



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC NO. 81 OF 2019

**GLADYS WAITHIRA KAMAU.....
.....PLAINTIFF**

VERSUS

- 1. MARY NYAMBURA WAHOME.....1ST
DEFENDANT**
- 2. JOYCE WANGARE MWANGI.....2ND
DEFENDANT**
- 3. ALICE WANGARI KARIUKI.....3RD
DEFENDANT**
- 4. DOMINIC KUNGU NJOROGE.....4TH
DEFENDANT**
- 5. EVANS LYULA SHIECHELO.....5TH
DEFENDANT**
- 6. PATRICK ZACHARIA ONDIEKI.....6TH
DEFENDANT**
- 7. JANE MUTHONI MWANGI.....7TH
DEFENDANT**
- 8. LUCY WAIRIMU.....8TH
DEFENDANT**
- 9. SAMUEL NDUNGU NGUGI.....9TH
DEFENDANT**
- 10. CLEMENT OMONDI OYUCHO.....10TH
DEFENDANT**

11.	HARMONY 2013 REAL ESTATE DEVELOPER....	
11TH DEFENDANT	
12.	BENEDICT MOTAI KAVUVA.....	12TH
	DEFENDANT	
13.	ELIAS KIBUNJA KIRIGIA.....	13TH
	DEFENDANT	
14.	ELIZABETH WANJIRU GICHUHI.....	14TH
	DEFENDANT	
15.	MOSES KARURIA THEMU.....	15TH
	DEFENDANT	
16.	JANE WAMBUI MOKABU.....	16TH
	DEFENDANT	
17.	FLORENCE WAIRIMU GACHAGUA.....	17TH
	DEFENDANT	
18.	JAMES KINYANJUI MBURU.....	18TH
	DEFENDANT	
	PAULINE N. NYAMBURA.....	18TH
	DEFENDANT	
19.	BENSON KIGAI MUGAU.....	19TH
	DEFENDANT	
20.	ISAAC NDICHU & LOISE NDUTA.....	20TH
	DEFENDANT	

JUDGMENT

1. The Plaintiff's claim is rooted in the purchase of the suit properties between 1987 and 1989 from Mwhoko Housing Company Limited. Following this purchase, she alleges to have been issued with residential plot certificates. She subsequently processed and obtained formal Leases for the properties. Upon attempting to develop her land, she alleges to have discovered the Defendants had trespassed and

taken illegal occupation. Despite a formal notice to vacate dated 2/04/2019, the Defendants remained defiant, necessitating this suit.

2. So, vide a Plaint dated 17/04/2019 the Plaintiff seeks the following prayers:

(a) An order of eviction to issue forthwith against each Defendant accordingly as per paragraph 6 above.

(b) A mandatory injunction directed against the Defendants to demolish/remove all structures (if any) erected on the suit properties and in default the Plaintiff be of liberty to demolish all the structures erected on suit properties with costs to be borne by the Defendants individually.

(c) A permanent injunction directed against the Defendants, their agents employees, servants and or any other person claiming through them to desist from, trespassing, alienating, wasting or interfering in any way with the Plaintiff's ownership of the said properties.

(d) The OCS Kasarani Police Station to supervise and ensure compliance of the Court orders.

(e) General damages for trespassing and unlawful entry into the suit properties.

(f) Costs of the suit to be borne by the Defendants jointly and severally.

(g) Interest on (e) and (f) above.

3. The Plaintiff claims to be the registered owner of all 21 plots measuring approximately 0.0360 hectares that she bought on diverse dates under the names of Thome Wambo Women Self Help Group and Waithiguru Women Group from Mwihoko Housing Company Limited and obtained plot certificates of all the plots. The Land Registrar Thika District Registry in her names hence she contends that she holds indefeasible/absolute Bonafide titles to the suit properties for a period of 99 years beginning 1/09/1995.
4. The Plaintiff claims that despite the persistent demands that the Defendants vacate the suit properties the Defendants have adamantly refused, neglected and or failed to vacate, claiming they are the lawful owners of the said representative plots.
5. Further that the Plaintiff made a complaint with the Ministry of Lands Ardh House and when investigations were done it was established that the Plaintiff was lawful owner of the said plots and the DCI issued a clearance letter dated 19/01/2018. That despite dissuading the Defendants from trespassing and erecting illegal structures on the suit properties they have continued.
6. The Searches that the Plaintiff carried out confirmed her ownership and that she was issued with certificates of search showing her as the absolute owner of the said properties and

so the Defendants are trespassers and should be evicted forthwith.

