

**IN THE COURT OF APPEAL  
AT NYERI**

**(CORAM: KANTAI, LESIIT & ALI-ARONI, JJ.A.)**

**CIVIL APPEAL NO. 70 OF 2020**

**BETWEEN**

**AFRIMAC NUT COMPANY LIMITED.....APPELLANT**

**AND**

**DOROTHY WACERA MACHARIA.....1<sup>ST</sup> RESPONDENT**

**MBO-I-KAMITI FARMERS  
COMPANY LIMITED.....2<sup>ND</sup>  
RESPONDENT**

**THE LAND REGISTRAR, MURANG'A.....3<sup>RD</sup> RESPONDENT**

*(Being an appeal against the Judgment of the Environment and  
Land  
Court at Murang'a (Kemei, J.) dated 27<sup>th</sup> January  
2020*

*in*

***ELC Case No. 163 of 2017]***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

1. At the heart of this dispute lies a contest over land ownership of property known as **Nginda/Samar/Block 2/316** in Murang'a County (hereinafter referred to as 'the suit property'), which the 1<sup>st</sup> respondent, **Dorothy Wacera Macharia**, claims forms part of the estate of her late

husband, **John Gichuki Thogo**. In an amended plaint dated 20<sup>th</sup> December 2017, she sought a permanent injunction against the appellant, **Africmac**

**Nut Company Limited**, and other respondents from dealing with the suit property; a declaration that the registration of the property to Patrick Gachanja Mutiria (who allegedly sold the land to the appellant) and the transfer of the suit land to the appellant were improperly conducted and therefore void; an order requiring the cancellation of titles issued to Patrick and the appellant and reinstatement of the property to the first registered owner and thereafter the transfer documents related to the suit property be registered in favor of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent also sought general, punitive, and exemplary damages, along with costs of the suit.

2. A brief overview of the case will suffice in providing context. The 1<sup>st</sup> respondent, a widow and legal representative of the late John Gichuki Thogo, filed a plaint dated 15<sup>th</sup> June 2015, which was later amended, claiming to be the beneficial owner of the suit property. She initially sued Patrick (as the 1<sup>st</sup> defendant), the appellant (as the 2<sup>nd</sup> defendant), and the Land Registrar, Murang'a (as the 3<sup>rd</sup> defendant). Patrick passed away on 13<sup>th</sup> April 2016 and was not substituted, resulting in the case against him abating. The 2<sup>nd</sup> respondent was subsequently enjoined and became the 1<sup>st</sup> defendant in the amended plaint.
3. It is the 1<sup>st</sup> respondent's case that her late husband purchased the suit property and she has had peaceful possession of the same since 1995. In August 2014, her

caretaker informed her that some individuals posing as owners of the suit property attempted to remove the fence and banana plants from the suit

property. She claimed that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents colluded and fraudulently transferred the title to the suit property to the appellant. Additionally, she contended that the 3<sup>rd</sup> respondent wrongfully removed a caution that she had placed on the property in March 2014.

4. Patrick filed a statement of defence dated 16<sup>th</sup> July 2015, claiming ownership of the suit property, contending that he held a valid title deed that was issued on 10<sup>th</sup> January 2014. He further stated that the property was previously registered in the name of Mbo-i-Kamiti Farmers Company (2<sup>nd</sup> respondent), a land-buying company in which he was a shareholder, and that he had acquired the suit property by virtue of such shareholding. He denied any knowledge of the 1<sup>st</sup> respondent or her late husband, and denied having colluded with the 3<sup>rd</sup> respondent to obtain the title. He claimed to have followed all legal processes, including obtaining consent from the Land Control Board on 9<sup>th</sup> May 2013.
5. The appellant, on its part, filed a statement of defence dated 9<sup>th</sup> October 2015, claiming that it purchased the suit property from Patrick for value without notice, after conducting a relevant inspection at the 3<sup>rd</sup> respondent's office. It claimed that at the time of signing the sale agreement, Patrick provided all relevant documents, including the title deed issued on 10<sup>th</sup> January 2014, which was found to be free of encumbrances. The appellant further claimed it was unaware

of the 1<sup>st</sup> respondent's beneficial interest in the suit property  
and argued that, as a

bona fide purchaser, it was legally protected against such claims. It also denied the allegations of fraud made against it.

