

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**

**ELCA NO E012 OF 2025**

**NAOMI NGOIRI NGOCO & ANOTHER.....**

**APPELLANTS**

**VERSUS**

**MUTURI NJOROGE & 3**

**OTHERS.....RESPONDENTS**

**JUDGMENT**

In the Amended Plaintiff dated 23/4/2024 initially dated 18/3/2024 the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had pleaded that their father, Njoroge Ngata (Deceased) surrendered his unspecified land in Githunguri to the Government of Kenya and by way of compensation, 3 parcels of land viz. NYANDARUA/MAWINGO/916,918 and 919 were transferred to his 3 sons namely Wangocho Njoroge (Deceased) Njuguna Njoroge and Ng'ang'a Njoroge to hold the same in trust for themselves and their 4 brothers and subsequently sub-divide the same amongst all the children of the late Njoroge Ngata. They then sub-divided the respective parcels of land accordingly but did not get Title Deeds for their respective portions. After the death of Wangocho Njoroge on 2/8/1999 his widow, the 1<sup>st</sup> Appellant petitioned for letters of Administration in Thika Chief Magistrate's Court Succession Cause No. 444 of 2021 and with her 3 children

inherited the land as one that only belonged to the Estate of Wangocho Njoroge to the disadvantage and disinheritance of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Grant was later confirmed on 31/5/2012 and the land was registered in the names of the Appellants who now threaten to evict the Respondents and their other siblings in occupation and possession of the land.

The Appellants filed a Defence and counter-claim both dated 24/7/2024 denying the Respondents' claim and averred that each of the 5 sons of the late Njoroge Ngata were allocated respective parcels of land as absolute owners with the late Wangocho Njoroge and that the Respondents were not in occupation of any of the suit lands. In their counter-claim, the Appellants averred that the husband to the 1<sup>st</sup> Appellant and father to the 2<sup>nd</sup> Appellant, Ngoco Njoroge was allocated by the Settlement Fund Trustees L.R. No. NYANDARUA/ MAWINGO/916, paid the monies due and payable to the Settlement Fund Trustees and the property discharged in his favour as absolute proprietor before he died in 1999.

The 2 got the land transmitted to them. But on unknown dates in 2022 the Respondents unlawfully encroached into the land and occupied thereon 0.4278 and 0.6046 Hectares respectively without the authority of the Appellants. They therefore prayed for:

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- a. An order directing the Defendants to the Counterclaim to remove all their structures erected on the Plaintiffs to the

Counterclaim parcel of land number NYANDARUA/MAWINGO/ 916 and vacate therefrom and in default an order of eviction do issue against the Defendants to the Counterclaim.

- b. An order of permanent injunction restraining and prohibiting the Defendants to the Counterclaim, their servants, agents employees or anybody purporting to act under them from entering, remaining, cultivating, occupying, possessing or in any manner whatsoever interfering with the Plaintiffs to the Counterclaim peaceful occupation and use of parcel of land number NYANDARUA/MAWINGO/916 in perpetuity.
- c. Mesne profits of Kshs 30,000/= per years until they vacate.
- d. Costs of the suit together with interest at Court rates.
- e. Any other or further relief that this Honourable Court may deem fit and just to grant.

In the Reply to Defence and Defence to counterclaim, the Respondents re-iterated the contents of the Plaint and added that.....

When the Hearing of the suit commenced, Jane Wanjiru Wanjiku was the 1<sup>st</sup> Plaintiff's witness who adduced evidence to the effect that she was the daughter of Kenneth Kuria Njuguna (Deceased), one of the sons of Njoroge Ngata (also Deceased). She testified that Wangocho Njoroge had land plot No. 916 registered in his name in trust for his siblings but that his wife and son, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants disinherited them through Succession Cause No. 444 of 2011 in Thika Chief Magistrate's Court.

On cross-examination by Mr Kamanga, she said that she was born in March, 1985 and that her statement was based on what she was told but she couldn't tell what happened in 1983. She would also not tell how the parcel No. 916 came into existence.

PW2 - Watene Njoroge Joseph adopted his Statement dated 23/4/2024. He said he was son to the late Njoroge Ngata who had given them the suit land but which was to be held by Wangocho, Njuguna and Ng'ang'a in trust for all Njoroge Ngata's children but that the wife and son of the late Wangocho Njoroge the 1<sup>st</sup> and 2<sup>nd</sup> Appellant herein respectively ended up disinheriting them. He then produced the following documents: -

1. Copy of the sale agreement.
2. Copy of Green card.
3. Kenya Gazette
4. Succession cause proceedings in Thika Succession Cause.
5. Copy of official search Certificate.
6. Latter dated 31/1/2024.
7. A copy of sale agreement dated 1/4/1992.

