



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLC NO. E345 OF 2024

**MARGARET MUTHONI NJUGUNA,
CHARLES NJUGUNA WAIGI,
ANDREW NYINGI NJUGUNA
(Suing as the Administrators of the
Estate of Njuguna Waigi
(Deceased) PLAINTIFFS**

=VERSUS=

**AUDENTES FORTUNA JUVAT LIMITED
DEFENDANT**

JUDGEMENT

1. The Plaintiffs commenced this suit by way of a Plaint dated 22nd August 2024, seeking the following orders:
 - a. A declaration that the Njuguna Waigi is the lawful, rightful and registered owner of all that piece of land known as Property Title No. DAGORETTI/RIRUTA/S.255.***
 - b. An order directing the Chief Land Registrar to amend and/or reconstruct the lands register, title documents and green card entries of all that Land described as Property Title No.***

DAGORETTI/RIRUTA/S.255 to restore Njuguna Waigi as the true proprietor.

- c. An order directing the Chief Land Registrar to cancel and/or revoke any title deed, land register entries and green card records to Property Title No. DAGORETTI/RIRUTA/S.255 issued and/or amended in favour of the Defendant.**
 - d. An order directing the Nairobi City Council to amend and/or reconstruct the Nairobi City Council rates account records for all that Land described as Property Title No. DAGORETTI/RIRUTA/S.255 to restore Njuguna Waigi as the true owner under the suit property rates account.**
 - e. An order of eviction directing the Defendant either by themselves, their servants, agents and/or employees to vacate the suit property known as Title No. DAGORETTI/RIRUTA/S.255.**
 - f. Costs of this suit.**
 - g. Interests on (f) above.**
 - h. Any other relief that this Honourable Court will deem fit to grant.**
2. Though duly served, the Defendant neither entered an appearance nor filed a statement of defence. The matter proceeded as an undefended suit.

THE PLAINTIFFS' CASE

3. The Plaintiffs called one witness in support of their case. PW1, Charles Njuguna Waigi, adopted his witness statement dated 22nd August 2024 as his evidence in chief. He also produced the documents in the list of even date in support of their case.
4. PW1 testified that he is one of the duly appointed administrators of the estate of the late Njuguna Waigi, pursuant to a confirmed Grant of Probate.
5. He further testified that the deceased was the registered owner of Title No. DAGORETTI/RIRUTA/S.255, the suit property herein, having acquired it in 1958 and remaining in quiet possession thereof until his death on 27th October 2003. A title had been issued in 1970. He informed the Court that the deceased had taken steps to develop the property, including obtaining the necessary approvals from the Nairobi City Council, but had not completed the development due to financial and health issues before his death in 2003.
6. He told the Court that the suit property was part of the deceased's estate, with land rates consistently paid over the years. He testified that when he went to the Nairobi City Council in May 2018 to pay rates, he discovered that the records had been altered to show Johnson Mburu Nganga as the owner of the suit property. He explained that further inquiries, including an official search, indicated that the suit property was registered in the Defendant's name.
7. He further asserted that the Defendant fraudulently and unlawfully caused the suit property to be transferred and

registered in its name. He contended that the Defendant orchestrated illegal alterations of entries in the land register and at the Nairobi City Council, facilitated the issuance of misleading search records, and unlawfully obtained the transfer of the title in its favour, all in breach of the procedures outlined under the Land Act and the Land Registration Act.

8. He further testified that he lodged formal complaints and requests for investigations with the Directorate of Criminal Investigations and the Chief Land Registrar through his advocates, but no corrective action was taken despite numerous follow-ups, which prompted them to register a caution against the suit property to prevent further fraudulent transactions. He maintained that the deceased's will contained no indication of any disposition of the suit property, and therefore any purported transfer or alteration of records was unlawful and void.
9. He further testified that the Defendant entered the property, erected a fence, and a container without lawful authority. Consequently, he urged the Court to grant the orders sought in the plaint.
10. After the hearing concluded, the Plaintiffs filed their written submissions in support of their case.

THE PLAINTIFFS SUBMISSIONS

11. The Plaintiffs filed their submissions dated 12th November 2025.

12. On behalf of the Plaintiffs, Counsel outlined the following issues for the Court's determination:
- a) *Whether the registration of Audentes Fortuna Juvat Limited as proprietor of the suit property was irregular, illegal or fraudulent and therefore liable to cancellation;*
 - b) *Whether the Plaintiffs are entitled to rectification of the land register and city county rate records to restore the deceased Njuguna Waigi as the lawful proprietor of the suit property;*
 - c) *Whether the Defendant, its agents or servants should be evicted from the suit property upon revocation of its title; and*
 - d) *Who should bear the costs of the suit?*
13. Regarding the first issue, Counsel relied on Section 26 of the Land Registration Act, 2012, to argue that although a certificate of title is prima facie evidence of ownership, this protection is not absolute and can be challenged if the title has been obtained through fraud, misrepresentation, illegality, procedural irregularity, or a corrupt scheme. To support this point, reliance was placed on **Caroget Investment Limited v Aster Holdings Limited & 4 others [2019] KECA 79 (KLR)**, where the Court of Appeal held that, in cases of competing claims to land, each party must establish the validity of its title.
14. Counsel further cited **James Henry Mundia t/a Kabarak Development Services v Tradewheel Kenya Ltd (1987) eKLR**, as cited in **Caroget Investment Limited v Aster**

Holdings Limited & 4 others [2019] KECA 79 (KLR), to submit that a claimant must succeed based on the strength of his own title rather than on the weakness of the opponent's case. Further reliance was placed on **Samuel Otieno Otieno v Municipal Council of Malindi & another [2015] eKLR**, where the Court emphasized that the standard of proof in declaratory suits relating to title is on a balance of probabilities.