6. The 3<sup>rd</sup> respondent filed a defence dated 24<sup>th</sup> September 2015, stating that the action undertaken by him was lawful and in accordance with his statutory duties. He contended that the lawsuit was time-barred, legally flawed, and did not establish a valid cause of action.
7. At the hearing, the matter proceeded by way of *viva voce* evidence. The 1<sup>st</sup> respondent, **PW1**, testified that she was the widow of the late John Gichuki Thogo, who died in June 1998, and she held a grant of letters of administration of his estate. While she did not know the appellant, she learned of it during a search at the lands office, which revealed that the 2<sup>nd</sup> respondent was registered as the owner of the property on 2<sup>nd</sup> February 1993. On the part of Patrick, he became registered as the owner of the suit property on 10<sup>th</sup> January 2014, and the appellant on 25<sup>th</sup> August 2014. She confirmed that her deceased husband died before the transfer documents in his favour were registered. Further, she stated that upon discovering the dealings in the title, she reported a case of fraud at the Makuyu Divisional Headquarters and is awaiting the results of the investigations.
8. Arising from the said discovery, she lodged a caution on the suit property on 17<sup>th</sup> March 2014. She testified that Patrick filed a suit against her to have the caution removed. She was aware

that the caution was removed by a court order. She also stated that she had sought to set the order aside, but the motion was dismissed.

9. PW1 further stated that although she had initially sued Patrick, who died before the case was heard, she did not substitute him due to uncertainty about who to replace him with. In cross-examination, she informed the court that she had obtained a grant of letters of administration for her husband's estate on 22<sup>nd</sup> September 2010, in Succession Cause No. 2619 of 1998. She further stated that her husband was registered as No. 0330 with the 2<sup>nd</sup> respondent. The suit property was initially 20 acres and, at her late husband's request, was subdivided into 554A and 554B. She testified that her late husband had paid for the land and produced receipts, but the 3<sup>rd</sup> respondent refused to register her caution.
10. On its part, the appellant's sole witness was **Johnson Muriuki, DW1**, who testified that he is a shareholder and director of the appellant. He claimed the company purchased the suit property from Patrick after conducting due diligence. He stated that he was unaware of the land's history. He knew that the 1<sup>st</sup> respondent's name was not on the title. He also confirmed that he had not taken possession of the suit property and denied any fraud, asserting that his title was clean.
11. During cross-examination, he confirmed that the date of the

application for the Land Control Board was 11<sup>th</sup> March 2014,

and the consent was issued on 13<sup>th</sup> March 2014, yet he signed a sale agreement with Patrick on 15<sup>th</sup> March 2014. He had no evidence to prove his directorship in the appellant company and claimed that the suit property comprised 4 acres, was unfenced, and that an unoccupied small farmhouse stood on it. He further informed the court that he had only paid a deposit of Kshs. 1,000,000 to Patrick, and that the balance of the purchase price was being held by the lawyers. He confirmed that the 1<sup>st</sup> respondent was in occupation of the property.

12. In its determination, the trial court found that the suit was not time-barred since the 1<sup>st</sup> respondent became aware of the alleged fraudulent registration of the land in 2014 and subsequently filed the suit in 2015, well within the time. On the issue of locus standi, the court was of the view that the 1<sup>st</sup> respondent proved that she held a confirmed grant for her deceased husband's estate and had the legal capacity to file the suit.
13. On the issue of fraud and illegality, the court noted that the 2<sup>nd</sup> respondent received the full purchase price from the 1<sup>st</sup> respondent's late husband, had signed the transfer and obtained the Land Control Board consent, documents necessary to effect a transfer, and as fate would have it, the deceased died immediately thereafter. The court concluded that, in the circumstances, the 2<sup>nd</sup> respondent held the land in trust for the estate of its deceased member and had no

proprietary interest left to transfer the property to any other

party, and that the title conferred to Patrick was invalid, which rendered the subsequent transfer to the appellant a nullity.