7. The Plaintiff's claim against the Defendants individually is for an order of eviction, a permanent injunction restraining them, their servants and or agents from trespassing i.e alienating, committing waste, erecting any structure on the suit properties or in any way interfering with the Plaintiff's quiet possession and enjoyment of the said properties and an order of demolition of any structure erected on the said plots and general damages for wrongful entry and trespass into the said properties belonging to the Plaintiff.
8. The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 16th, 17th, 18th, 19th and 20th Defendants, in their Statement of Defence dated 11/05/2020, denied the averments in the Plaint and stated that they on diverse dates purchased their individual properties from Mwhoko Housing Company Limited and were issued with respective Clearance Certificates authorizing processing and issuance of titles.
9. They also aver that upon purchase, they took possession and constructed residential houses upon which they are living to date. Further the Ministry of Lands recommended on 20th May 2019 of all processing of titles for the suit properties until clearance by DCIO Ruiru or a Court of Law and neither was issued.

10. According to the Defendants had the Plaintiff done her due diligence, she would have found that there were people already living on the property that she was about to purchase and the alleged loss would not have been occasioned upon her.
11. The Defendants deny that the Plaintiff is deserving of the orders prayed as she has not shown to the Court why she deserves them and further reiterates that they are the Bonafide purchasers and owners of their respective suit properties subject of this suit.
12. It is the contention of the Defendants save for the 14th Defendant that demand and notice of intention to sue was not issued. Further that there is another suit pending before this Honorable Court being **ELC 130 of 2019 - Samuel Ndungu Ngugi, Alice Wangari Kariuki & Others versus Chief Land Registrar and Gladys Waithira Kamau** which is yet to be determined.
13. The Defendants pray that the Plaintiff's suit against the 1st to 20th Defendants save for the 14th Defendant be dismissed with costs.
14. The 14th Defendant in the Statement of Defence dated 3/09/2020 states that the 14th Defendant bought the said Ruiru/Kiu Block 4/1381 Certificate No. 1167 together with plots corresponding with Certificates numbers 1164, 1165, 1166 and Ruiru/Kiu Block 4/1379 from Mwihoko Housing Company Ltd in the year 2001. That pursuant to the said

purchase the Defendant was granted possession of the said plots on which she had built her residence and cultivates the rest of the land.

15. It is the averment of the 14th Defendant that the said Mwhiko Housing Co. Ltd having sold the above referenced plot Ruiru/Kiu Block 4/1381 Certificate No. 1167 did not have any locus standi to again sell the same plot to the Plaintiff either directly or through any other purported party.
16. He further denies that the Plaintiff was issued with Certificates of Lease in respect to the suit property. At the same time on a without prejudice basis the 14th Defendant states that the subject matter as relates to plot corresponding to certificate numbers 1167, 1166, 1165 and 1164 were the subject of **Thika MCL & E No. 3 of 2019** formerly **Thika ELC No. 310 of 2018** which has since been determined and so according to the 14th Defendant the subject matter of the issues of Ruiru/Kiu Block 4/1381 Certificate Number 1167 is res judicata.
17. The 14th Defendant prays that the Plaintiff's suit against the 14th Defendant be dismissed with costs.

Plaintiff's Case.

18. By the time this case was heard on 11/02/2025 the Plaintiff was deceased and so the legal representative testified as PW1 - David Stanley Kamau. He stated that he was the legal representative of Gladys Kamau and adopted

his witness statement dated 29/09/2022 as his evidence in chief.

19. He also stated that he had adopted the witness statement of Gladys Waithera Kamau (deceased) dated 17/04/2019 and the one dated 3/10/2019. At the same time, he produced the list(s) of documents as exhibits dated 17/04/2019, 3/10/2019 by Gladys Waithera and one dated 12/10/2020.
20. Upon cross-examination, he stated his wife purchased the suit properties around 1980s and that he had receipts, Allotment Letter which he produced although he did not have a Sale Agreement. He also testified that he had produced title deeds. He told the Court that he did not actively participate in the purchase of the suit properties.
21. According to PW1, the documents produced in the Plaintiff's trial bundle at page 117 show that the certificate is for Wathiguru Women Group and the one at page 24 show it is from Thome Wambo Women Self Help Group belonging to Gladys.
22. That at paragraph 3 of the Complaint, it states that Gladys bought the plots under the names of the groups mentioned there although he could not produce Sale Agreements to support his claim. He stated that he did not know when titles were processed but at page 205 of the bundle, he produced copied of titles issued and processed on 16/04/2018 although the properties were bought in the 1980s. PW1 told

the Court that he did not know why Gladys did not process titles earlier.

