

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC APPEAL CASE NO. E016 OF 2025

**DCK WOMEN GROUP (THROUGH ITS REGISTERED OFFICIALS
MARGARET NYOKABI MUCHIRI AND
NANCY WANGARE GITHITU)**
APPELLANT

VERSUS

GEORGE MUCHIRI MUCHUNA.....1ST
RESPONDENT

THE REGISTRAR OF LANDS.....2ND
RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD
RESPONDENT

*(Being an appeal of the judgement delivered on 27th August 2025 by the
Honourable N.S Lutta (CM) in MCELC No. E062 of 2021-DK Women through
its registered officials Margaret Nyokabi Muchiri and Nancy Wangare Githuti-
versus-George Muchiri Muchuna & 2 Others)*

BETWEEN

**DCK WOMEN GROUP (THROUGH ITS REGISTERED OFFICIALS
MARGARET NYOKABI MUCHIRI AND
NANCY WANGARE GITHITU)**
APPELLANT

VERSUS

GEORGE MUCHIRI MUCHUNA.....1ST
RESPONDENT

THE REGISTRAR OF LANDS.....2ND
RESPONDENT

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JUDGEMENT.

1. Before me for determination on Appeal is a matter which was heard and determined by Hon. N S Lutta, Chief Magistrate in MCELC No. E062 of 2021 wherein, upon considering the evidence of both parties, vide his Judgement delivered on 27th August, 2025, the Trial Court dismissed the Plaintiff's suit with costs for lack of merit.
2. The Plaintiff /Appellant, being dissatisfied with the said Judgement, has now filed the present Appeal based on the following grounds in his Memorandum of Appeal:
 - i. That the learned trial magistrate grossly misdirected himself in treating the evidence and the submissions made by the Appellant, and consequently came to a wrong conclusion on the same;
 - ii. That the learned trial magistrate erred in law by disregarding Section 26(1)(a) & (b) of the Land Registration Act, 2012, which provides that a certificate of title may be impeached if it is shown to have been obtained through fraud, misrepresentation, or illegality;
 - iii. That the learned trial magistrate misdirected himself/herself by treating the 1st Respondent's title as indefeasible without interrogating the circumstances of acquisition, contrary to binding jurisprudence;
 - iv. That the learned trial magistrate erred in law and in fact in failing to appreciate that fraudulent acquisition cannot confer valid legal rights, and that any subsequent transfer based on an illegal root of title cannot be protected under the law;
 - v. That the learned trial magistrate erred in law in ignoring the public policy principle that courts cannot sanction or

uphold illegality, particularly in matters concerning land fraud;

- vi. That the learned trial magistrate failed to give due consideration to the evidence adduced by the Appellant, which demonstrated clear elements of fraud and illegality in the process of allocation/ transfer, thereby arriving at a decision not supported by law or evidence; and
 - vii. That the learned trial magistrate failed to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
3. The Appellant thus prayed for the following orders:
- i. The Appeal be and is hereby allowed.
 - ii. The Judgement of the subordinate court dated 27th August, 2025, is hereby set aside.
 - iii. Cost of the appeal be awarded to the Appellant.
4. In his response dated 9th February 2026, the 1st Respondent confirmed that the learned trial Magistrate properly evaluated all the evidence on record, considered the parties' pleadings and submissions, and correctly arrived at a conclusion supported by both fact and law. That the learned trial Magistrate correctly appreciated and applied the provisions of Section 26(1)(a) and (b) of the Land Registration Act, 2012, which unequivocally provide that a certificate of title may be impeached only where fraud, misrepresentation or illegality is specifically pleaded and strictly proven, a burden the Appellant failed to discharge. Accordingly, the allegation that the court had disregarded the said statutory provisions was unfounded and unsupported by the record.
5. That the learned trial Magistrate rightly treated the Respondent's title as indefeasible, since the Appellant had failed to adduce evidence that interrogated or impugned the circumstances of its acquisition in a manner capable of displacing the statutory protection accorded to registered titles.