14. The court held that to qualify as a bona fide purchaser for value without notice, the appellant needed to demonstrate that it had no notice of any fraud and purchased the property in good faith for valuable consideration. The court identified various irregularities in the appellant's acquisition of the property, notably, the Land Control Board's consent was issued on 13<sup>th</sup> March 2014, prior to the signing of the sale agreement on 15<sup>th</sup> March 2014. Additionally, the appellant's witness failed to present an executed transfer document to prove the transfer of title and failed to demonstrate that due diligence had been exercised in relation to the suit property.
15. In a judgment dated 27<sup>th</sup> January 2020, the court granted the 1<sup>st</sup> respondent the prayers sought in the amended plaint. Dissatisfied with the judgment, the appellant preferred an appeal to this Court vide its memorandum of appeal dated 11<sup>th</sup> June 2020 based on the following nine grounds: the learned Judge erred in law and facts: by failing to find that the appellant was an innocent bona fide purchaser for value without notice; by canceling the appellant's title despite acknowledging that it was not involved in the fraud committed by the 2<sup>nd</sup> respondent; by finding in favour of the 1<sup>st</sup> respondent without evidence of fraud to the required

standard; by failing to find that the omission of Patrick from the case was detrimental to the 1<sup>st</sup> respondent's claims; by failing to appreciate that the appellant

followed all legal processes in acquiring the suit property from Patrick; by failing to appreciate that the appellant had complied with all the legal procedures when acquiring the suit property from Patrick who was not a party in the trial; by failing to note that the 1<sup>st</sup> respondent lacked locus standi to sue on behalf of a deceased person without annexing a grant of letters of administration; by failing to take into account that the 2<sup>nd</sup> respondent intended to transfer the property to the 1<sup>st</sup> respondent's deceased husband, but this did not materialize; by failing to hold the 2<sup>nd</sup> respondent responsible for the confusion regarding the property's registration, and incorrectly ordering the appellant to pay the costs of the suit to the 1<sup>st</sup> respondent. The appellant sought that the appeal be allowed and the 1<sup>st</sup> respondent's suit in the trial court be dismissed with costs.

16. Learned counsel for the appellant filed submissions dated 6<sup>th</sup> November 2023, where he submitted that in Murang'a CMCC No. 159 of 2014, the subject matter was the same as in this matter, where Patrick sued the 1<sup>st</sup> respondent herein; however, she did not file a defence and judgment was entered against her. The appellant did not prefer an appeal; instead, she instituted the cause now before this Court, raising the same issues and urging that the suit is res judicata, citing the Supreme Court case of **Independent Electoral and Boundaries Commission vs. Maina Kiai & 5 Others [2017] eKLR**, which underscored the importance of finality in litigation. On locus standi, counsel argued that

only the legal representative of a deceased person  
can litigate on behalf of the estate, and since the 1<sup>st</sup>  
respondent

did not provide proof of a grant of representation, she lacked the locus standi to initiate proceedings on behalf of her deceased husband's estate. In support, counsel referenced the case of ***Juliana Adoyo vs. Francis Kiberenge Abano, Migori Civil Appeal No. 119 of 2015***, where the court held that the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case.

17. Counsel further asserted that the 1<sup>st</sup> respondent has never been the registered owner of the suit property, which was first registered in the name of the Government of Kenya and later transferred to the 2<sup>nd</sup> respondent, then to Patrick, and subsequently to the appellant. The 1<sup>st</sup> respondent lodged a caution in March 2014, following Patrick's registration as the owner, the appellant purchased the land as an innocent purchaser for value in August 2014, following a court order that removed the 1<sup>st</sup> respondent's caution and all legal processes followed, including obtaining consent from the Land Control Board dated 11<sup>th</sup> March 2014, a letter of consent dated 13<sup>th</sup> March 2014, and a sale agreement dated 15<sup>th</sup> March 2014.
18. Counsel emphasised that the certificate of confirmation of grant provided by the 1<sup>st</sup> respondent identified the property as Nginda Ex-Samar Plot No. 554A & 554B, rather than the suit property, which is Nginda/Samar Block 2/316. Additionally, the 1<sup>st</sup> respondent admitted that there are no documents to support the renaming of the plots.