23.PW1 told the Court that he was not aware that the Defendants are settled on the suit property. Further that he did not have letters from Mwihoko nor approval from the Ministry of Lands to have the titles processed in the name of Gladys and that the land buying companies cannot process title without approval and he produced none.

24.He also testified that he was not aware that Mwihoko was to compensate Gladys with other properties as per the letter at page 78 of the Defendants' trial bundle.

25.On further cross-examination by Counsel **Masore** for the 14th Defendant, he told the Court that the suit properties belonged to his wife. He also stated that he was not aware that the Surveyor was to visit the suit property to be shown the beacons by his wife. According to him, the Defendants have erected illegal structures and he is not aware that there is approval from Local Government.

26.PW1- stated that he is claiming LR Plot No. 1381 from the 14th Defendant. Further that he is not aware that the 14th Defendant sued his wife in **CMCC ELC 3 of 2019** and neither does he know the outcome of the said suit which is concluded.

27.On re-examination it was his testimony that he had not seen the Share Certificate of the 14th Defendant but that he had seen a receipt relating to plot No. 1167. He also told the

Court that he had not been shown any Judgment from **CMCCMCELC No. 3 of 2019**. Additionally, he stated that the pictures produced in Court do not show which plot the houses are build on and neither were approval plans produced. Therefore, it is his position that if the houses are built on Gladys's plot they need to be demolished since they are illegal.

28. Furthermore, he stated that when one buys land he gets a receipt, a Share Certificate and then title. That however the deceased did not process title since 1989 and that he did not know why. With that the Plaintiff closed his case.

Defense Case

29. DW1 - Samuel Ndungu Ngugi introduced himself as a Church Elder. He adopted his witness statement as evidence in chief and a list of documents dated 11/05/2020 as exhibits including an authority to plead which he stated he was given by the rest of the Defendants to plead on their behalf. He was testifying on behalf of the 1st to 20th Defendants save for the 14th Defendant.

30. On cross-examination he told the Court that he became aware that the deceased was given leases in 2005 on 08/03/2005. That when they got evidence about this, they started pursuing matter with DCI though he did not produce any documents to support this claim in Court. He testified having bought this portion from Kirima-Mwihoko but that he

had no Sale Agreement produced in Court from the one who sold it to him.

31. He stated that he had not produced a Share Certificate but an Allotment Letter from Mwioko on 8/02/2005 which is the same day Gladys was issued with leases. According to him, they bought the suit property in 2004 although he testified that he did not have any documents to support his claim. That all the Defendants on whose behalf he is testifying bought property at different times. Some have shown Share Certificates and some Allotment Letters from Mwioko.

32. That they were sent to Ruiru to try and resolve the issue but they never met Gladys. DW1 testified that they got Share Certificates before issuance of leases and the issue of ownership was never resolved.

33. When cross-examined by Counsel **Masore** he testified that he had developed his parcel of land and he resides on it. He told the Court that he did not know the 14th Defendant. That he got approvals for development of his parcel and that his structure is not illegal. On re-examination he testified the letter from Ardhi House came on 8/02/2005 and that he discovered that the leases were issued to somebody on 4/04/2018. Yet leases to Gladys were issued on 16/04/2018 and his allotment and those of the other Defendants came out before 2018.

34. DW2- Alice Wangari Kariuki adopted her witness statement as evidence in chief and a list of documents as exhibits. She

stated that as per the authority filed at page 4 of the trial bundle, she was given authority to plead on behalf of the other Defendants.

35. When she was cross-examined, she testified that she bought and was issued with Share Certificate number 1132 for LR 1372. That she bought her parcel from Mwihoko in July 2019 and she was given a Share Certificate. According to her the letter at page 60 from the Ministry of Lands in her trial bundle was copied to Gladys Waithira Kamau and it is dated 4/04/2018.

