

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELCL APPEAL NO. E015 OF 2025

KITHUMBU NDII MICHIRO & 17 OTHERS.....
APPELLANTS

VERSUS

PETER GICHOVI NTHIGA & 3 OTHERS.....
RESPONDENTS

(Being an appeal from the Judgement of Hon. Stephen K. Ngii (PM) delivered on 13/03/2025 in Siakago ELC Case No. E033 of 2020 Peter Gichovi Nthiga & 3 others v Kithumbu Ndi Muchiro & 17 others.)

JUDGMENT

1. The Respondents herein were the Plaintiffs before the trial court wherein they had sued the Appellants vide a Plaint dated 26/06/2020 seeking interalia: A declaration that the subdivision of land parcels No. Mbeere/Kirima/2645 and 1090 into twenty two parcels to wit Mbeere/Kirima/6297-6306 was null and void and therefore be cancelled; that the said parcels 2645 and 1090 be subdivided into seven equal shares of the original seven registered owners.
2. The Respondents claimed that they were equal and joint owners of land parcels 2645 and 1090 which they owned and registered jointly in the names of Peter Gichovi Nthiga, Ngari Gukemba, Munyi Michinji, Kithumbu Njeru Laini, Muriuki Kigoci,

Kithumbu Ndi Muciro and John Muriuki Njeru. They averred that the general agreement was that the suit lands would be shared equally by the seven registered owners who owned the land from the beginning. They stated that the 1st and 2nd Appellants illegally and fraudulently subdivided and transferred the said parcels of land illegally and set out the particulars of fraud against them.

3. The Appellants filed a statement of defence and counterclaim dated 21/07/2020 and denied the Respondents allegations. They sought an order of permanent injunction restraining the 1st, 2nd and 3rd Respondents from entering, cultivating, utilizing or in any other manner interfering with the Appellants land parcels No. Mbere/Kirima/6297, 6298, 6299, 6287, 6288, 6300, 6304 and 6290.
4. When the former suit came up for directions, the parties agreed to proceed with the hearing by way of viva voce evidence.
5. PW1, Peter Gichovi Nthiga adopted his written statement dated 22/10/2023 as his evidence in chief. He stated that land parcel No. 2645 was prior to the impugned subdivision registered in his name together with Muriuki Kigoci, John Muriuki Njeru and Kithumbu Nieru whereas parcel No. 1090 was registered in the name of the late Fundi Niiru Micinji, Francis Ngari Gukemba and Kithumbu Ndi Muciro which was pursuant to allocations made by their clan known as Ikara Clan in 1971. He stated that the Ndiiri clan was also claiming ownership of the said parcels of land which cases were resolved in favour of the named persons.

6. He testified that whereas there was a consensus that three people Joseph Nthiga, Lawrence Njiru and Joseph Gitonga would be rewarded for the support they accorded to them during the cases in defence of the land, they never agreed on the specifics of the reward. He stated that he was not aware of the impugned subdivisions until Joseph Nthiga brought him a title deed in 2021. He denied knowledge of the minutes of 17/07/2019 relied on by the Appellants and stated that he was not present at the meeting in which they were taken. He stated that there was no Land Control Board meeting to approve the subdivisions.
7. He produced in evidence green cards for land parcels 2645 and 1090, the final decision on the appeal to the Minister and official searches of the resultant subdivisions.
8. PW2, Ngari Gukemba adopted his witness statement dated 02/10/2023 and stated that he was one of the owners of land parcel 1090. On cross examination he denied that the subdivisions were done with his knowledge and that even though some meetings over the subject matter were held at his home he was not present. On re-examination he stated that there was never any consensus on how their financiers in the land cases aforesaid were to be rewarded and the shares thereof.
9. PW3, Muthoni Njiru also adopted her witness statement dated 22/10/2022. She stated that Munyi Njiru one of the initial registered owners of land parcel 1090 was her son who died on 10/08/1998. She denied that her late son had sold his share of the suit land to one John Mwaniki. She also said that she and

others funded the adjudication cases but didn't know who subdivided the land. She also denied signing any minutes dated 03/02/2018.

10. PW4, James Muriuki also adopted his statement dated 02/10/2024 and stated that the case before the minister was facilitated by the beneficiaries of the suit lands. He denied signing any minutes disposing his land.

11. DW1 Joseph Nthiga Munyi adopted his witness statement dated 23/08/2023 as his evidence in chief and produced the documents attached to his list of documents as D Exh1 - 26. He stated that he was a member of the Gekara clan and that in 1972, they allocated land parcel 1090 to Peter Munyi Micinji, Ngari Gukemba and Kithumbu Ndi Muciro and land parcel 2645 which was excised from land parcel 1090 to John Muriuki, Kithumbu Njeru, Kariuki Kigoci and Peter Gichovi Nthiga. He stated that in 2017, he was appointed together with Lawrence Ndaru to represent their clan in a dispute lodged before the Minister involving the suit lands. He averred that the trustees who held the suit lands subsequently added them and one Joseph Gitonga Ngari due to the roles they were playing in the dispute and together they formed a ten member committee.