6. That the trial court's finding was consistent with binding jurisprudence on the indefeasibility of titles, where the Appellant's claim of an illegal root of title was speculative and unsupported by either documentary or testimonial evidence that linked the 1st Respondent to any illegality. That, in any event, the testimony of the Appellant's witness had confirmed that she had no proof of membership of the DCK Women's Group, nor did she produce any evidence of participation in any of the group's activities.
7. That the learned trial magistrate did not ignore public policy principles, but had instead upheld the law governing land registration and title, and public policy did not permit courts to invalidate registered titles on the basis of unproven allegations. The learned trial magistrate had adequately evaluated all the evidence and exhibits and arrived at its decision.
8. He thus prayed that the instant Appeal be dismissed with costs.
9. The 2nd and 3rd Respondents did not participate in the Appeal.
10. Directions were issued for the disposal of the Appeal by way of written submissions, wherein the parties complied and filed their respective submissions, which I shall summarise as herein under.

Appellant's Submissions.

11. In their submissions dated 10th March 2026, the Appellants outlined the factual background of the case, asserting that the evidence showed they owned the suit land. They argued that the Respondent's title deed was obtained illegitimately and fraudulently, making it subject to challenge. They then listed their issues for resolution as follows:
 - i. Whether the trial court failed to properly evaluate the evidence showing that the Appellant purchased land from Agricultural & Industrial Holdings Limited.
 - ii. Whether the Respondent proved a lawful root of title to the suit property.

- iii. Whether the Respondent's title was impeachable under the law.
 - iv. Whether the trial court ignored material and uncontroverted evidence demonstrating that the land belonged to the Appellant.
12. On the first issue for determination, they argued that the Appellant presented the trial court with documentary evidence showing its purchase of land from Agricultural & Industrial Holdings Limited (ADC). This evidence included receipts issued by ADC in favor of the Appellant, confirming payment for the land. Additionally, the Appellant submitted proof that it had received titles to other parcels of land bought from the same company. Despite these receipts serving as direct proof of purchase and entitlement, the trial court allegedly failed to properly assess this evidence.
13. The significance of the said receipts was twofold:
- i. They demonstrated that the Appellant was a purchaser from the allocating entity.
 - ii. They confirmed that the Appellant had a legitimate expectation to be allocated land from the same pool of land.
14. The fact that it had successfully obtained titles for other parcels purchased from the same entity reinforced the legitimacy of the transaction. That the only parcel that had remained unaccounted for was the suit land, which the Respondent was now claiming, and which creates a compelling inference that the Respondent's title did not originate from the lawful allocation process involving ADC. It thus submitted that the trial court had erred by failing to interrogate this inconsistency.
15. On the second issue, namely whether the Respondent had proved a lawful root of title, it was submitted that, although the Respondent had alleged that he was a member of the Appellant group and that the suit

land constituted his entitlement from the Appellant, the Appellant's records clearly demonstrated that the suit land had never been allocated to the Appellant; hence, the Appellant had no land capable of being transferred to the Respondent. It was further submitted that, if the suit land had never passed to the Appellant, it followed that the Respondent could not possibly have received it as an entitlement from the Appellant; hence, the Respondent had failed to demonstrate a lawful root of title.

16. Submissions were that where the root of the title is challenged, the registered proprietor must prove how the title was obtained. Reliance was placed on the Supreme Court's decision in **Dina Management Limited v County Government of Mombasa & 5 Others**.(sic) In the present case, the Respondent merely relied on the existence of a title deed without demonstrating how the land had moved from the allocating authority, how it came to be registered in his name, or whether the Appellant ever had the authority to allocate it to him. It thus submitted that the trial court had erred in treating the title deed as conclusive proof of ownership.
17. On the third issue, namely whether the Respondent's title was liable to impeachment, it relied on the provisions of Section 26(1) of the Land Registration Act, which sets out the ways in which a certificate of title may be challenged, and submitted that the evidence on record demonstrated serious irregularities surrounding the Respondent's title.
18. That the land registrar had issued a letter dated 31st October, 2013, requiring the Respondent to surrender the title deed. That in the said letter, the Registrar confirmed that the parcels in question belonged to the Appellant. That the Appellant submitted that the said letter was crucial evidence because it had come from the statutory custodian of land records, confirming that the Respondent's registration was irregular. That, nevertheless, despite its evidentiary weight, the trial court had failed to give it proper consideration.