36. That the letter from the DCI dated 19/01/2018 state that the titles of the land were registered under one person as shown at page 36 of the trial bundle.

37. DW-14 Samuel Mathenge Ngure stated that he was a businessman residing in Mavoko. She told the Court that she was substituted when the 14th Defendant passed on. She adopted the witness statement recorded earlier and also, she referred to the Defence filed on 3/09/2020. She adopted both her mother's (14th Defendant) witness statement and her own as evidence in chief.

38. She produced a List of Documents filed on 03/09/2020 which is at page 14 of the trial bundle. She also produced the Court Judgment rendered in **CMCELC No. 3 of 2019**.

39. According to her testimony she has lived on the suit property since she was born. That the said suit property was purchased in 2001 and that she is not aware that the Plaintiff

bought the suit property in 2007 as per the certificate produced in the Plaintiff's bundle at page 203.

40. She stated that she did not have the certificate for plot 1167 as shown in the Plaintiff's trial bundle at page 203 but that when they bought their parcels of land, they were issued with Share Certificates. She stated that she has produced photographs showing her building in the middle of four properties. That they had approved plans although she did not produce them in Court.

41. It is her testimony that she has lease certificate for plot parcel; Ruiru Kiu Plot 4/1379 which property is built on parcel 1165. That he has a Judgment delivered in **CMCC 3 OF 2019** which states that they had purchased the property and that they had stayed there for long but that his mother died before the suit property had been transferred to them.

42. DW-14 told the Court that they were told to surrender Plot 1167 by Mwioko but they refused. That the Plaintiff had a certificate and the search at page 200 show that the Plaintiff was the registered owner of parcels 1164, 1166 and 1167 but that according to her that is erroneous since they are the ones who bought the property and Mwioko issued them with receipts.

43. That apart from receipts she has no leases but that the property does not belong to the Plaintiff.

44. On being re-examined, she clarified that this case was filed in 2019 and the Case in the CM's Court was filed later.

However, she again stated that they had filed their case in 2018 being **MCELC 310 OF 2018** but upon transfer to the Subordinate Court it became **MCELC 3 OF 2019** and so their case was filed earlier than the instant suit.

45. That in the Judgment of **MCELC 3 OF 2019** the Court determined all questions relating to the plots and neither the Plaintiff nor Mwihoko Housing appealed. It is her testimony that the house as shown in the photographs at pages 25 to 35 is in the middle and it touches on all the four plots.

46. She told the Court that she was asked to surrender plot 1167 and it is one of the plots she had sued for and the Court's Judgment did not order her to surrender the said plot. Instead, the Court gave her mother the plots and the administrator of the Court was ordered to sign the transfer documents.

47. With that the 14th Defendant closed their cases.

48. The Court directed parties to file their written submissions and reserved a Judgment date.

Plaintiff's Submissions

49. The Plaintiff filed their submissions dated 29/12/2025 and she submits that this Honorable Court should issue final orders in this dispute, asserting her unwavering right to the suit properties which she lawfully acquired between 1987 and 1989. She avers that having purchased these parcels from Mwihoko Housing Company Limited, she was duly issued with residential plot certificates as evidenced in the

Plaintiff's Bundle dated 4/10/19 (pages 15-79) and the Bundle dated 9/11/21 in **ELC 130/19** (pages 13-270).

50. She further submits that she subsequently followed all legal channels to process and obtain formal Leases from the Land Registry. She avers that this litigation arose when the Plaintiff, intending to develop her land, discovered that the Defendants had moved onto the property without any color of right. Despite being served with a formal Notice to vacate dated 2/04/2019, the Defendants chose to remain in occupation, making the filing of **ELC No. 81 of 2019** an absolute necessity.

51. In her submissions she has also stated that the Defendants' claim of lawful occupation lacks both legal and evidentiary weight. She has stated that whereas the Defendants allege to have bought the land from the same Company on non-specific dates, yet many have failed to produce even a basic plot certificate. Those who have produced documents present certificates dated as late as 2015, long after the Plaintiff's interest had vested. That most telling is the Defendants' admission that they were aware of the Plaintiff's Leases as early as 2005, yet they sat on their alleged rights for over a decade. Their failure to join Mwhoko Housing Company Limited to explain these alleged double allocations means they cannot now shift the blame to a *bona fide* purchaser like the Plaintiff.