12. He averred that they encountered financial upheavals in raising the required legal fees for the dispute and the committee was tasked to look for financiers who would help finance the suit. He stated that it was agreed that the financiers would be allocated plots from the two suit parcels of land after the determination of the dispute and that after the suit was determined, they worked jointly with the financiers to

effect the process of subdivision. He averred that the two land parcels were surveyed, demarcated and the resulting portions allocated to the financiers and beneficiaries. He contended that after the subdivision the Respondents surprisingly denied the beneficiaries and bonafide purchasers access and vacant possession of the resulting subdivisions.

13. On cross examination, he stated that the Respondents signed the application for consent of the subdivisions and that they attended the land control board meeting.

14. DW2, Joseph Gitonga Ngari adopted his written statement dated 23/08/2023 as his evidence in chief. He testified had been appointed treasurer in the committee and that it had been agreed that upon successful litigation over the suit lands, they would subdivide the land amongst themselves and other clan members. He averred that they brought in other people who facilitated them financially to deal with the case and they were given land according to their respective financial contribution. On cross examination he said that the Respondents had signed the consent for subdivision but admitted that he didn't have it in court. On re-examination he stated that records relating to the subdivision are with the land registry.

15. DW3, John Muriuki, also adopted his statement dated 23/8/2023 which corroborated DW2's testimony. He reiterated that the Respondents were fully involved in all the processes leading to addition of beneficiaries and subdivision of the land. On cross-examination he stated that the Respondents signed the necessary documents for subdivision and subsequent

transfers but admitted that he didn't have a record of the same.

16. Upon analyzing the evidence tendered, the trial Court found that the subdivision and subsequent alienation of the suit lands was illegal, unprocedural, and fraudulent. That the Respondents demonstrated that no written consent was obtained from all registered proprietors as required under Section 91 of the Land Registration Act, and that the Appellants failed to produce any documentary evidence to support their claim that the Respondents had applied for subdivision or transfer. Relying on the cases of *Kogo Flats Ltd v Sammy Cherunya & Anor (2019) Eklr*, *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others (2015) Eklr* and Section 26(1) of the Land Registration Act, the court held that titles acquired illegally, unprocedurally, or through a corrupt scheme are impeachable, even against innocent title holders.

17. The court found that the Appellants did not provide the necessary documents which required by law to accomplish the subdivision and transfer of the suit lands including consents to subdivide and transfer and applications for transfer signed by all the proprietors of each of the suit lands. Consequently, the court declared the subdivision and resultant transfers null and void ab initio, ordered cancellation of the titles and reversion to the original owners, but declined to order fresh subdivision, noting that the proprietors could initiate this themselves at the lands office. The Appellants' counterclaim for injunction failed, and judgment was entered for the Respondents jointly and severally in terms of prayer (a) in the Plaint.

18. The Appellants were aggrieved with the impugned decision and preferred the present Appeal on the following grounds;
1. That the Learned Magistrate erred in law and fact by ultimately disregarding the indefeasibility of title, for land parcels No. Mbeere/Kirima/6297-6306 and making and delivering a judgment adverse to the principle of indefeasibility of title.
 2. That the Learned Magistrate erred in law and fact by shifting the burden of proof of validity of the title to the Appellants, when the burden of the proof squarely lay on the Respondents to prove their claim of invalidity.
 3. That the Learned Magistrate erred by misapprehending the provisions, interpretation and applicability of section 91 of the Land Registration Act
 4. That the Learned Magistrate erred in law and fact by failing to appreciate that the registration of title is a process handled by the Land Registrar pursuant to the Land Registration Act, who is also the custodian of all the records leading up to the final process of issuance of title.
 5. That the Learned Magistrate erred in law and fact by failing to appreciate that it was unsafe to revoke an otherwise valid title issued by the Registrar of titles without the Land Registrar being included as a party to the proceedings.
 6. That the Learned Magistrate erred in law and in fact in failing to analyze the evidence given by the Appellants and therefore reached a wrong decision.
 7. That the Learned Magistrate erred in law and fact by deliberately disregarding and failing to consider the weight

of the evidence of the Appellants' submissions and the judicial authorities tendered before the Court.

8. That the Learned Magistrate erred in law and in fact in failing to put into account all the evidence showing the veracity of the Appellants' case and therefore made the wrong decision that occasioned a miscarriage of justice.
9. That the Learned Magistrate erred in law and in fact in solely accepting the evidence of the Respondents and their witnesses and completely disregarding the counter evidence tendered by the Appellants and their witnesses, therefore making the wrong decision.
10. That the Learned trial Magistrate erred in law and in facts in his analysis of evidence before him on facts thus manifesting bias against the Appellants' case from the onset of the Judgment to his conclusion thereby causing his Judgment to fall short of established principles of a legal Judgment.
19. The Appellants sought to have the decree of the trial Court set aside, the appeal and counterclaim allowed and the title to the suit lands reinstated to the Appellants.
20. When the appeal came up for directions, the parties agreed to canvass the appeal by way of written submissions. The Appellants filed submissions dated 26/01/2026 through the firm of Mutuma Gichuru and Associates. They submitted that the learned Magistrate misdirected himself on the principle of indefeasibility of title under Section 26(1) of the Land Registration Act, which protects registered proprietors except where fraud, misrepresentation, or illegality is strictly proved.