19. That further confirmation had come in a letter dated 18th June, 2014 from the Ministry of Lands, addressed to the DCIO, restating that the suit land belonged to the Appellant and that the matter had attracted investigative attention due to irregularities in registration. That, despite this being powerful corroborative evidence supporting the Appellant's case, the trial court had completely ignored the documentary evidence.
20. That the aforesaid documents had formed part of the Appellant's evidence, as reflected in the Record of Appeal, including the proceedings at page 174 of the Record of Appeal, which confirm that the documents were formerly produced. It thus submitted that the trial court was under a duty to evaluate the said evidence, and hence the failure to do so amounted to a misdirection on evidence.
21. In contending that the Respondent did not purchase land from ADC, it submitted that although the Respondent had produced receipts, they did not demonstrate any purchase from ADC, yet he had alleged that the land had originated from ADC. It further submitted that, since the Respondent did not purchase the land from ADC, his title could not have originated from the legitimate allocation process.
22. That if the Respondent indeed believed he was entitled to land from the Appellant, his claim would lie only against the Appellant for allocation, not through registration of title in his own name over the Appellant's land. Accordingly, the only reasonable inference was that the Respondent had irregularly procured the title deed.
23. On the fourth issue, namely whether the trial court failed to consider uncontroverted evidence, it submitted that it is a settled principle that uncontroverted evidence should ordinarily be accepted by the court unless inherently incredible. It further submitted that, in the present case, the Land Registrar's letter confirmed that the land belonged to the Appellant, and that the Appellant had produced receipts confirming the purchase of the land from ADC. It further submitted that, on the other hand, the Respondent had failed to show any purchase from ADC. That

this evidence was never rebutted, yet the trial court failed to address it, thus constituting a serious misdirection warranting appellate intervention.

24. In conclusion, the Appellant submitted that the Court could not legitimise an unlawful title and relied on the **Dina Management Limited** case (supra) to submit that the Supreme Court emphasised that a title obtained through illegality could not be protected by law, as public policy forbids it. That once the Appellant demonstrated serious irregularities in the acquisition of the Respondent's title, the trial court ought to have declared the title invalid.

1st Respondents Submissions.

25. On the other hand, the 1st Respondent, in his submissions dated 3rd March 2026, addressed each of the Grounds of Appeal in the Appellant's Memorandum of Appeal. On Grounds (i) and (ii), he submitted that he was a bona fide purchaser for value without notice within the meaning of Section 26 of the Land Registration Act. He further submitted that he had produced documents establishing that he was the appointed chairman of the Appellant and that he had made payment towards the purchase of the suit parcel of land. He also submitted that the Agricultural and Industrial Holdings Ltd had lawfully processed the registration of the title and notified him by letter to collect it, which evidence was not controverted.

26. That the Appellant had failed to demonstrate any misdirection in law, misapprehension of evidence, or any basis for impeaching a lawfully issued certificate of title. He relied on the decided case of **Gichinga Kibutha v Caroline Nduku (2018) KEELC 3981 (KLR)** to submit that the Appellant had failed to call cogent evidence of fraud and/or to challenge the documents that had been produced. It was his submission that, without proof of fraud attributable to the 1st Respondent, the provisions of Section 26 of the Land Registration Act were applicable to protect the title.

27. His submission in relation to Ground (iii) of the Appeal, specifically that the learned trial Magistrate had misdirected himself by treating his title as indefeasible without interrogating the circumstances of its acquisition, was that pursuant to the provisions of Section 107 of the Evidence Act, it was trite law that the burden of proof lies upon the party alleging fraud. He further submitted that the standard required was higher than the balance of probabilities. He relied on the decided case of **Ratilal Gordhanbhai Patel vs Lalji Makanji (1957) EA 314** to submit that, in the absence of strict proof, allegations of fraud must fail.
28. On Grounds (iv) and (v), he submitted that during the trial court hearing, the Appellant had called one witness who demonstrated a lack of understanding of the Appellant's affairs and failed to produce proof of membership. That whilst the said witness had alleged that he had made documents without authority to procure registration of the suit property in his name and had altered documents with the purpose of obtaining registration of the suit land without following due process, the Appellant had failed to demonstrate to the court in what manner the same had happened. That it was the Appellant's duty to produce evidence of irregularities in the registration process, proof of unauthorised changes to the property records at the lands registry, and alterations to documents in support of their fraud and illegality claims. That nonetheless, the documents that had been produced by the Appellants did not categorically indicate a finding of fraud or illegality on the part of the 1st Respondent.
29. It was his submission that the learned trial magistrate had properly directed himself on both the law and the evidence, and that no misdirection or error had been demonstrated to warrant interference by the Honourable Court. He thus prayed that the Appeal herein be dismissed with costs to him.