52. It is the Plaintiff's case that her claim is anchored on the principle of indefeasibility of title as protected under the Land Registration Act. That she placed before this Court a comprehensive trail of ownership, including **purchase receipts dated 29/9/89 and 10/10/08** as per the **Supplementary Record dated 29/9/22** and the **Further List of Documents dated 12/10/22**. To further bolster the legitimacy of her claim, the Plaintiff produced a **clearance letter from the Directorate of Criminal Investigations (DCI)** confirming that her titles were not the product of any fraudulent dealings. In contrast, the Defendants have attempted to rely on a letter dated 4th April 2018 where they clumsily inserted their names by hand - a clear indicator of fraud on their part rather than the Plaintiff's.

53. She contends in her submissions that the 14th Defendant's specific plea of *res judicata* is equally untenable in law. That the doctrine, as set out in Section 7 of the Civil Procedure Act, requires a final determination of the issue in a former suit between the same parties. She submits that no such finality existed at the time of filing, and the 14th Defendant failed to provide the necessary pleadings and Decrees from the Thika suit to allow this Court to make a proper comparison. Furthermore, the 14th Defendant's claim fluctuates between being a purchaser and an adverse possessor; and that these two legal positions are mutually exclusive and cannot co-exist in the same breath.

54. In light of the statutory protections under the Land Registration Act, specifically Section 24, which recognizes the registered owner as the absolute proprietor of the land, and Section 25, which provides that first registration shall not be defeated except as provided in the Act, the Plaintiff submits that she stands as the absolute owner. Section 23(a) further gives an absolute and indefeasible title to the owner, subject only to a challenge on grounds of fraud to which the owner is a party. Thus, this Court is urged to find guidance in the established jurisprudence of **Dr. Joseph Arap Ngok - Vs- Justice Moiwo Ole Keiwua & 5 Others, Nai. Civil. Appeal No. 60 of 1997** and **Munyu Maina v Hiram Gathiha Maina [2013] eKLR (Civil Appeal 239 of 2009)**, which affirm that a Certificate of Lease is conclusive evidence of proprietorship.

55. That since the Defendants have failed to discharge the heavy burden of proving fraud under Sections 107-109 of the Evidence Act (Cap 80), which mandates that whoever desires the Court to give Judgment as to any legal right dependent on facts must prove those facts exist, their defense must crumble. The Plaintiff thus prays for the entry of Judgment as prayed in the Plaint and Counter-claim, including orders for eviction, permanent injunctions, and special damages of Ksh. 60,000/-, following the principle in **Mrao Limited v. First American Bank (2003) eKLR** that

the Plaintiff has established a *prima facie* case with a high probability of success.

1st to 20th Defendant's Submissions (save for 14th Defendant)

56. The 1st to 20th Defendants (save for 14th Defendant hereinafter the Defendants) filed their submissions dated 12/01/2026. They submitted that following the consolidation of **ELC No. 81 of 2019** and **ELC No. 130 of 2019**, the 1st to 20th Defendants (with the exception of the 14th Defendant) moves this Honorable Court to find that they are the rightful, bona fide owners of the suit properties. According to the submissions by the Defendants, they submit that this dispute centers on whether the Plaintiff's recently acquired paper titles can override the Defendants' long-standing, open, and lawful occupation of the land.

57. The Defendants' case that they are bona fide purchasers for value. They contend that between the years 2008 and 2015, they purchased these parcels from Mwhoko Housing Company Limited, receiving Clearance Certificates that authorized the issuance of formal titles. It was only upon presenting these documents to the Chief Land Registrar that they discovered, to their dismay, that the land had been registered in the Plaintiff's name. That the Plaintiff's Certificates of Lease were only registered in 2018 years after the Defendants had already moved onto the land, erected their homes, and established their lives.

58. It is their submission that in Kenyan land law, it is an age-old maxim that possession is nine-tenths of the law. The Defendants invite the Court to consider that they have been in actual and constructive possession of these properties from the moment of purchase. They cite the case of the Court of Appeal in **Bandi v Dzomo & 76 Others (Civil Appeal 16 of 2020) [2022] KECA 584 (KLR)**, which drew from the earlier holding in **Benja Properties Limited vs. Syedna Mohammed Burhannudin Sahed & 4 Others [2015] eKLR**. The Court of Appeal held that:

"It is trite law that all titles to land are ultimately based upon possession in the sense that the title of the man seised prevails against all who can show no better right to seisin. Seisin is a root of title."