On cross-examination by Mr Karanja, the witness said that he lived in Githunguri and not on the suit land. He said that his land was parcel No. 1156 and that it was not true that the sons of the Deceased were allocated land individually.

On re-examination, he said that the total number of acreage for the land to be sub-divided amongst the 7 children was 30.

After the close of the Respondents' case, Jonah Njuguna Ngocho took to the witness stand as the 2<sup>nd</sup> Defendant and having adopted his Statement recorded on 19/11/2024 he testified that he was a co-administrator of the Estate of Ngocho Njoroge together with the 1<sup>st</sup> Appellant. He said that Ngocho Njoroge was the sole and absolute allottee from the Settlement Fund Trustees of Parcel No. NYANDARUA/MAWINGO SALIENT/916 having been so balloted for and not a trustee for his siblings. He paid all the dues in respect of the land. After his demise he and his mother petitioned for the letters of Administration in Thika C.M Succession Cause No. 444 of 2011. He said that the sons of Njoroge Ngata had been allocated land as follows:-

1. WATENE NJOROGE NGATA was allocated parcel of land number NYANDARUA/ MAWINGO SALIENT/1156 measuring 2.1 Hectares being a subdivision of original parcel of land number NYANDARUA/ MAWINGO SALIENT/901.
2. MUTURI NJOROGE NGATA was allocated parcel of land number NYANDARUA/ MAWINGO SALIENT/1155 measuring 2.1 Hectares being a sub-division of parcel of land number NYANDARUA/ MAWINGO SALIENT/901.
3. GITAU NJOROGE NGATA was allocated parcel of land number NYANDARUA/MAWINGO SALIENT/1140 measuring 2.1 Hectares being a subdivision of parcel of land number NYANDARUA/MAWINGO SALIENT/903
4. KENNETH KURIA NJOROGE was allocated parcel of land number NYANDARUA/ MAWINGO SALIENT/1141 measuring

2.5 hectares being a subdivision of parcel of land number NYANDARUA/MAWINGO SALIENT/903.

5. NJUGUNA NJOROGE NGATA was allocated parcel of land number NYANDARUA/ MAWINGO SALIENT/918 measuring 4.5 hectares.

6. NG'ANG'A NJOROGE NGATA was allocated parcel of land number NYANDARUA/ MAWINGO SALIENT/919 measuring 4.1 hectares.

He then produced the following documents

1. Letter dated 6th August 1993 by Njoroge Ngata
2. Offer letter from the Settlement Fund Trustees dated 3/2/1993
3. Charge by Settlement Fund Trustees dated 3rd February 1993
4. Letter dated 25/6/1984 from District Officer, Githunguri addressed to Muturi Njoroge, Kenneth Kuria Njoroge and Watene Njoroge Ngata
5. Agreement of the children of Njoroge Ngata in the presence of their mother together with its translation
6. Receipts for payments dated 3/2/1993 and 12/10/1995
7. Green Card extract for NYANDARUA/MAWINGO SALIENT/916
8. Copy of title deed for NYANDARUA/MAWINGO SALIENT/916
9. Green Card extract for NYANDARUA/MAWINGO SALIENT/901
10. Green Card extract for NYANDARUA/MAWINGO SALIENT/1155

11. Green Card extract for NYANDARUA/MAWINGO  
SALIENT/1156
12. Green Card extract for NYANDARUA/MAWINGO  
SALIENT/903
13. Green Card extract for NYANDARUA/MAWINGO  
SALIENT/1140
14. Green Card extract for NYANDARUA/MAWINGO  
SALIENT/1141
15. Green Card extract for NYANDARUA/MAWINGO  
SALIENT/918
16. Green Card extract for NYANDARUA/MAWINGO  
SALIENT/919
17. Surveyor's report dated 30/1/2024
18. Copy of demand notice dated 31/1/2024

He said that the father to Muturi Njoroge, 1<sup>st</sup> Respondent was not buried in the disputed land and that each of the sons of Njoroge Ngata was given their own land which were registered in their respective names.

On cross-examination by Ms. Lydia for the Respondent, the witness said that his father died in Thika although he did not own property there.

On cross-examination by Ms. Rotich for the 3<sup>rd</sup> Defendant the witness said Ngoco was registered owner in 1993 and never got Title in his name.

On re-examination, Jonah said that the Respondents did not live on the land.