Analyses of the evidence.

30. The Court of Appeal in **Paramount Bank Limited vs. First National Bank Limited & 2 Others (Civil Appeal 468 of 2018) [2023] KECA 1424 (KLR)** where the court held as follows;

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the Civil Procedure Act, a first Appellate Court can appreciate the entire evidence and come to a different conclusion.”

31. The summary of the core dispute is that DCK Women Group, the Plaintiff/Appellant herein, instituted a suit against George Muchiri Muchuna, the Registrar of Lands and the Hon. Attorney General, the 1st to 3rd Defendants respectively, in Naivasha MCELC No. E062 of 2021, vide a Plaint dated 20th August 2021, wherein it sought the following orders;

- i. A declaratory order declaring the Plaintiff as the bona fide legal and equitable owner of the land parcels known as Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315.
- ii. An order directing the 2nd Defendant to revoke the Title Numbers Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315.
- iii. General damages.
- iv. Interest on (ii) above **(sic)**
- v. Cost of the suit.
- vi. Any other suitable or appropriate relief that this court may deem fit to grant.

32. Subsequent to the filing of the suit, the 1st Defendant/Respondent filed his Statement of Defence dated 30th January, 2023, denying the contents of the Plaint and putting the Plaintiff to strict proof. He argued that he had, as the chairman of the Plaintiff, paid in full for the suit property No. Gilgil/Gilgil Block 1/314, for which he had been issued with the title deed in his name as the absolute proprietor. That, with Gilgil/Gilgil Block 1/315 measuring 5 acres, he had paid only for the 1-acre portion to which he was rightfully and/or legally entitled. That he had been appointed as the chairman of the group by its members and assigned the task of facilitating the issuance of titles, which were being processed and issued by Agricultural and Industrial Holding Ltd (the vendor) in accordance with payments made to them.
33. He had thus prayed that the Plaintiff's suit be dismissed with costs.
34. Subsequently, the case had proceeded for hearing wherein Margaret Nyokabi Muchiri while testifying as PW1 adopted her Witness Statement and produced the filed documents in evidence as follows:
- i. Copy of title deeds- Gilgil/Gilgil Block 1/314 and 315 as Pf Exh. 1
 - ii. Payment receipts issued by Agricultural and Industrial Holdings Ltd as Pf Exh. 2.
 - iii. Official search for land parcels Gilgil/Gilgil Block 1/314 and 315 as Pf Exh. 3.
 - iv. Letter dated 31st June 2013 as Pf Exh. 4.
 - v. Letter dated 18th June 2014 as Pf Exh. 5.
 - vi. Letter dated 3rd September 2014 as Pf Exh 6.
35. She then testified that she was seeking the revocation of the said titles.
36. During cross-examination, she acknowledged that she was a member of the DCK Women Group, the Appellant in this case, but she did not present any evidence to support this claim. She confirmed, however, that she served as the Appellant's chairlady, having joined the organization in

1980, although she did not have the election Minutes. She stated she had not kept receipts but that the land was purchased from ADC. The group was supposed to have six independent titles. She also mentioned that she met the 1st Defendant in court.

37. In re-examination, she confirmed that the parcel of land had been bought.

The Plaintiff had thus closed his case.