Relying on the Privy Council decision in **Wuta-Ofei -vs- Danquah (1961) 1 All ER 596**, the Court noted that even the slightest amount of possession is sufficient to establish a right. Having quietly enjoyed and occupied this land for years, the Defendants' right to the suit property is superior to a title obtained much later.

59. Furthermore, the Defendants submit that the Plaintiff's claim is fundamentally flawed and lacks merit. That though the Plaintiff alleges that she purchased the land in the late 1980's on behalf of Thome Wambo Women Self Help Group

and Wathiguru Women Group, she has failed to present any trust deed or evidence of her appointment as a trustee.

60. More strikingly, the Plaintiff has not produced any transfer documents or conveyancing instruments that were used to obtain the 2018 Leases. In the absence of such documents, the Defendants maintain that these Leases were irregularly and illegally obtained. The Plaintiff has also failed to explain why she allowed the Defendants to occupy and develop the land for decades if she truly held a valid interest.

61. That the burden of proof in this matter lies squarely on the Plaintiff's shoulders. Under Section 107 of the Evidence Act (Cap 80), it is provided that:

"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."

62. Section 108 further clarifies that the burden lies on the person who would fail if no evidence were given, while Section 109 states that:

"The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence."

63. The Plaintiff has failed to meet this threshold; she has not proved her case on a balance of probabilities, and her suit must therefore fail.

64. Finally, on the question of costs, the Defendants pray that this Honorable Court exercise its discretion to award them costs for defending this frivolous action. Section 27(1) of the Civil Procedure Act (Cap 21) mandates that:

"The costs of and incidental to all suits shall be in the discretion of the Court or Judge ... provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order."

65. As noted by **Richard Kuloba in Judicial Hints on Civil Procedure (2nd Edition)**, a party who is forced to defend a legal right is entitled to costs as a matter of course. This was echoed by the **High Court at Nyeri in Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another [2016] eKLR**, citing **Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd**, which emphasized that costs are compensatory for the trouble taken in litigation and must follow the event unless there are good reasons to depart from the rule.

66. In conclusion, the Defendants submit that the Plaintiff's suit is scandalous and vexatious. They are bona fide purchasers who have made their homes on this land, while the Plaintiff's claim is a late-day attempt to disrupt their quiet enjoyment.

It is their humble prayer that the Plaintiff's suit be dismissed with costs to the Defendants.

14th Defendant's Submissions

67. The 14th Defendant filed their submissions dated 12/01/2026 rendered in opposition to the Plaintiff's suit and in steadfast support of the 14th Defendant's Defense. The 14th Defendant (hereinafter the "**Defendant**") contends that Plaintiff's claim, as set out in the Plaint dated 17/04/ 2019, seeks to label the 14th Defendant a trespasser on the parcel of land known as **Title Number Ruiru/Kiu Block 4/1381 (Certificate Number 1167)**. In the Plaint, the Plaintiff prays for several reliefs, including eviction, demolition of structures, and permanent injunctions.

68. However, the 14th Defendant maintains that her occupation is founded on a lawful purchase from **Mwihoko Housing Company Limited** in the year 2001. Since that purchase, she has been in open possession, has constructed her residence, and continues to cultivate the land. Having parted with the suit property to the 14th Defendant over two decades ago, the vendor, Mwihoko Housing Company Ltd., had no *locus standi* to subsequently sell the same parcel to the Plaintiff's alleged predecessors.

69. Further that the 14th Defendant has raised a plea of *res judicata*. That the ownership of Certificate Number 1167, along with several adjacent plots, was the specific subject of **Thika MCL & E No. 3 of 2019 (formerly Thika ELC No.**

310 of 2018): Elizabeth Wanjiru Gichuhi vs. Mwihoko Housing Company Ltd., Gladys Waithera Kamau & Chief Land Registrar. According to the 14th Defendant, that suit, involving the very same parties and the same subject matter, has been heard and finally determined. In that Judgment, the Court declared the 14th Defendant as the rightful proprietor and ordered the execution of transfer documents in her favor a Judgment that remains valid, unappealed, and binding to this day.

70. Consequently, that this Court is legally forbidden from re-litigating these issues. And the Court's attention is drawn to the mandatory provisions of Section 7 of the Civil Procedure Act, which provides that:

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court."