15. Counsel cited **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, to argue that when the root of a registered proprietor's title is challenged, the proprietor must go beyond the instrument and demonstrate the legality and procedural propriety of the acquisition process. Counsel contended that this principle effectively overrides the statutory protection under Section 26 of the Land Registration Act where illegality or fraud is established.
16. Regarding the second issue, Counsel submitted that the Plaintiffs have demonstrated that the root of the Defendant's title was obtained illegally or fraudulently, and therefore it should be rectified.
17. Regarding the third issue, Counsel submitted that having established that the Defendant's title is unlawful, the Defendant should be evicted from the suit property.
18. Regarding rectification, Counsel cited Section 80(1) of the Land Registration Act to submit that the Court has jurisdiction to order the cancellation or amendment of the register where registration has been obtained through fraud

or mistake. To support this point, reliance was placed on **Esther Ndegi Njiru & another v Leonard Gatei [2014] eKLR**, where the Court held that no registration is immune from rectification when fraud or error is demonstrated.

19. In light of the foregoing, Counsel contended that once a title is challenged and deemed unlawful, any occupation based on that title is also unlawful and constitutes trespass, thus justifying eviction.

ANALYSIS AND DETERMINATION

20. Having considered the Pleadings, the evidence on record, and the Plaintiffs' submissions, the only issue for determination is whether the Plaintiffs are entitled to the orders sought in the Plaint.
21. It is the Plaintiffs' case that they are the administrators of the estate of Njuguna Waigi, the registered owner of the suit property. They assert that the suit property forms part of the deceased's estate and claim ownership thereof. The Court is called upon to determine whether the Plaintiffs have established the root of their title.
22. In **Munyu Maina vs Hiram Gathina Maina [2013] eKLR**, the Court of Appeal held that when a title is challenged, the registered proprietor must go beyond the instrument of title and demonstrate the legality of the acquisition.

“...when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is

this instrument that is under challenge, and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances, including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go the extra mile that is required of him, and no evidence was led to rebut the appellant's testimony."

23. Similarly, in **Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School (Civil Appeal 64 of 2014) [2023] KECA 371 (KLR)**, the Court of Appeal set out the test for the root of title as follows:

"The best evidence of ownership of immovable property is the title deed to it, and that is why the question of the root of title is important. The root of the title is the deed to which the title to a property is ultimately traced to prove that the owner has a good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

(a) it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question; (b) it must contain a recognizable description of the property; (c) it must not contain anything that casts any doubt on the title.”

24. The Plaintiffs produced a Certificate of Confirmation of Grant of Probate, the deceased’s death certificate, a title deed issued to the deceased on 7th July 1970 and rate demand notes from 1967 to 2016, all consistently issued in the name of the deceased, demonstrating that the deceased was the registered proprietor of the suit property.
25. The documentary evidence produced by the Plaintiffs demonstrates a long, continuous, and uninterrupted history of possession and acknowledgement of ownership by public authorities spanning several decades.
26. Section 24(a) of the Land Registration Act sets out the interest conferred by registration as follows;

Subject to this Act;

The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

27. Section 25 of the Land Registration Act sets out the rights of a proprietor as follows:

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided by this Act and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject...

28. These provisions vest in the registered owner of land with rights and privileges and provide for instances when the right can be taken away.
29. In the absence of any competing evidence and noting that the Defendant neither entered an appearance nor controverted this evidence, the Court is satisfied that the Plaintiffs have established a credible and prima facie root of title.
30. Accordingly, the Court finds that the Plaintiffs have established their root of title to the suit property.
31. The Plaintiffs alleged that the Defendant fraudulently obtained title to the suit property.
32. It is trite law that allegations of fraud must be specifically pleaded and proved. In ***Vijay Morjaria vs Nansing Madhusingh Darbar & Others [2000] eKLR (Civil Appeal No 106 of 2000)***, Tunoi JA stated as follows:

“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 as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.