19. Counsel contended further that the trial Judge made an error by allowing the 1<sup>st</sup> respondent's suit with costs. He urged that it was illogical for the appellant to be ordered to pay costs to the 1<sup>st</sup> respondent, yet the parties did not know each other.
20. Learned counsel for the 1<sup>st</sup> respondent, on his part, filed submissions dated 14<sup>th</sup> December 2023. On whether the suit was res judicata, counsel contended that the proceedings in Murang'a CMCC 159/214 were conducted surreptitiously, without any service upon the 1<sup>st</sup> respondent, with the intention of displacing her from the suit property. Counsel argued that the issues in the suit in the High Court could not be res judicata, as the issues raised were different and so were the parties. That Murang'a CMCC 159/2014 related to the removal of a caution placed by the 1<sup>st</sup> respondent on the suit property, whereas the current suit concerns land ownership. Further counsel urged that the appellant cannot raise the issue of res judicata, as it was not a party to the suit under reference and the issue was not raised in the High Court. He asserted that the issue has been raised on appeal as an afterthought.
21. Counsel further urged that the 1<sup>st</sup> respondent adequately established her status as both the widow and administratrix of the estate of her late husband. She testified that her deceased husband purchased the property from the 2<sup>nd</sup> respondent prior to his death. To support this claim, she

presented various documents, including executed land transfer documents, a clearance certificate, a Land Control Board consent for the

transfer, and a letter from an advocate dated 9<sup>th</sup> December 2003, requesting payment of stamp duty and transfer fees. Additionally, counsel pointed out that the 1<sup>st</sup> respondent's husband is buried on the suit property.

22. Counsel argued further that although the appellant claims to have purchased the suit property from the late Patrick, who had acquired the suit property from the 2<sup>nd</sup> respondent, there is no evidence to support the appellant's alleged purchase. Counsel contended that all the evidence presented in court, including the appellant's defence in the High Court, is fabricated and riddled with falsehoods. He highlighted that during the trial, the appellant's witness admitted that the purported purchase price was never paid to the alleged vendor, nor was stamp duty ever settled.
23. This being a first appeal, it is our duty, in addition to considering submissions by the appellants and the respondents, to analyse, examine and re-assess the evidence on record and reach our own independent conclusion in the matter. This approach was adopted in ***Kibui & Another vs. Kibui (Administrator of the Estate of Mary Wangechi Kibui) & 6 others (Civil Appeal E087 & E094 of 2022 (Consolidated)) [2025] KECA 1149 (KLR)***, where this Court held; -

***“Being a first appeal our mandate as donated by rule 31 of the Court of Appeal Rules, 2022 is to re-appraise the evidence and to draw inferences of fact; to retry the***

***case. That mandate has been***

***captured in various pronouncements of this Court in such cases as Nairobi Bottlers Limited vs. Imbuga (Civil Appeal E661 of 2022) [2024] KECA 434 (KLR), where it was stated:***

*“Our mandate in a first appeal as donated by rule 31 of the Court of Appeal Rules, 2022 is to re- appraise the evidence and to draw inferences of fact; to retry the case. That mandate has been the subject of various judicial pronouncements in such cases as **Nicholas Njeru vs Attorney General & 8 Others [2013] eKLR**, where it was stated: “[In] a first appeal, we are required to re-evaluate the evidence and arrive at our own independent findings and conclusions of the matter.”*

24. Having considered the pleadings, the evidence placed before the court, submissions by rival parties, case law cited, and the law, we are of the view that the issues arising for determination in this appeal are: -