After the close of the Appellant's case and filing of written submissions, the learned trial magistrate wrote and delivered her Judgment and concluded that the documents relied upon by the Respondents demonstrate that the suit property belonged to the Deceased who was the Respondents' father and the 1<sup>st</sup> Appellant's father-in-law and that therefore the late Wangocho Njuguna held the land in trust for his brothers.

She further held that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants secretly and fraudulently obtained registration thereof without following due process. The Appellants were therefore intent on improperly and unfairly depriving the Respondents of their share of inheritance. The Court invoked Section 28 of the L.R.A and accordingly implied a constructive trust in favour of the Respondents and invoked Section 80 of the L.R.A to rectify the register of the suit land to include the Respondents as bona fide in part share of the suit land. They were also awarded the costs of the suit.

Subsequently, the Appellants filed a Memorandum of Appeal dated 16/6/2025 with the following Grounds: -

1. That the learned trial magistrate erred in law and in fact by making a Judgment that is unsupported by evidence presented before the said Court.

2. That the Learned Trial Magistrate erred in law and fact in concluding that there was constructive trust in this case yet every child of the deceased Njoroge Ngata got their own parcel of land within the same area.
3. That the Learned Trial Magistrate erred in law and fact in concluding that the deceased Wangoco Njoroge and his brothers were to get equal portions of land.
4. That the Learned Trial Magistrate erred in law and fact in concluding that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants acquired the title secretly and fraudulently yet the same was done openly vide a proper succession Cause.
5. That the Learned Trial Magistrate erred in law and in fact in heavily placing reliance on one piece of document labeled “memorandum of agreement” in exclusion of all other evidence tabled before the court therefore arriving at a wrong finding.
6. That the Learned Trial Magistrate erred in law and in fact by failing to consider the material circumstances of the case therefore arriving at the wrong decision and making a judgment devoid of justice.

They then prayed for the following orders:

1. The Appeal be allowed.
2. The Proceedings, Judgment, all consequential orders issued on the 21<sup>st</sup> May, 2025 by the Honourable trial Magistrate J. N Nthuku be set aside and be substituted with orders

dismissing the Respondents' claim and allowing the Appellants' claim in the counterclaim.

3. Any other Order that this court may deem fit to grant in this Appeal.
4. The costs of the appeal be provided for.

Having invited both sets of parties to file submissions, I proceeded to write my Judgment and suffice to say that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents never participated in the proceedings herein just as they failed to do so in the lower Court.

From the evidence on the face of the Documents produced by the Appellants, Ngoco Njoroge of ID No. 3843823166 was on 3/2/1993 offered a parcel of land in Mawingo Settlement scheme being land parcel No. 916 and was to pay Kshs 25/= in total. A charge in his favour was executed on 3/2/1993.

The Appellants also produced 2 receipts indicating that L.R. No. 916 was his one for Kshs 663/= for conveyancing dated 3/2/1993 and the other one for rates of Kshs 1,278 paid on 12/10/1995. The Title for NYANDARUA/MAWINGO SALIENT/916 was opened on the 14/3/1990 in the name of Settlement Fund Trustees. Then on 22/7/2015 it was transferred to the 1<sup>st</sup> Appellant of ID. No. 3018500 as Administrator of the Estate of the late Ngoco Njoroge and on the same day it was transferred to the Appellants and a Title Deed issued 5 days later, on 27/7/2015. This information is contained in the Green Card issued on 24/9/2024. There is also a Title Deed issued on 27/7/2015 in favour of the Appellants.

The Respondents on the other hand produced a sale agreement that is not legible and letters of Administration in respect of Ngoco Njoroge's Estate applied for by the 1<sup>st</sup> Appellant. They also produced several official searches as well as a copy of Certificate of death for Ngoco Njoroge who died on 2/8/1999 and although I can see 2 agreements mentioning Plot No. NYANDARUA/MAWINGO SALIENT/ 916 one being christened as a Memorandum of Agreement dated 23/3/2000 and the other one 1/4/1992, from the Documents produced by the Respondents, the said Respondents have not shown how the suit land was acquired by their late father, Njoroge Ngata. Without a letter of allotment from the Settlement Fund Trustees showing the Allotee of a Settlement Scheme parcel of land, we cannot explain how he got that particular land.

The Appellants have demonstrated through various Documents that the suit land was allocated to their husband and father respectively by the Settlement Land Trustees. They were then issued with a Title Deed on 22/7/2015. No such Documents have been exhibited to show that the suit land was allocated to any other person. Nothing would have been easier than the letter of allotment showing that the suit land was Njoroge Ngatia's.

Secondly, although the Respondents have invoked fraud as the means by which the Appellants acquired the suit land, no particulars of fraud were shown or proved.