38. The Defence case proceeded with the testimony of George Muchiri Muchuna, the 1st Defendant herein, who adopted his witness statement as his evidence in chief and produced his filed documents as follows:

- i. Copy of the Title Deed Registration No. Gilgil/Gilgil Block 1/314 as Df Exh. 1.
- ii. Copy of official search for land parcel Gilgil/Gilgil Block 1/314 as Df Exh. 2.
- iii. Payment Receipts issued by DCK Women Group to George Muchiri as Df Exh. 3.
- iv. Payment Receipts issued by Agricultural and Industrial Holding Ltd as Df Exh. 4.
- v. Register of official members of DCK Women Group as Df Exh. 5.
- vi. Membership subscription payment receipts for the official members Df Exh. 6.
- vii. Letter by Agricultural and Industrial Holding Ltd to George Muchiri as Df Exh. 7.
- viii. Letters by County Commissioner to the Land Registrar Naivasha dated 17/04/2014. Together with Minutes of DCK Women Group Committee meetings held at the County Commissioner as Df Exh. 8.
- ix. Maps of the suit parcels of land as Df Exh. 9

39. He then testified that he was appointed chairman of DCK Women Group, the Appellant herein. He explained that he paid for the land in question and received the title deed. He denied any knowledge of the Plaintiff, asserting she was not a member of DCK Women Group.
40. During cross-examination, he confirmed that the 30-acre land was purchased from ADC while he was the chairman of DCK Women. He also stated that they contributed funds toward the purchase, as evidenced by the documents and payment receipts that he provided.
41. During re-examination, he confirmed paying Ksh. 16,000/= as per the receipts he had produced in evidence, stating that subsequently, he acquired the title deed in his name.

The Defence had thus closed his case.

42. I have reviewed the Plaintiff's witness statements dated 20th August 2021, in which Margaret Nyokabi Muchiri, the Plaintiff's witness PW1, stated that the Plaintiff had purchased a parcel of about 30 acres from Agricultural and Industrial Holdings and had thereafter initiated the process of obtaining title deeds. However, the Plaintiff did not obtain the title deed to the land parcel No. Gilgil/Gilgil Block 1/314 and No. Gilgil/Gilgil Block 1/315.
43. That it was during the Plaintiff's quest to obtain title to enable further distribution to its members that it discovered that the 1st Defendant had illegally and fraudulently transferred the two parcels of land into his name, prompting frantic attempts to arrest the situation with the help of the 2nd Defendant and the investigative bodies.
44. That, despite numerous requests to surrender the title deeds to the 2nd Defendant, the 1st Defendant had refused and/or neglected to do so, giving rise to Naivasha Criminal Case Number 192 of 2016. That subsequently, the 1st Defendant had proceeded to erroneously, illegally and/or fraudulently register and obtain title deeds for the suit properties.

45. She particularized illegality and/or fraud on the part of the Plaintiff as:
- i. Making documents without authority to procure registration of the suit properties in their names.
 - ii. Altering documents with the purpose of obtaining registration.
 - iii. Procuring registration of the suit lands without following due process.
 - iv. *Res ipsa loquitor*.
46. She stated that the 1st Defendant was not the Plaintiff's member and that at no time did the Plaintiff permit the transfer of the suit properties to him and/or any other individual. Hence, any transfers made were illegal and/or fraudulent.
47. I have also reviewed the 1st Defendant's witness statement dated 30th January 2023, in which he stated that he was the chairman of DCK Women Group, the Plaintiff herein, and that the said Margaret Nyokabi Muchiri and Nancy Wangare Gathitu, who had instituted the instant suit, were not registered members of the Plaintiff. He further stated that the Plaintiff's members had agreed to purchase a 30-acre parcel of land from Agricultural and Industrial Holding Ltd, which land parcel had been subdivided into 5-acre plots sold at Kshs. 3000/= per acre.
48. That the Plaintiff held a meeting on 17th November 2001, where he was appointed as chairman to facilitate the purchase of the said property and discharge their then chairlady, Susan Wambui, from her duties. Thereafter, the members purchased the plots and made payments according to their financial capacity. That he made payment for a six (6)-acre parcel of land, the 5-acre parcel being Gilgil/Gilgil Block 1/314, while the one (1)-acre portion was to be excised from land parcel No. Gilgil/Gilgil Block 1/315.
49. That after payment for the parcels of land was completed, the title deeds were collected by Susan Wambui from the Agricultural and Industrial Holding Ltd, who handed them over to one Joseph Kamau

Mwangi, who was not a member of the Plaintiff. Joseph Kamau Mwangi then confiscated the titles and refused to give them to the members. The Plaintiff reported the matter to the County Commissioner, Gilgil, where meetings were held to resolve the dispute.