- i. Whether the 1<sup>st</sup> respondent has a beneficial or equitable interest in the suit property;***
- ii. Whether the transfer of the suit property to Patrick and the subsequent transfer to the appellant were tainted with fraud, were unlawful, illegal and unprocedural;***
- iii. Whether the appellant qualifies as a bona fide purchaser for value without notice and is therefore entitled to protection of title.***

25. In its analysis, the trial court held as follows; -

*“On 9/12/2003, the law firm of Mathenge & Muchemi Co Advocates, who were the Advocates of Mboi*

*Kamiti, wrote to the said John Gichuki Thogo informing him that the transfer and the application forms for Land Control consent in respect to the suit land were ready for his signature. He was asked to call on their offices and execute the same, and in addition, make additional payments in respect to stamp duty, Advocate fees, registration fees, consent fees and incidentals totaling Kshs 26,425/- to the said Advocates. In a letter dated 31/8/2004, the said Advocates confirmed to their clients, Mboi Kamiti, that the said John Gichuki Thogo, deceased, purchased the suit land and informed them that the Plaintiff and Apofia Wangui Kinuthia were the legal administrators of his estate.*

*On 25/5/2005, the said law firm wrote to the Plaintiff and Apofia Wangui Kinuthia seeking the photocopies of PIN of the legal administrators for purposes of compliance with the new title registration requirements.”*

26. The court went further to state:

*“The question that the Court should inquire is whether Mboi Kamiti upon receiving value for the suit land and title having passed to the late John Gichuki Thogo had any interest to pass to Patrick Gachanja Mutira. According to the documentary evidence on record, all the documents required for the effectual registration of the title in the name of the late Thogo had been executed by both the seller and the buyer, that is to say, the transfer and the Land Control Board consent. As fate would have it, the purchaser died before the registration was effected. It is the view of the Court that Mboi Kamiti having sold the suit land to Thogo and executed the transfer in his favour, it had divested itself of all the interest, right and proprietary interest and privileges over the suit land and title and there was nothing left or vested in Mboi Kamiti*

*to purport to convey or confer to Patrick Gichuki Mutira or any other*

*third party. It is a principle of law that one cannot confer that which they do not own."*

27. A reading of the above extract shows the finding of the trial court that, prior to his death, the deceased had complied with all the necessary requirements for purposes of effecting a transfer of the suit property to him; what was pending was actual registration. In essence, therefore, the 2<sup>nd</sup> respondent had no property to pass to any other party. As the trial court correctly held, the 2<sup>nd</sup> respondent stood in the position of a trustee; it held the property in trust for its member, who had fully paid for the land, complied with all necessary requirements, and obtained all necessary documentation, awaiting registration of the transfer. There was indeed sufficient evidence to the required standards to prove that the transfer to Patrick by the 2<sup>nd</sup> respondent, who knew very well that it had sold the suit property to another member, was, to say the least, fraudulent.
28. The 1<sup>st</sup> respondent successfully demonstrated that her deceased husband had indeed bought the property. On the other hand, there was a paucity of evidence on the part of the appellant. He failed to provide evidence of whether a search of the property was conducted prior to the purchase; he was unable to produce a copy of the sale agreement; and, in his own testimony, he admitted that only the deposit of the purchase price was paid. We agree with the learned trial Judge's finding that; -

*“The Plaintiff led undisputed evidence that she and her husband took possession of the suit land in 1995 and commenced developments to wit; clearing the land, fencing, constructing a farm house and planting bananas on the suit land. This fact of the Plaintiff’s possession and occupation of the suit land was confirmed by the 2nd Defendants witness in evidence at the trial. The Plaintiff informed the Court that she buried her late husband on the suit land in 1998 and no one raised any objection (including Mboi Kamiti) then because the interest in the land had passed to them pending the registration of the same in their name of the estate of the late Thogo.*