33. Similarly, in **Kinyanjui Kamau vs George Kamau [2015] eKLR**, the Court of Appeal held that;

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo Vs Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”

34. Section 107 (1) and (2) of the Evidence Act states that:

107(1) 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.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

35. To support their claim of fraud, the Plaintiffs relied on the particulars of fraud and illegality set out in the Plaint and documentation showing that, as of 2018, the rates account had been altered to reflect a third party, and that an official search confirmed that the Defendant was the registered proprietor, having acquired title on 29th August 2016. They further demonstrated that neither the deceased nor the estate had effected any transfer of the suit property.
36. This evidence clearly shows a significant and unexplained change in the ownership of the suit property. The Defendant, having failed to appear or submit any evidence, did not explain how it acquired the title to the suit property.
37. However, the lack of an explanation coupled with evident irregularity does not, on its own, prove fraud. Fraud, being a serious allegation, requires evidence of specific actions such as deceit, misrepresentation, forgery, or involvement in a corrupt scheme attributable to the party against whom it is alleged.
38. In the matter at hand, no evidence was presented to prove the existence of forged instruments, manipulation of the land register, or any conduct directly linking the Defendant to a fraudulent scheme. Furthermore, no evidence from the Land

Registry, investigative agencies, or expert witnesses was produced to demonstrate that the disputed registration was obtained through fraudulent means.

39. The evidence on record shows that the Defendant is the beneficiary of a registration whose root has not been explained. Although this casts serious doubt on the legality and procedural propriety of the title, it falls short of the strict evidentiary threshold required to sustain a finding of fraud.
40. Accordingly, the Court finds that the Plaintiffs have not proved fraud on the part of the Defendant to the required standard.
41. However, it does not necessarily mean that the Defendant's title has been protected from challenge. Section 26(1)(b) of the Land Registration Act provides that:

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except:

- a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or***

b) Where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.”

42. In **Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] KEELC 151 (KLR)**, the Court held that:

“Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation. However, where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, my view has been, and still remains, that it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part.

43. In the present case, the Plaintiffs tendered cogent and uncontroverted evidence demonstrating that the suit property was part of the estate of the late Njuguna Waigi, and that at all material times following his death, the property remained vested in his estate under a confirmed grant of probate. They further demonstrated that neither the deceased during his lifetime, nor the duly appointed administrators, executed any transfer, transmission, or disposal of the suit property in favour of the Defendant.

44. Section 45(1) of the Law of Succession provides:

“Except so far as expressly authorized by this Act or by any other written law or by grant of representation no person shall for any purpose take possession or dispose of any property of a deceased person.”

45. The legal consequence of the foregoing is that any dealing with the suit property after the deceased's death and the issuance of the confirmed grant can only be made through the personal representatives. Without such a process, any purported registration in favour of a third party would lack legal standing.
46. The registration of the Defendant as proprietor on 29th August 2016, without any evidence of transmission, transfer, consent, or other registrable instrument traceable to the estate, is therefore both unexplained and legally untenable. Accordingly, any purported transfer of the suit property after the death of the deceased and without lawful authority is a nullity ab initio.
47. In light of the foregoing, the Plaintiffs established a prima facie case of illegality and procedural impropriety sufficient to displace the presumption of indefeasibility attached to the Defendant's title and to call for an explanation as to its root and legality. The Defendant, having failed to enter an appearance or tender any evidence, did not discharge that evidentiary burden. Consequently, the Court is satisfied, on a balance of probabilities, that the Defendant's title was acquired unprocedurally and therefore falls within the scope

of Section 26(1)(b) of the Land Registration Act. The title is therefore impeachable despite the lack of proof of fraud.

48. The Plaintiffs seek an order to cancel the entries in the land register in favour of the Defendant and to amend the rates record.

49. Section 26(1) of the Land Registration Act outlines the conditions under which a registered title may be revoked.

50. Further, **Section 80 of the Land Registration Act** gives the court power to order rectification of the register and provides as follows:

1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

51. The evidence on record shows that the Defendant's registration was effected in clear violation of the law governing succession and property transfer, rendering it illegal and unprocedural. Accordingly, the Plaintiffs have established a proper basis for the rectification of the title for the suit property.

52. Having established that the Defendant's title is unlawful, it follows that his occupation of the suit property is without any legal basis.

53. The upshot of the foregoing is that the Plaintiffs have proved their case on a balance of probabilities against the

Defendant. I therefore enter judgment for the Plaintiffs against the Defendants as follows:

- a. A declaration that the Njuguna Waigi is the lawful, rightful and registered owner of all that piece of land known as Property Title No. DAGORETTI/RIRUTA/S.255.***
- b. An order directing the Chief Land Registrar to amend and/or reconstruct the lands register, title documents and green card entries of all that Land described as Property Title No. DAGORETTI/RIRUTA/S.255 to restore Njuguna Waigi as the true proprietor.***
- c. An order directing the Chief Land Registrar to cancel and/or revoke any title deed, land register entries and green card records to Property Title No. DAGORETTI/RIRUTA/S.255 issued and/or amended in favor of the Defendant.***
- d. An order directing the Nairobi City Council to amend and/or reconstruct the Nairobi City Council rates account records for all that Land described as Property Title No. DAGORETTI/RIRUTA/S.255 to restore Njuguna Waigi as the true owner under the suit property rates account.***
- e. An order of eviction directing the Defendant either by themselves, their servants, agents***

and/or employees to vacate the suit property known as Title No. DAGORETTI/RIRUTA/S.255.

f. As the suit was undefended, no order of costs shall issue.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 28TH DAY OF APRIL, 2026.

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Oketch for the Plaintiff

Ahmed- Court assistant