They contended that the Respondents failed to discharge the heavy burden of proving fraud, and the trial court erred by canceling their titles without calling the Land Registrar, the statutory custodian of records, who was a necessary party to the proceedings as was held in the case of *Mwihaki v Kigui & 2 others* (Environment & Land Case 572 of 2015)(2022)(KEELC 2771(KLR)).

21. The Appellants further submitted that the trial court wrongly shifted the burden of proof to them by requiring production of written consents under Section 91 of the Land Registration Act, whereas such consents are filed and retained by the Land Registrar. They maintained that the Respondents bore the burden under Section 107 of the Evidence Act to prove absence of consent or an irregularity which they failed to do. They argued further that the trial Court failed to properly address the issue of the agreement between the parties that persons who had financially supported the litigation in defence of the suit lands to be awarded which they averred was never genuinely denied by the Respondents. They urged that the appeal be allowed.

22. The Respondents filed submissions dated 11/12/2025 through the firm of Njeri Murigi & Company Advocates. They submitted that the trial court was correct in finding that the subdivision and transfer of the suit lands was illegal, unprocedural, and fraudulent. They argued that although the Appellants claimed indefeasibility of title under Section 26(1) of the Land Registration Act, they did not provide any evidence that the Respondents had authorized them to sign the Land

Control Board application forms, attend the Board and also sign the transfer forms on their behalf. They further contended that Section 91(6) of the Land Registration Act requires written consent of all co-tenants before dealing with undivided shares, and no such consent was obtained.

23. They argued that the Appellants' reliance on the absence of the Land Registrar as a party to the proceedings was misplaced as the issue of joinder was not challenged during trial. The Respondents maintained that the Appellants failed to demonstrate that the subdivision was procedural, as they did not produce applications for consent to subdivide or transfer duly signed by the registered proprietors. That the minute book relied upon by the Appellants did not prove that the Respondents signed the application for consent to subdivide or transfer the suit lands. They urged that the appeal be dismissed.

24. The issues for determination in this appeal are whether the learned trial Magistrate erred in law and fact in finding that the subdivision and subsequent transfer of the suit properties was unlawful, unprocedural, and fraudulent, and consequently in ordering cancellation of the resultant titles and reversion to the original parcels.

25. The second issue is whether the trial court misapplied the provisions of Section 26(1) and Section 91 of the Land Registration Act, and whether it improperly shifted the burden of proof or reached a conclusion unsupported by the evidence on record.

26. It is not in dispute that prior to the impugned subdivisions, land parcels Nos. Mbeere/Kirima/2645 and 1090 were registered in the names of the original proprietors as pleaded by both parties. It is further not disputed that the resultant parcels Mbeere/Kirima/6297-6306 were created following a process of subdivision which is the subject of the present dispute. It is trite law that under Section 26(1) of the Land Registration Act, a certificate of title is prima facie evidence of ownership and can only be challenged on grounds of fraud, misrepresentation, illegality, unprocedural acquisition, or through a corrupt scheme.

27. In the present case, the Respondents pleaded and led evidence that the subdivision and transfer of the suit properties was undertaken without the requisite consents of all registered proprietors and without compliance with the mandatory statutory procedures under Section 91(4) of the Land Registration Act which provides that:

4) If land is occupied jointly, no tenant is entitled to any separate share in the land and, consequently—

(a) dispositions may be made only by all the joint tenants;

(b) on the death of a joint tenant, that tenant's interest shall vest in the surviving tenant or tenants jointly; or

(c) each joint tenant may transfer their interest inter vivos to all the other tenants but to no other person, and any attempt to so transfer an interest to any other person shall be void.

28. This Court therefore finds that the learned Magistrate properly applied the provisions of Section 91 of the Land Registration Act in holding that dealings with co-owned land

require the written consent of all co-proprietors, which was not demonstrated in this case. The Court further finds that the trial court carefully evaluated the evidence on record and correctly found that the Appellants did not produce any duly executed Land Control Board consent, written authority from all registered proprietors of the suit lands, or transfer instruments to show that the properties were lawfully disposed to the Appellants. The burden was on them to prove that the suit lands were transferred to them through a lawful process which they failed to do.

29. Consequently, this Court finds no basis to disturb the findings of the trial Court.

30. Accordingly, the appeal lacks merit and is hereby dismissed with costs to the Respondents.

DATED, SIGNED and DELIVERED virtually/at Embu this 30th day of April, 2026.

HON. E. C. CHERONO
ELC JUDGE

In the presence of:

1. Mr. Muriithi H/B for Mr. Mutuma for the Appellant
2. 1st Respondent-present
3. 2nd Respondent-absent
4. 3rd Respondent-present

5. Diana Kemboi C/A