further evidence besides the letter dated 5th October, 1978 and the minutes which were not found in the records of DW3.

58. **Section 26** of the **Land Registration Act** provides as follows:-

“(1) The certificate of title issued by the registrar upon registration, or 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 that 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; or

b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the registrar and sealed with the seal of the registrar, shall be received in evidence in the same manner as the original.”

59. From the above, a title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. This court is empowered to cancel and revoke any title that has been acquired through fraudulent means as the one allegedly claimed by the plaintiff.
60. Equally, the defendant proved his acquisition of plot nos. 39 and 8A in Nachu. This was confirmed by the testimony of DW3. However, and in view of the fact that all divisions and subdivisions emanating from T. 438 are found to be fraudulent and unlawful, it is not for this court to allocate T. 1837 to the defendant at this juncture. This can only be done by the relevant authority within Kiambu county.
61. From the above, I find that the plaintiff's acquisition of T. 438 giving rise to T. 1804 and the further subdivisions into T.1837 was unlawful and fraudulent. I find that the defendant has proved his

counterclaim dated 2nd October, 2015 on a balance of probabilities and it is hereby allowed in the following terms:-

- 1. The plaint dated 29th July 2015 is hereby dismissed.**
- 2. A declaration is hereby issued that the registration and transfer of plot no. Karai/ Lussigetti/T. 1804 and subsequent subdivisions into properties Karai/Lussigetti/T. 1837-1840 to Samuel Njunge Muinamia is unlawful, fraudulent, null and void.**
- 3. The Chief Land Registrar Kiambu is hereby directed to cancel and revoke the titles emanating from T. 1804.**
- 4. A permanent injunction to restrain Samuel Njunge Muinamia, his agents, servants, assigns and anyone claiming under him from interfering in any manner whatsoever with the defendant's parcel of land known as plot nos. 39 and 8A Nachu.**
- 5. The defendant (estate of the late Oliver Ngumo Njoroge) is awarded the costs of the plaint and the counterclaim.**

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 9TH DAY OF APRIL, 2026.**

**HON. MBOGO C.G.
JUDGE
09/04/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

Mr. Mugu for the Plaintiff

No appearance for the Defendant