It is not in dispute that the Appellants are registered as owners of the suit land. The rights of a proprietor are enshrined under Section 25 of the Land Registration Act which states that a certificate of Title issued to a proprietor shall be taken as prima facie evidence that the named proprietor is the absolute and indefeasible owner subject to such encumbrances, easements restrictions and conditions endorsed on the Title. It gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the titleholder under the Act.

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

Appurtenant to is derived from the Norman French word which means to belong to, anything corporeal or incorporeal which is an

incident of, and belongs to some other thing as principal, an addition to, adjoining to, enjoyed with, an adjunct of, usually occupied with or attached to a more important thing and passing with it upon sale, transfer, or conveyance.

As was held in the case of **Esther Ndegi Njiru & Another =vs= Leonard Gatei [2014] eklr:**

***“the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which a person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme”.***

It is trite law that once a person is registered as a proprietor of land, he is to enjoy all rights and privileges appurtenant thereto. Having established that the 1<sup>st</sup> Appellant’s husband and 2<sup>nd</sup> Appellant’s father was the allotted owner of the suit property, I find that he was entitled to all the rights and privileges belonging or appurtenant thereto and hence to occupy, possess and do all

that is legally appurtenant to his rightful ownership. The Appellants are therefore entitled to the protection of the law.

Section 26 provides that:

- (1 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,.....

In Solomon Omwega Omache & another -v- Zackery O. Ayieko & 2 others (2016) e KLR it was stated that the court has the duty to uphold the sanctity of the records from the Lands office.

Section 80 (1) of the **Land Registration Act No. 3 of 2012** provides as follows:

***“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.”***

But such allegations must go beyond imaginations. They must be proved. In **RG PATEL VS LALJI MAKANJI (1957) EA 314** the court expressed itself as follows:

*“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require prove beyond reasonable doubt, something more than a mere balance of probabilities is required”*

Given the seriousness of the allegations, the onus was on the Respondents to provide evidence to the Court of the alleged fraud which evidence must meet the standard of proof as was underscored by the Court of Appeal in Central Bank of Kenya

Limited v Trust Bank Limited & 4 Others [1996] eKLR as being beyond that of a balance of probabilities but not beyond reasonable doubt. In that case, the Court rendered itself as follows:

**“The appellant has made vague and very general allegations of fraud against the respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the appellant in this case than in an ordinary civil case.”**

In the case of Urmila w/o Mahendra Shah v Barclays Bank International Ltd & another [1979] eKLR, the Court of Appeal took the view that the onus to prove fraud in a matter is on the party who alleges it. Similarly, in cases where fraud is alleged, it is not enough to simply infer fraud from the facts.

The position that emerges is that evidence of especially high quality and strength is required to prove fraud in land cases. It is a daunting and burdensome task to prove fraud in any civil case. In the instant case, the Respondents needed to not only plead and particularize the fraud, but also lay a basis by way of

credible evidence upon which the Court would make a finding that indeed there was fraud in the transaction leading to the transfer and registration of the suit land in the name of the Appellants. Fraud is a quasi-criminal charge which must, as already stated, not only be specifically pleaded but also proved on a standard though below beyond reasonable doubt, but above balance of probabilities. However, from the evidence tendered in Court, the Respondents did not prove fraud at all. No evidence was tendered to this end by the Respondents at least to verify their allegations. In the absence of evidence or even the particulars of fraud, I am therefore unable to impeach the Appellant's Title Deed in respect to L.R. NO. NYANDARUA/ MAWINGO/916 or even find that it was acquired fraudulently and hence the Respondents fail in their claim over the parcel of land L.R. No. NYANDARUA/ MAWINGO/ 916. On trust nothing was shown to connect the suit land to the late Njoroge Ngata or to show that the late Ngoco Njoroge had been allocated the suit land to hold in trust for the late Njoroge Ngata or that when the latter surrendered his unspecified land in Githunguri to the Government of Kenya, he was by way of compensation given parcel of land No. NYANDARUA/ MAWINGO/

916 as compensation and that the same had a letter of allotment issued to Ngoco Njoroge as the Respondents convinced the lower Court. In any case there is no proof of the assertion that a parcel of land in Githunguri was ever surrendered to the state by the late Njoroge Ngata. Accordingly, the Appellants succeed in their Appeal and the Appeal is accordingly allowed with costs.

**Judgment read and delivered at Nyandarua this 7th Day of May 2026.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Samson.**

**Appellants' Counsel: Ms. Nyambura Waigwa.**

**Respondent's Counsel: Mr. Kaloki Mumo.**