71. The 14th Defendant submits that because the Thika Court has already pronounced itself on the ownership of Plot 1167, this Court lacks the jurisdiction to take even a single

step further. As famously stated by the **Hon. Justice J.O. Nyarangi, JA** in the landmark case of **Owners of the Motor Vessel 'Lilian S' vs. Caltex Oil (Kenya) Ltd [1989] eKLR**:

"Jurisdiction was everything. Without it, a Court had no power to make one more step. Where a Court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downed tools in respect of the matter before it the moment it held the opinion that it was without jurisdiction."

72. Therefore, the moment the *res judicata* nature of this claim is established, this Court must down tools. Even in striking out the suit for lack of jurisdiction, the Court retains the power to award costs under Section 27(1) of the Civil Procedure Act, which explicitly states that *"the fact that the Court or Judge has no jurisdiction to try the suit shall be no bar to exercise those powers."*

73. According to the 14th Defendant, beyond the jurisdictional hurdle, the Plaintiff's suit is fundamentally incompetent. The Plaintiff admits that the properties were purportedly bought by **Thome Wambo Women Self Help Group** and **Waithiguru Women Group**, not the Plaintiff herself. There is no privity of contract between the Plaintiff and Mwhoko Housing Company Ltd. Furthermore, by failing to join the vendor Company the entity that sold the land to both parties

the Plaintiff invites the Court to condemn Mwhoko Housing Company Ltd. unheard, which would be a gross violation of constitutional fair administrative action.

74. In light of the foregoing, the 14th Defendant humbly urges Your Ladyship to find that the Plaintiff has failed to prove her case and to strike out the suit as against the 14th Defendant with costs.

Analysis and Determination

75. The dispute before this Court involves a classic and often tragic confrontation between the holder of a paper title and parties in actual, long-term possession of land. The Plaintiff's case rests upon the sanctity of registration under the Land Registration Act, asserting that having acquired Leases in 2018 for properties purchased in the late 1980s, her title is absolute and indefeasible.

76. Conversely, the 1st to 20th Defendants (excluding the 14th Defendant) contend that they are *bona fide* purchasers for value who have transformed the suit property into their homes long before the Plaintiff sought formal registration. Separately, the 14th Defendant raises a formidable jurisdictional barrier, arguing that the dispute over her specific parcel was already conclusively determined by a Court of competent jurisdiction.

77. In evaluating the Plaintiff's case, the Court must look beyond the mere existence of a Certificate of Lease. While the Plaintiff relies on Section 26(1) of the Land Registration

Act, the Supreme Court of Kenya has provided definitive guidance on the weight of such titles. In the landmark case of **Dina Management Limited v County Government of Mombasa & 5 Others (Petition No. 8 (E010) of 2021) [2023] KESCP 31 (KLR)**, the Apex Court clarified that a title is not a magic wand that sanitizes an irregular process. The Supreme Court stated:

"The root of the title must be clean. If the process of land acquisition was tainted with illegality, a subsequent registration, however 'formal' it may appear, cannot be used to defeat the interests of those who were already lawfully on the land. A person seeking the protection of the Court as a bona fide purchaser must demonstrate that they conducted due diligence and that the title they hold was obtained through a transparent and legal procedure."

78. The Plaintiff's evidence, through PW1, admitted that although the land was purchased in the 1980s, no registration occurred for nearly 30 years. During this period, the Defendants moved in, built homes, and established a community. The Plaintiff failed to produce any trust deed explaining her personal registration of land allegedly bought for women's self-help groups. This Court finds that the Plaintiff's 2018 registration, occurring amidst such heavy

occupation, suggests a lack of the clean root required by the Supreme Court.

79. Further, the Plaintiff's processing of Leases in 2018 despite the Defendants' open and hostile possession since as early as 2004 raises a presumption of procedural irregularity. The Plaintiff failed to demonstrate how she could purchase and register land that was already occupied and developed by others without conducting a physical inspection, which would have revealed the Defendants' interests.

80. On the side of the 1st to 20th Defendants, the Court finds their long-standing possession to be a significant equitable interest. The Court of Appeal in **Munyu Maina v Hiram Gathiha Maina [2013] eKLR** set the standard for such disputes, stating:

"It is not enough for a party to produce a lease or a certificate of title and rest his case there. Where the root of that title is challenged, the registered owner must go beyond the certificate and prove the legality of the process through which they acquired it. Possession is a tangible fact that the law cannot ignore in favor of a mere paper entry obtained in suspicious circumstances."