50. That the office of the Commissioner, Gilgil, and the Plaintiff established a committee to verify the official members of the group and requested the Land Registrar, Naivasha, to assist the group in subdividing the plots among the rightful members. The rightful members of the Plaintiff produced receipts for payments made towards the purchase of the parcels of land, and Joseph Kamau Mwangi was instructed to surrender the titles he had illegally confiscated to the Land Registrar, Naivasha. Because Joseph Mwangi and others were not satisfied with the findings of the Commissioner's office, a criminal case was filed in court.

Determination.

51. I have considered the record of appeal, the holding of the trial Magistrate, the written submissions of learned Counsel, the authorities cited and the applicable law.
52. Conscious of my duty as the first Appellate Court in this matter, I have reconsidered the decision appealed against and the evidence adduced in the trial court, both on matters of fact and law, as it is trite of me and I find, from the prayers sought herein by the Appellant, the issues arising therein for determination as follows:
- i. Whether the 1st Respondent's title to Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315 were obtained fraudulently and illegally and are therefore null and void.
 - ii. Whether a declaratory order should issue declaring the Appellant as the bona fide legal and equitable owner of the land parcels known as Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315

- iii. Whether the 2nd Respondent should be directed to revoke the Title Numbers Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315

53. On the first issue for determination, it is trite that the registration of a person and Certificate of title held by a person as a proprietor of a property was conclusive proof that such a person is the absolute and legal owner of the property pursuant to the provisions of Sections 24, 25 and 26 of the Land Registration Act, which stipulate that the owner of a registered title attains indefeasible rights, and interests on the land vested in them by the law.

54. The law is very clear on the position of a holder of a title deed in respect of land. Indeed, 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

55. 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.

56. 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 if it 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.
57. 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
58. 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.”

59. In this case, the Appellant challenged the 1st Respondent’s title to the suit parcels of land, No. Gilgil/Gilgil Block 1/314 and No. Gilgil/Gilgil Block 1/315, asserting that it purchased a 30-acre parcel from Agricultural and

Industrial Holdings. While processing titles for distribution to its members, they discovered that the 1st Respondent had fraudulently registered these two portions in his own name, despite not being a member. The matter had been reported to the police, wherein a criminal case, Naivasha Criminal Case 192 of 2016, was instituted. That they filed the present suit seeking to be declared the rightful owners and for an order to issue to the Registrar, the 2nd Respondent, to revoke the 1st Respondent's titles.

60. The 1st Respondent denied the allegations of fraud and maintained that he is the legal owner of the land he registered. He claimed to be the Chairman of DCK Women Group (Appellant) and was appointed in 2001 to facilitate the land purchase. The land was subdivided into 5-acre plots and sold to members based on what they could pay, during which he personally paid for 6 acres (5 acres comprising Block 1/314 and 1 acre from Block 1/315) as per the receipts and a membership register herein produced in evidence.

61. He also challenged the Appellant's authority, stating that Margaret Nyokabi Muchiri (PW1) and Nancy Wangare Gathitu, who instituted the suit, were not registered members of the group and have no standing to sue. This line of argument was addressed by the trial court, which, vide its ruling dated 31st July 2024, dealt with a preliminary objection. I shall therefore not dwell on it as it has not been raised on appeal.

62. The 1st Respondent explained that the original titles were confiscated by a non-member, one Joseph Kamau Mwangi, which led to an intervention by the County Commissioner. A verification committee was formed, which he claims validated the rightful members and their payments, leading to his legal registration of the suit property.

63. 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 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."

64. I have no doubt in my mind that the Appellant herein had distinctly pleaded the facts on which fraud was alleged against the 1st Respondent. The next step, however, was for them to prove those allegations to the required standard, that the 1st Respondent's title to parcel No. Gilgil/Gilgil Block 1/314 (Kikopey) was acquired illegally, as it is settled law that fraudulent conduct must be distinctly alleged and distinctly proved.

