



**Gathuna v Njenga & 3 others (Environment and Land Case
E047 of 2020) [2025] KEELC 5743 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5743 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E047 OF 2020**

**MD MWANGI, J
JULY 24, 2025**

BETWEEN

BETH NYOKABI GATHUNA PLAINTIFF

AND

ROBERT GICHARU NJENGA 1ST DEFENDANT

GRACE WAIRIMU 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

NAIROBI CITY COUNTY 4TH DEFENDANT

JUDGMENT

1. By way of a Complaint dated 30th July 2020, the Plaintiff, a female adult of sound mind and the duly appointed 1st administrator of the Estate of the late Simon Gathuna alias Gathuna Wakaboi/Kabui, instituted the present proceedings against the Defendants. She seeks the following orders:-
 - a. A permanent injunction restraining the 1st and 2nd Defendants, their servants, agents, or anyone claiming under them, from trespassing upon, alienating, constructing on, or otherwise dealing in any manner with land parcel Dagoretti/Ruthimitu/T.119 (hereinafter referred to as ‘the suit property’) or in any other manner dealing whatsoever with the land.
 - b. An eviction order directing the 1st and 2nd Defendants to vacate the suit property.
 - c. Cancellation of the title for land parcel Dagoretti/Ruthimitu/T.119, on the ground that the deceased owner died in 2002 and the property was unlawfully transferred to the 1st and 2nd Defendants in 2005.
 - d. A declaration that the Plaintiff is the lawful owner of land parcel Dagoretti/Ruthimitu/T.119.
 - e. An order directing the 1st and 2nd Defendants to pay special damages to be proved at the hearing.



- f. A permanent injunction restraining the 1st and 2nd Defendants, their servants, agents, or anyone claiming under them, from interfering with or in any way trespassing upon the suit property.
 - g. General damages for trespass.
 - h. Costs of this suit.
 - i. Such further or other relief as this Honourable Court may deem fit and just in the circumstances.
2. It is the Plaintiff's case that the suit property forms part of the estate of the deceased, who passed away on 9th January 2002. Although the property was not listed in the initial schedule of assets annexed to Succession Cause No. 927 of 2002, the Plaintiff avers that subsequent searches revealed that it belonged to the deceased and was intended to devolve to her in accordance with the family's agreement. The grant of letters of administration in the said succession cause was confirmed on 9th February 2015.
 3. The Plaintiff contends that on or about 29th June 2005, the 1st and 2nd Defendants, who are alleged to be strangers to the estate, procured transfer and registration of the suit property into their names, fraudulently and without her knowledge or participation as the administrator of the estate of the late Simon Gathuna alias Gathuna Wakaboi/Kabui. She avers that the Defendants have since dug trenches, constructed permanent structures thereon, installed water connections, and continue to occupy and lease the property for commercial gain, thereby denying the estate its beneficial use.
 4. The Plaintiff attributes the irregular transfer to collusion with the 3rd Defendant, the Land Registrar, who issued the title while the property was still the subject of determination before the High Court in the aforesaid succession proceedings. She further alleges that the 4th Defendant, Nairobi City County, failed to enforce planning and development controls, thereby facilitating the 1st and 2nd Defendants' unlawful activities thereon.
 5. She avers that repeated demands and notices of intention to sue have not elicited compliance from the 1st and 2nd Defendants. She therefore maintains that the 1st and 2nd Defendants are trespassers who cannot derive a valid title from their occupation of the suit property, and that their continued presence amounts to an unjustified invasion of the estate's proprietary rights, resulting in irreparable loss and damage.
 6. The 1st and 2nd Defendants entered appearance and filed a joint statement of Defence and Counterclaim, wherein they denied each and every material allegation contained in the Plaintiff's claim save for the descriptive averments of the parties. They maintained that they are the bona fide and registered proprietors of the parcel of land known as Dagoretti/Ruthimitu/T.119, having purchased the same in 2005 for valuable consideration from the then registered owners, Prof. Teresiah Nungari Kiama and Prof. Stephen Kiama Gitahi, after conducting all requisite due diligence. They asserted that at the time of acquisition, they had neither actual nor constructive notice of any adverse claims and have since enjoyed uninterrupted possession and have developed the suit property by constructing permanent structures thereon.
 7. The 1st and 2nd Defendants further contended that the Plaintiff's claim against them is misconceived, time-barred, and incapable of sustaining any enforceable cause of action, as any claim to recover the property lapsed by operation of law on 30th June 2017. They averred that they have openly and continuously occupied the land for over fifteen years without any challenge from the Plaintiff, who resides within the same locality, and that her suit is an afterthought. They denied any knowledge of the deceased, Simon Gathuna alias Gathuna Wakaboi, or of Succession Cause No. 927 of 2002, insisting



- that as registered proprietors, they enjoy indefeasible title and the constitutionally guaranteed right to quiet possession over the suit property.
8. In their Counterclaim, the 1st and 2nd Defendants reiterated their proprietary rights over the suit land and sought judgment against the Plaintiff for the following orders:
 - a. A declaration that the 1st and 2nd Defendants are the absolute and indefeasible owners of Title No. Dagoretti/Ruthimitu/T.119.
 - b. A permanent injunction restraining the Plaintiff, her servants, agents, or any persons acting under her authority, from entering, occupying, or in any manner interfering with the Defendants' peaceful and quiet possession of the suit property.
 - c. Costs of the suit and the counterclaim, together with interest thereon at such rate and for such period as the court may deem fit.
 - d. Any such further or other relief as the court may in the circumstances find just and expedient to grant.
 9. Consequently, the 1st and 2nd Defendants urged the court to dismiss the Plaintiff's suit with costs and grant them the reliefs sought in their Counterclaim.
 10. In reply to the Defence and Counterclaim, the Plaintiff, Beth Nyokabi Gathuna, reaffirmed her position that Title No. Dagoretti/Ruthimitu/T.119 forms part of the estate of her late father, Simon Gathuna alias Gathuna Wakaboi, and maintained that the 1st and 2nd Defendants fraudulently, irregularly, and unlawfully acquired the title unprocedurally and or without her knowledge as an administrator. She denied all substantive averments in the Defence, challenged the validity of the Defendants' title, and insisted that the deceased never sold the property during his lifetime. The Plaintiff reiterated that any purported transfer in 2005 was null and void, and urged the court to dismiss the Defence and Counterclaim with costs, and order rectification of the register to restore the property to the estate of the deceased, together with the other reliefs sought in her Plaint.
 11. The 3rd Defendant, represented by the Honourable Attorney General, filed a defence denying all material allegations in the Plaint and contending that no reasonable cause of action lies against it. It was admitted that the Chief Land Registrar is the custodian of the land register and that any registration of Title No. Dagoretti/Ruthimitu/T.119 was undertaken on the strength of documents presented and believed to be genuine after due diligence. The 3rd Defendant disclaimed any knowledge of the estate of the late Simon Gathuna alias Gathuna Wakaboi or the alleged irregularities in the transfer, maintaining that any issue concerning inclusion of the suit property in the estate required an amended grant in the succession proceedings. While admitting the jurisdiction of the court and the absence of prior suits between the parties, the 3rd Defendant denied receiving any statutory notice and urged that the suit be dismissed with costs.
 12. By its ruling rendered on 30th November 2023, this Court dismissed the Plaintiff's interlocutory application dated 24th July 2023 seeking leave to amend the Plaint and join two additional Defendants.

Evidence adduced on behalf of the Plaintiff

13. The Plaintiff, who testified as PW1, averred that she is one of the duly appointed administrators of the estate of the late Simon Gathuna alias Gathuna Wakaboi, who passed away on 9th January 2002. She told the court that the suit property, Dagoretti/Ruthimitu/T.119, forms part of the deceased's estate and was unlawfully transferred on 29th June 2005 to the 1st and 2nd Defendants, whom she described as strangers to the estate. She stated that the Defendants had erected permanent commercial



structures, installed water connections, and taken occupation of the land without the consent of the administrators. PW1 insisted that neither she nor her co-administrators were aware of any sale of the property by the deceased and maintained that the Defendants' acquisition of title was fraudulent. In support of her case, she produced in evidence the Certificate of Confirmation of Grant rectified on 9th February 2015, official land searches, correspondence with the Nairobi City County Government (the 4th Defendant), and records of land rates relating to the suit property. PW1 asserted that she and her co-administrators only discovered the alleged unlawful transfer shortly before filing this suit.

14. PW2, Nyandia Gathuna, the sister to the Plaintiff and a co-administrator of the estate of the late Simon Gathuna alias Gathuna Wakaboi, testified that according to the records at the Nairobi City County offices, the suit property, Dagoretti/Ruthimitu/T.119, was still in the name of their late father. She stated that for a long time, they believed the property to be part of the estate; however, upon reviewing the confirmed grant, they later realized that it had not been included in the schedule of assets. PW2 candidly admitted that she could not recall the precise point at which they became aware of this exclusion or when they obtained information regarding the current ownership status of the property. PW2, Nyandia Gathuna, testified that the family relied on Nairobi City County rating records, which continued to reflect the deceased as owner, and that they only later realized the property had not been included in the confirmed grant.
15. PW3, Mary Njoki Leng'ete, a sister to the Plaintiff but not an administrator of the estate, testified that the suit property belonged to their late father, Simon Gathuna alias Gathuna Wakaboi. She stated that by 2005, when the 1st and 2nd Defendants were registered as proprietors, their father had already died. She maintained that to the best of her knowledge, neither she nor any family member had ever sold or authorized the sale of Dagoretti/Ruthimitu/T.119. She recalled visiting the property shortly after their father's death.

Defendants' Evidence

16. The 1st Defendant, Robert Gicharu Njenga, testified on his own behalf and on behalf of the 2nd Defendant. He reiterated that the 1st and 2nd Defendants are the duly registered proprietors of Title No. Dagoretti/Ruthimitu/T.119, having acquired the same in 2005 for valuable consideration from the then registered owners, Prof. Teresiah Nungari Kiama and Prof. Stephen Kiama Gitahi, after conducting all requisite due diligence. He maintained that at the time of purchase, they had neither actual nor constructive notice of any adverse claims and have since enjoyed uninterrupted possession of the property, including the construction of permanent structures thereon. The witness denied any acquaintance with the deceased, Simon Gathuna alias Gathuna Wakaboi, or knowledge of Succession Cause No. 927 of 2002 and asserted that the Plaintiff's claim, brought close to fifteen years after their registration, is not only misconceived but also statute-barred. He further emphasized that as registered owners, they hold an indefeasible title under the law and are constitutionally entitled to peaceful and quiet enjoyment of the suit property. Conclusively, he reiterated the Defendants' counterclaim that sought a declaratory relief, a permanent injunction against the Plaintiff, and costs to the suit.
17. The 2nd Defence Witness, George Gitonga, a Land Registrar from the office of the Chief Land Registrar, testified as DW2 on behalf of the 3rd Defendant. He produced and filed in evidence the certified copy of the green card and an accompanying report that precisely illustrated the historical lineage of ownership of Title No. Dagoretti/Ruthimitu/T.119. He took the court through the parcel's registration history, confirming that the original proprietor was Gathuna Kabui, from whom the property was transferred to Teresiah Nungari Kiama on 13th October 1998, later to Teresiah Nungari Kiama and Prof. Stephen Kiama Gitahi as joint proprietors on 1st December 2003, and finally to the 1st and 2nd Defendants, Robert Gicharu Njenga and Grace Wairimu Njenga, on 29th June 2005.



DW2 testified that each transfer was supported by duly executed and stamped transfer instruments, the requisite Land Control Board consents, and the payment of stamp duty. He affirmed that the process of registration was procedurally proper and in compliance with the law. He further clarified that the rating records relied upon by the Plaintiff, as maintained by the Nairobi City County, do not constitute conclusive proof of ownership and cannot override the entries on the green card, which remains the ultimate and authoritative record of proprietorship.

Plaintiff's Submissions

18. The Plaintiff, through her written submissions, contends that Plot No. Dagoretti/Ruthimitu/T.119 forms part of the estate of the late Simon Gathuna alias Gathuna Wakaboi, who passed away on 9th January 2002, and that the 1st and 2nd Defendants, being strangers to the estate, fraudulently, illegally, and irregularly procured registration of the property in their names in 2005. It is argued that there is no evidence that the deceased ever disposed of the property during his lifetime and that the challenged transfers bear hallmarks of forgery, procedural impropriety, and fraud, including discrepancies in the green card entries and lack of requisite clearance from Nairobi City County Government.
19. The Plaintiff further submits that the challenged transactions amounted to intermeddling with the estate contrary to section 45(1) of the *Law of Succession Act*, and that the 1st and 2nd Defendants could not have acquired a good title, as the root of their title is fundamentally defective. She invokes Article 40 of *the Constitution* on the protection of property rights and sections 26(1) and 80(1) of the *Land Registration Act*, arguing that a title acquired through fraud, illegality, or misrepresentation is impeachable. The Plaintiff cites various authorities, including *Mary Watiri Mwangi v Timothy Kimani Kiburio & Others*, *Esther Matoke Mogaka v Richard Ondieki Makori & 2 Others*, and *Munyu Maina v Hiram Gathiha Maina*, to fortify the principle that where the root of title is challenged, the registered proprietor must demonstrate lawful acquisition.
20. On the basis of the foregoing, the Plaintiff prays for cancellation of the 1st and 2nd Defendants' title, rectification of the register to restore the property to the estate of the deceased, a permanent injunction restraining the Defendants from interfering with the suit land, eviction orders, and general and special damages for trespass and costs of the suit.

Defendants' Submissions

21. The 1st and 2nd Defendants submit that they are the lawful and indefeasible proprietors of Title No. Dagoretti/Ruthimitu/T.119, having acquired the same through a lawful transfer from Teresia Nungari Kiama and Dr. Stephen Kiama Gitahi, the then registered owners, for valuable consideration. They rely on section 27 of the Registered *Land Act* (Cap 300) (repealed) and section 26(1) of the *Land Registration Act*, 2012, which confer upon a registered proprietor the rights of absolute ownership, subject only to encumbrances noted on the register, and protect title from challenge except on the grounds of fraud or misrepresentation to which the proprietor is proved to be a party. They argue that they have demonstrated the root of title, supported by the green card entries, duly executed transfer instruments, Land Control Board consents, and proof of payment of purchase price, as required under section 7 of the *Land Registration Act*. They cite the Court of Appeal decision in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, which underscores that where a registered proprietor's title is challenged, it is not sufficient to rely merely on the instrument of title; rather, the registered proprietor must go beyond it and demonstrate that the acquisition was legal, formal and free from encumbrances.
22. The Defendants further contend that the Plaintiff has not met the evidentiary burden imposed by sections 107–109 of the *Evidence Act* (Cap 80), as her allegations of fraud remain unsubstantiated. They rely on the principle, as reaffirmed in *Vijay Morjaria v Nansingh Madhusingh Darbar & Another*



[2000] eKLR, that fraud must not only be specifically pleaded with full particulars but also strictly proved; it cannot be left to mere inference. They argue that the Plaintiff's documents—a certificate of official search, historical county rating records, and correspondence with the Nairobi City County—do not dislodge their registered title.

23. The testimony of George Gitonga, a Land Registrar from the Chief Land Registrar's office, confirmed the validity of their title and clarified that rating records do not determine ownership. The Defendants maintain that they are bona fide purchasers for value without notice, as defined in *Katende v Haridar & Co. Ltd* (2008) 2 EA 173, having acquired the property in good faith, for valuable consideration, without notice of any adverse claims or defects in the vendors' title.
24. On this basis, the Defendants urge that their constitutionally protected property rights under Article 40 of *the Constitution* of Kenya, 2010 should not be disturbed, absent clear proof of fraud or illegality. They rely on *Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others* [2015] eKLR, where the court held that a title can only be impeached if it is proved that the registered proprietor participated in the alleged fraud or misrepresentation. They also point out to the Plaintiff's inordinate delay in bringing the suit—five years after confirmation of grant—arguing that it evidences bad faith and undermines her claim. Consequently, they pray for a declaration of their absolute ownership, a permanent injunction against the Plaintiff, and costs of the suit and counterclaim in line with the principle that costs follow the event, as restated in *Stanley Nkarichia v Meru Teachers College & Another* [2016] eKLR.

Issues of Determination

25. Having carefully considered the pleadings filed by the parties in this case, the evidence adduced, and the rival submissions of the parties, the Court finds that the issues arising for determination are as follows:
 1. Whether the Plaintiff was competent to institute this suit alone on behalf of the estate of the deceased.
 2. Whether the 1st and 2nd Defendants lawfully and validly acquired Title No. Dagoretti/Ruthimitu/T.119, and whether their registration as proprietors confers upon them absolute and indefeasible ownership under the *Land Registration Act*.
 3. Whether the Plaintiff has discharged the legal and evidentiary burden of proof to revoke the Defendants' title.
 4. Whether the Plaintiff is entitled to the reliefs as sought in her suit.
 5. Whether the 1st and 2nd Defendants are entitled to the reliefs sought in their counter-claim.
 6. Who should bear the costs of this suit and the counterclaim.

Analysis and Determination

I. Whether the Plaintiff was competent to institute this suit alone on behalf of the estate of the deceased.

26. The starting point is the law on representation of estates by administrators. Section 79 of the *Law of Succession Act* vests the property of the deceased in the personal representatives, while Section 82 thereof gives them the power to enforce, by suit or otherwise, causes of action vested in the deceased. However, where there are several administrators, the law requires them to act jointly. In *John Wacira Wambugu v Attorney General & Another* [2016] eKLR, Odunga J, as he then was, citing Willis



Ochieng Odhiambo -vs- Kenya Tourist Development Corporation & another Kisumu HCCC No. 51 of 2007, expressed himself thus:

“The legal position of joint administrators was dealt with in *Willis Ochieng Odhiambo v. Kenya Tourist Development Corporation & Another Kisumu HCCC No. 51 of 2007*, where the Court while citing with approval *Lewin on Trusts*, 16th Edn. at 181; *Williams & Mortimer: Executors, Administrators & Probate* and *Bullen & Leake & Jacobs: Precedents of Pleadings*, 13th Ed. at 373 held that in the case of co-trustees of a private trust, the office is a joint one and that where the administration of the trust is vested in co-trustees they all form as if they were one collective trust and therefore must execute the duties of their offices in their joint capacity. It was further held that although a strict definition of ‘trustee’ does not apply to personal representatives who hold property upon trust for the estate, the legal responsibilities and liabilities of executors and administrators of estates are the same and are treated similarly where matters of procedure are in issue. It is therefore my view and I hold that in such circumstances a compromise of a cause of action must be by the administrators jointly and any purported compromise by only one when the other denies having authorized such compromise cannot stand.”

Joint administrators thus form a single legal unit and must institute or defend suits for or against the estate as one entity. Any proceedings commenced by only one, in the absence of the others, are fatally defective.

27. Applying this principle to the instant matter, the Plaintiff herein, Beth Nyokabi Gathuna, instituted these proceedings singularly, yet the confirmed grant dated 9th February 2015 appointed her alongside her sisters, including PW2 Nyandia Gathuna, as co-administrators of the estate of the late Simon Gathuna alias Gathuna Wakaboi. PW2 in her own words confirmed in her testimony that she did not participate in nor authorize the commencement of these proceedings. There is no evidence of renunciation, consent, or delegation by the co-administrators.
28. I therefore find that the Plaintiff lacked the requisite locus standi to sue alone on behalf of the estate. This defect, on its own, would suffice to strike out this suit. Nonetheless, in the interest of completeness and guided by good judicial practice, I will proceed to determine the other substantive issues raised.

II. Whether the 1st and 2nd Defendants lawfully and validly acquired Title No. Dagoretti/Ruthimitu/T.119, thereby obtaining absolute and indefeasible ownership under the [Land Registration Act](#)

29. In determining this issue, I am guided by the clear provisions of Section 26(1) of the [Land Registration Act](#), 2012, which provides that:

“The certificate of title... shall be taken by all courts as prima facie evidence that the person named as proprietor... is the absolute and indefeasible owner... and the title... 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.”



The statutory presumption of indefeasibility of title is therefore only displaced where credible evidence of fraud, misrepresentation, illegality, or procedural impropriety is demonstrated.

30. The jurisprudence surrounding this provision has been well settled by the superior courts of this country. In *Munyu Maina -vs- Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held that:

“When a registered proprietor’s root of title is under challenge... the registered proprietor must... show that the acquisition was legal, formal and free from any encumbrances.”

31. Equally, in *Republic -vs- Minister for Lands & Another; Ex Parte Mumias Sugar Co. Ltd* [2003] eKLR 130, the court emphasized that:

“Indefeasibility of title is a golden rule” unless exceptional circumstances are proven. These decisions underscore that a duly issued certificate of title is conclusive proof of ownership unless its acquisition falls within the limited exceptions envisaged under section 26(1).

32. I have carefully examined the evidence placed before this court. The Defendants have produced the full chain of ownership of Title No. Dagoretti/Ruthimitu/T.119, including the green card entries tracing the transfers from the Plaintiff’s late father, Gathuna Kabui, to Teresia Nungari Kiama, then to Teresia Nungari Kiama and Dr. Stephen Kiama Gitahi, and finally to the 1st and 2nd Defendants. The record is supported by certified copies of Land Control Board consents for each transaction, duly executed and stamped transfer instruments, and payment vouchers for stamp duty and the purchase consideration. Further corroborating this evidence was the testimony of George Gitonga, the Land Registrar, who confirmed that each transfer was procedurally proper and free from any encumbrances or irregularities.

33. On the other hand, the Plaintiff has not produced evidence capable of displacing the presumption of indefeasibility of the Defendants’ title. No evidence of fraud, misrepresentation, or illegal dealings has been tendered. The Plaintiff’s reliance on historical rating records and correspondence with the Nairobi City County Land Rates Office cannot, in law, override the green card entries maintained at the Ministry of Lands, which constitute the definitive records of proprietorship. There are no exceptional circumstances proven that would warrant the court to depart from the statutory guarantee of indefeasibility.

34. By dint of this analysis, I am satisfied that the 1st and 2nd Defendants lawfully and validly acquired Title No. Dagoretti/Ruthimitu/T.119, and that their registration confers upon them absolute and indefeasible ownership as contemplated under section 26(1) of the *Land Registration Act*.

III. Whether the Plaintiff has discharged the legal and evidentiary burden of proof to revoke the Defendants’ title

35. The starting point in determining this issue is Section 107(1) of the *Evidence Act*, which provides:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

36. A fact, as clarified under Section 3(2) of the same Act, is proved when “the Court either believes it to exist or considers its existence so probable that a prudent man ought to act upon the supposition that it exists.”



37. It is therefore incumbent upon the Plaintiff to establish, on a balance of probabilities, that the Defendants' title falls within the exceptions to indefeasibility under Section 26(1) of the [Land Registration Act](#). Where fraud is alleged, the standard of proof, though not as high as in criminal proceedings, is higher than a mere balance of probabilities.
38. It is trite law that fraud must not only be specifically pleaded, but the particulars thereof must be distinctly proved. In *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, Tunoi JA emphatically held:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
39. Similarly, in *Alice Chemutai Too -vs- Nickson Kipkurui Korir & 2 Others* [2015] eKLR, the court held that,
- “Where one intends to impeach title on the basis that the title has been procured... by fraud... then he needs to prove that the title holder was party to the fraud or misrepresentation.”
40. I have scrutinized the Plaintiff's pleadings and evidence. The allegations of fraud are directed largely against the Defendants' predecessors in title and are premised on a claim that the transfer instruments were forged and that there was collusion between Teresia Nungari Kiama and Dr. Stephen Kiama Gitahi. However, the Plaintiff neither called a handwriting expert nor produced forensic evidence to support the forgery claim. No official from the Ministry of Lands was called by her to controvert the chain of title as demonstrated by the Defendants. The testimony of George Gitonga, the Land Registrar, on the other hand, confirmed that all transfers were procedurally proper, supported by the requisite consents, and duly registered.
41. The Defendants have also demonstrated that they are bona fide purchasers for value without notice, having purchased the suit property in good faith, paid valuable consideration, and acquired it free from any encumbrances. The Court of Appeal of Uganda in *Katende -vs- Haridar & Company Ltd* (2008) 2 EA 173 succinctly defined a bona fide purchaser as:
- “A bona fide purchaser is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. He does not have notice of the fraud, and he purchases for valuable consideration.”
42. The Plaintiff in the instant suit has not displaced this presumption. Having weighed the evidence, I find that the Plaintiff has failed to discharge the legal and evidentiary burden of proof necessary to impeach the Defendants' title. The allegations of fraud and illegality remain bare, unsubstantiated, and fall short of the heightened standard required by law.

IV. Whether the Plaintiff is entitled to the reliefs sought

43. The Plaintiff seeks orders of permanent injunction, eviction, cancellation of title, damages, and costs. These remedies are discretionary and are grounded on the existence of a proven superior legal right. As held in *Alice Chemutai Too -vs- Nickson Kipkurui Korir & 2 Others* [2015] eKLR, cancellation of title can only issue where fraud, illegality, or misrepresentation has been proved against the titleholder. In this case, no such proof has been forthcoming.



44. An injunction cannot issue to protect a non-existent or unproven right. I have found under the first and second issue that the 1st and 2nd Defendants hold valid, indefeasible title to the suit property and that the Plaintiff has failed to prove any defect therein. It therefore follows that she has no superior interest to ground her claim for injunctive relief or eviction of the Defendants, who are the rightful proprietors in possession.
45. Equally, claims for damages presuppose an unlawful act or wrongful dispossession, which have not been demonstrated. As the Plaintiff's claim has collapsed on the threshold issues, the consequential reliefs sought must similarly fail. I therefore hold that the Plaintiff is not entitled to any of the reliefs sought in her plaint.

V. Whether the 1st and 2nd Defendants have established their entitlement to the reliefs sought in their counterclaim.

46. I now turn to the issue of whether the 1st and 2nd Defendants have established their entitlement to the reliefs sought in their counterclaim, specifically a declaration of ownership and a permanent injunction.
47. As has been stated severally, Section 26(1) of the *Land Registration Act*, 2012 provides that a certificate of title;

“Shall be taken by all courts as prima facie evidence that the person named as proprietor...”

48. On the prayer for a permanent injunction, the guiding principles were outlined in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where the court held:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury. Thirdly, if the court is in doubt, it will decide the application on the balance of convenience.”

49. Having already found that the Defendants lawfully acquired Title No. Dagoretti/Ruthimitu/T.119 and that their registration confers upon them absolute and indefeasible ownership, it follows that they have demonstrated a superior legal right that must be protected. I am therefore persuaded that the Defendants have met the threshold for the grant of a permanent injunction to protect their proprietary rights from unlawful interference. In the circumstances, I find that the 1st and 2nd Defendants are entitled to the reliefs sought.

VI. Who should bear the costs of this suit and the counterclaim

50. The general principle on costs is codified under Section 27(1) of the *Civil Procedure Act*, which provides that:

“Costs shall follow the event unless the court or judge shall for good reason otherwise order.

51. In *Stanley Nkarichia v Meru Teachers College & Another* [2016] eKLR, the court underscored this principle, stating that:

“As a matter of general principle, costs follow the event and the successful party will always have costs of his success unless the court has good reason to order otherwise.”



52. The Defendants having successfully defended the suit and prevailed on their counterclaim. I find no reason to depart from the settled principle that costs follow the event. The Plaintiff shall accordingly bear the costs of both the suit and the counterclaim.
53. The end result, and for the reasons set out in this judgment, the Plaintiff's suit is hereby dismissed with costs to the 1st and 2nd Defendants. Judgment is entered in favour of the 1st and 2nd Defendants for the following orders:
- a. A declaration is hereby issued that the 1st and 2nd Defendants are the absolute and indefeasible proprietors of Title No. Dagoretti/Ruthimitu/T.119.
 - b. A permanent injunction is hereby granted restraining the Plaintiff, whether by herself, her servants, or agents, from entering upon, trespassing, or in any manner interfering with the Defendants' quiet possession and enjoyment of the said property.
 - c. The Plaintiff shall bear the costs of the suit and the counterclaim, together with interest thereon at court rates from the date of this judgment until payment in full.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ondieki for the Plaintiff

Mr. Wachira for the 1st and 2nd Defendants

Mr. Okello h/b for Mr. Mwambonu for the 3rd Defendant

N/A by the 4th Defendant

Court Assistant: Edwin