71. Had the 2nd Defendant made inquiries it would have discovered that the suit land was not available for purchase on account of the evidence apparent on the ground in form of the developments by the Plaintiff denoting occupation and possession thereof. In the case of **Sir John Bogire Vs Matovu CA No 7 of 1996 (ULR)** the Court when confronted by the same situation emphasized the value of land and the need for thorough investigations before the purchase. The Court stated that;

*“Lands are not vegetables that are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only of the land but also of the seller before the purchase.”*

72. The Court opined in the case of **Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others [2015] eKLR** as follows:

*“It was common knowledge, and well documented at the time, that the land*

market in Kenya was a minefield and only a foolhardy investor would purchase land with the alacrity of a potato dealer in Wakulima market. Perhaps the provisions of the new Constitution 2010 and the

*Land Registration Act, 2012 will have a positive impact for land investors in future." ....*

29. Courts have held severally that the holding of title is not absolute, as the same may be impeached under certain circumstances. **Section 26 (1) a** and **b** of the Land Registration Act provides:

**(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, un-procedurally or through a corrupt scheme.**

30. In **Attorney General & 2 Others vs. Kenya Joinery Limited & 2 Others (Civil Appeal E885 of 2022) [2025] KECA 727 (KLR)**, this Court held 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 that is under challenge and the registered proprietor must go beyond the instrument and prove 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. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant’s testimony.”***

31. The appellant urged that the title was never registered in the

name of the 1<sup>st</sup> respondent's deceased husband. That even

though there may have been an intention to do so, this did not materialise, and the title remained in the name of the 2<sup>nd</sup> respondent, who transferred the same to Patrick, and in turn Patrick transferred the same to the appellant. The argument by the appellant cannot hold, and we agree in total with the view taken by the trial court that the 2<sup>nd</sup> respondent had no interest to pass to Patrick.

32. The next question is whether the appellant was a bona fide purchaser. It is its case that it acquired the land as an innocent purchaser for value, having purchased it from Patrick in August 2014, following a court order removing the 1<sup>st</sup> respondent's caution on the property.

33. This Court in **Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura vs. Attorney General & 4 Others [2017] eKLR**, adopted the decision of the Ugandan Court of Appeal in **Katende vs. Haridar & Company Limited [2008] 2 E.A.173**, that weighed in on the definition of an innocent purchaser, and this Court takes the same approach. The Court held thus:

***“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, ... (he) must prove that:***

***a. He holds a certificate of title;***

- b. He purchased the property in good faith;**
- b. He had no knowledge of the fraud;**
- d. He purchased for valuable consideration;**
- e. The vendors had apparent valid title;**
- f. He purchased without notice of any fraud;**
- g. He was not party to any fraud.”**

In ***Maina vs. Bwana (Civil Appeal E009 of 2022) [2025] KECA 1388 (KLR)***, this Court held that; -

***“The appellant’s case, which had not fared well, was much the worse when the appellant was inconsistent on the crucial aspect of payment of the purchase price.”***

34. The appellant produced a questionable Land Control Board consent, he did not produce a copy of the transfer form, he admitted to not having paid the purchase price in full, he does not seem to have done any due diligence, there was no proof of stamp duty paid either and as we determined earlier in this judgement the 2<sup>nd</sup> respondent did not have a good title to pass on to Patrick who in turn allegedly sold to the appellant. All this leads to the only determination that the appellant was not an innocent purchaser for value without notice.
35. Ordinarily, costs follow the event or in other words, the outcome of a suit. The appellant, having been a party to

the suit and

having participated in it, there was no error on the part of the trial Judge in ordering it to meet the costs of the suit.

36. In the end, we find the appeal has no merit, and it is dismissed with costs.

**Dated and delivered at Nyeri this 24<sup>th</sup> day of April, 2026.**

**S. ole KANTAI**

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·  
**JUDGE OF APPEAL**

**J. LESIIT**

**JUDICIARY**

.....  
·  
**JUDGE OF**

**APPEAL ALI-**

**ARONI**

**REPUBLIC OF KENYA**

.....  
·  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

*Signed*  
**DEPUTY REGISTRAR**