65. The 1st Respondent relied on his title as proof of ownership; however, it is now well established that when the registered proprietor's root title 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:

"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.

...Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, H.E. Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co. (1993) Ltd, who in turn could pass to the appellant.

Article 40 of the Constitution entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of the Constitution. The root of the title having been challenged, as we already noted above, the appellant could not benefit from the doctrine of bona fide purchaser”

66. 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.
67. Based on a careful review of the pleadings, witness statements, and both the documentary and oral evidence adduced during the trial, the following facts appear to be undisputed by the parties.
- i. It is not in contention that the 30-acre parcel of land was originally owned by and purchased from Agricultural and Industrial Holdings Ltd, herein referred to as ADC, wherein the broader land transaction involved a 30-acre parcel.
 - ii. It is also not disputed that the current registration status is that the suit property comprises two specific subdivisions, namely Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315, each measuring approximately 2.020 hectares (roughly 5 acres), and that the titles are currently registered to both the Appellant and the 1st Respondent, George Muchiri Muchuna.
 - iii. The Timeline of Registration shows that as of 23rd June, 2003, both the Appellant (DCK Women Group) and the 1st Respondent were registered as proprietors, but the said titles were reissued on the 29th December 2010 and 23rd May 2011, respectively.

- iv. The Plaintiff does not appear to dispute that the 1st Respondent made some payment of Ksh. 16,000/= as per his receipts, the dispute is not about whether he paid anything, but rather how much land that payment entitled him to.
 - v. Both parties agree that there has been a long-standing conflict over these titles, which led to the intervention of the County Commissioner and the filing of Naivasha Criminal Case No. 192 of 2016.
68. The disputed facts of the case are whether both the Appellants' witness who testifies as PW1, Margaret Nyokabi Muchiri and the 1st Respondent are actually registered members of the DCK Women Group. (Appellant) as each of them flatly denied membership of the other while at the same time claiming to be the legitimate leaders of the DCK Women Group. While the 1st Respondent claims he was appointed Chairman in 2001 to replace one Susan Wambui, the Appellant's witness disputed his chairmanship, portraying him as an outsider who fraudulently took control of the titling process.
69. The 1st Respondent claims he paid for the land personally as an individual member, while the Appellant argues that the land was bought by the Group collectively and that any payments made by the 1st Respondent were merely contributions toward his share, not the entire 10-acre block.
70. Lastly, the Appellant alleges that the 1st Respondent altered and made documents without authority. The 1st Respondent denies this, claiming all documents originated from the vendor (Agricultural and Industrial Holdings) or the Land Registrar following the County Commissioner's resolution.
71. I have looked at the documents herein submitted by the parties in their evidence. A receipt dated the 4th December 2001, issued by Agricultural and Industrial Holdings Limited, confirms that the Appellant paid Ksh

24,200/= for a survey and a title to land parcels No. Block 1/321-326. (Pf exh 2 and Df exh 4)

72. A receipt dated 11th December 2001, issued by Agricultural and Industrial Holdings Limited, confirms that the Appellant paid 3,175/= for title deed fees for Block 1/321-326 (Pf exh 2).

73. A receipt dated 14th May 2002, issued by Agricultural and Industrial Holdings Limited, confirms that the Appellant paid 3,675/= as the final payment for the title deed for Block 1/321-326, (Df exh 4)

74. The Membership subscription payment receipts produced as Df exh 6 issued in 1983 by the Appellant to various members showed payments of Ksh 3,000/= for shares.

75. I have also seen the unclear receipts produced as Df exh 3 which were issued to the 1st Respondent by the Appellant, dated December 1983 for 4,600/ for shares, 8th January 1984 for 400/= for shares, 3rd January 1984 for 1,000/= for shares, 27th January 1984 for 1,000/- for shares, 29th December for 1,000/- for shares, 30th April 19x3 for 4,000/= for shares, 23rd April xxx for 4,800/ for shares and 31st December 1983 for 1,000/= for shares all totaling to Ksh 17,800/=.