81. The Defendants purchased their parcels from the same vendor, Mwhiko Housing Company Limited, and have been in open, continuous occupation. This Court holds that the

Plaintiff, by failing to develop the land or assert her rights for three decades, allowed an equitable cloud to form over her claim. The Defendants' occupation was open and notorious, and had the Plaintiff conducted any due diligence before processing her leases in 2018, she would have seen the vibrant residential community already in place.

82.Regarding the 14th Defendant, the matter is strictly legal and jurisdictional. The existence of a final Judgment in **Thika MCL & E No. 3 of 2019** regarding Plot 1167 means the Plaintiff's claim is *res judicata*. The 14th Defendant's plea is anchored on Section 7 of the Civil Procedure Act. The Court finds guidance in the Court of Appeal's decision in **Independent Electoral and Boundaries Commission (IEBC) v Maina Kiai & 5 Others [2017] eKLR** where the Court emphasized the finality of litigation thus:

"The rule of res judicata is intended to provide finality to litigation and to prevent a party from being vexed twice over the same cause. Once a Court of competent jurisdiction has pronounced itself on a matter, that decision stands as the truth between the parties unless set aside on appeal."

83.I note that the Plaintiff was served and they chose not to enter appearance nor file any response. Thus, the Judgment is valid until set aside by discretion. In the circumstances at hand the Judgment was not set aside and so it is valid.

84. Since the **Thika MCELC No. 3 of 2019** specifically adjudicated the ownership of Plot 1167 in favor of the 14th Defendant and was not appealed, this Court is legally barred from entertaining the Plaintiff's claim over the same parcel. Therefore, the Plaintiff cannot ignore a Thika Court Decree and attempt to relitigate ownership here. The tools of this Court are effectively downed regarding the 14th Defendant.

85. On possession and root of title, the Defendants' long-term occupation serves as an equitable shield against the Plaintiff's late-day paper title. In **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, the Court of Appeal addressed the weight of possession by stating that:

"We state that the appellant could not simply rely on the certificate of title to prove his case. He had to go beyond the title and prove the legality of how he acquired it... Possession is nine-tenths of the law. Where a person is in possession of land, that possession is notice to the whole world of his interest in the land."

86. Furthermore, in **Bandi v Dzomo & 76 Others [2022] KECA 584 (KLR)**, the Court held:

"It is trite law that all titles to land are ultimately based upon possession in the sense that the title of the man seised prevails against all who can show no better right to seisin. Seisin is a root of title."

Final Finding and Decision

87. This Court finds that the Plaintiff's case fails on a balance of probabilities. Under Sections 107 and 108 of the Evidence Act, the burden was on the Plaintiff to prove her title was acquired through a flawless process that took into account the existing rights of the occupants. She did not. The Defendants, through their long-standing occupation and proof of purchase, have established a superior right to remain on the property. The Plaintiff's titles are found to be hollow against the backdrop of the Defendants' established possession.

88. The Plaintiff's failure to explain the 30-year delay in registration, coupled with the lack of Sale Agreements and the presence of third parties on the land, leads to the conclusion that the Plaintiff was not a *bona fide* purchaser in the strict legal sense.

89. The Defendants, having purchased from the same vendor, Mwihoko Housing and having lived on the land for decades, hold a superior claim.

90. Given the foregoing I do make the following findings:

i) The Plaintiff's suit against the 1st to 20th Defendants is hereby dismissed with costs.

ii) The Plaintiff's claim against the 14th Defendant is struck out for being res judicata, with costs to the 14th Defendant.

iii) The Defendants are hereby declared the lawful and rightful owners of their respective portions of the suit property.

iv) An order is hereby issued for the rectification of the register to reflect the Defendants' interests where applicable, and the Plaintiff's Leases, in so far as they conflict with the Defendants' possession, are hereby declared null and void.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 27TH DAY OF APRIL, 2026.

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**MOGENI J
JUDGE**

In the Presence of:

Mr. Momanyi for the Plaintiff

Miss Lucy Kamau for the 1st Defendant

Mr. Mosare for the 2nd Defendant

Melita - Court Assistant.

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**MOGENI J
JUDGE**