76. It is also to be noted that whereas the Appellants herein lay claim to a parcel of land No. Gilgil/Gilgil Block 1/314 and Gilgil/Gilgil Block 1/315, a perusal of the documents herein submitted in evidence as Pf exh 1 shows that both the Appellant and the 1st Respondent were registered as proprietors of Gilgil/Gilgil Block 1/315(Kikopey) and Gilgil/Gilgil Block 1/314 (Kikopey), both measuring 2.020 hectares respectively, on the 23rd June 2003. That, however, as per the Official searches herein produced as Pf exh 3 and Df exh 2, both parties' titles were reissued on the 29th December 2010 and 23rd May 2011, respectively. So it stands, while the Appellant is registered as the owner of Gilgil/Gilgil Block 1/314, the 1st Respondent is also registered as the owner of Gilgil/Gilgil Block 1/315.

77. I have also noted that from the Membership Register dated the 5th November 1979, herein produced as Df exh 5, which consisted of 21

members, while the 1st Respondent's name appeared as the first member, the name of PW1 was missing on the list. A letter dated 17th April 2014, presented as Df exh 8, also confirms that the 1st Respondent was a chairman of the Appellant and one of the committee members chosen to represent the group in transacting its business. A look at the Appellant's minutes of 17th November 2001, also produced as Df exh 8, confirms that the 1st Respondent was in attendance, among others, both as a member and acting chairman. I am thus satisfied that the 1st Respondent was a member/Chairman of the Appellant.

78. I have also noted that although the 1st Respondent in his adopted statement stated that he had made payment for a six (6)-acre parcel of land, the 5-acre parcel being Gilgil/Gilgil Block 1/314, while the one (1)-acre portion was to be excised from land parcel No. Gilgil/Gilgil Block 1/315, there had been no counterclaim or evidence led on this aspect, and I shall leave it at that.

79. Turning back on the issue at hand and considering both the documentary and oral evidence tendered in court, one vital issue stands out to wit that in the entire case, there had been no documentary evidence such as a Sale Agreement, Letter of Allotment, or Transfer Form linking the purchase of Blocks 1/321-326 (Pf exh 2 and Df exh 4) to the current Blocks 1/314 and 1/315, herein produced as Pf exh 1 and Df exh 1. The court is thus faced with a missing link that fundamentally undermines the Appellant/Plaintiff's fraud claim.

80. It is trite under Section 109 of the Evidence Act that "The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person." Indeed, he who alleges must prove. The Appellant alleged that the 1st Respondent fraudulently transferred parcels No Gilgil/Gilgil Block 1/314 and 315, and therefore, to prove fraud, it was incumbent upon them to first prove that they had a legal or equitable interest in those specific parcels.

81. The receipts produced herein show only the purchase of Block 1/321-326, and there is no evidence, such as a mutation form or a letter from the vendor, showing that 321-326 were changed or renumbered to 314 and 315, or that Block 1/321-326 was the same as Block 1/314 and 315. Therefore, the Appellant did not prove that Blocks 1/314 and 315 belonged to them.
82. Fraud cannot be proven in a vacuum because it requires the deprivation of a right. If the Appellant cannot prove ownership of Block 1/314, they cannot technically claim they were defrauded of it, and the court cannot assume that Block 1/314 is one of the blocks the group bought. Therefore, without a paper trail linking the ADC receipts to the suit property, the allegations of altering documents or making documents without authority become impossible to verify.
83. The **Dina Management** case (supra) is a double-edged sword. While the 1st Respondent cannot dangle his title to prove ownership, the Appellant also cannot simply point to a random title and claim it's theirs without a root of title. As the Appellant was the one claiming that the 1st Respondent's title was fraudulently obtained, the burden was on them to prove that the 1st Respondent's title was not authentic. General allegations, however strong the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice. (See **Arthi Highway Developers Ltd vs West End Buthery Ltd & Others C.A Civil Appeal No. 246 of 2013 (2015) eKLR**. From the sum total of the evidence, it is clear that the Appellant's sole evidence fell far short of establishing fraud on the part of the 1st Respondent.
84. The legal conclusion is therefore that, having led insufficient evidence to prove their case, the Appellant's appeal lacks merit and is dismissed with costs.

Dated and delivered via Microsoft Teams at Naivasha, this 30th day of April 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE.