



Gacheru & 2 others (Suing as Officials and Members of Good Neighbours Self Help Group) v Shamba Poa Investments Company Limited & 23 others; Mulwa & another (Third party) (Environment and Land Case 41 of 2017 & 37 of 2014 (Consolidated)) [2025] KEELC 5449 (KLR) (22 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 41 OF 2017 & 37 OF 2014 (CONSOLIDATED)**

CA OCHIENG, J

JULY 22, 2025

BETWEEN

**FRANCIS GACHERU 1ST PLAINTIFF
RICHARD GICHUKI 2ND PLAINTIFF
PETER MUNGA 3RD PLAINTIFF
SUING AS OFFICIALS AND MEMBERS OF GOOD NEIGHBOURS SELF HELP
GROUP**

AND

**SHAMBA POA INVESTMENTS COMPANY LIMITED 1ST DEFENDANT
WAYUA MUTHAMA 2ND DEFENDANT**

AND

**FRANCIS MWANZA MULWA THIRD PARTY
VERONICA KAMENGELE KIBWAU THIRD PARTY**

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE 37 OF 2014

BETWEEN

**ONESMUS KIOKO MUTHAMA 1ST PLAINTIFF
JAMES ZAKAYO MUTHAMA 2ND PLAINTIFF
PETER MUNGA 3RD PLAINTIFF**



SUING FOR AND ON BEHALF OF WAYUA MUTHAMA

AND

PAUL KAGUMA MUTHUNGA & 21 OTHERS & 21 OTHERS & 21

OTHERS DEFENDANT

JUDGMENT

1. In ELC 37 of 2014, the Plaintiffs vide a Plaint dated the 20th May, 2014, pray for judgment to be made against the Defendants jointly and severally for:
 - a. An order of injunction restraining the Defendants from using in any manner whatsoever land parcels known as land title Nos Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
 - b. An order of inhibition restraining the Defendants from dealing in any manner whatsoever with land title Nos Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
 - c. An order of declaration that the donor Wayua Muthama did not subdivide land title No. Mavoko Town Block 3/2719.
 - d. An order of declaration that the donor Wayua Muthama did not transfer to any of the Defendants land title No's Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
 - e. An order directing the Machakos County Land Registrar to cancel transfers made to the Defendants over Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
 - f. An order directing the Machakos County Land Registrar to cancel the subdivision made on 18.11.2010 over land title No. Mavoko Town Block 3/2719.
 - g. Costs of this suit be awarded to the Plaintiffs.
2. In ELC 41 of 2017, through a Plaint dated the 10th February, 2017 which was amended on 25th July, 2017, the Plaintiffs pray for judgment against the First and Second Defendants jointly and severally for: -
 - a. A permanent injunction restraining the Defendants either by themselves, their servants, agents, employees, assigns, or any other person authorized to act for them and/or on their behalf from trespassing onto, selling, disposing of, evicting the Plaintiffs therefrom and or otherwise dealing with all that properties known as Title Numbers Mavoko Town Block 3/10504, Mavoko Town Block 3/ 10505, Mavoko Town Block 3/10506, Mavoko Town Block 3/10507 and Mavoko Town 3/10508.
 - b. An order directing the Defendants to forthwith surrender the original title documents to the Plaintiffs, obtain the relevant Land Control Board consent and execute the relevant transfer documents in favour of the Plaintiffs over all those properties known as Title Numbers Mavoko Town Block 3/10504, Mavoko Town Block 3/ 10505, Mavoko Town Block 3/10506,



Mavoko Town Block 3/10507 and Mavoko Town 3/10508 within Fifteen (15) days of this order and in default thereof the Deputy Registrar of this Honourable Court do execute the relevant transfer documents in favour of the Plaintiffs.

- c. In the alternative, a refund by the First Defendant of the full purchase price of Ksh. 1, 400,000/- plus interest calculated at the rate of 18% per annum from 24th June 2011 till refund in full.
 - d. Costs of this suit.
 - e. Such further or other relief as this honourable deems fit and just to grant.
3. The two suits were opposed by some of the Defendants who filed their defences.
 4. The 6th, 7th, 8th, 9th, 17th and 22nd Defendants in ELC 37 of 2014 denied the averments in the Plaint except the descriptive. The 6th Defendant contended that he is the proprietor of Mavoko Town Block 3/10480, the 7th, 8th and 9th Defendants claim they are the owners of Mavoko Town Block 3/10481. They insisted that they adhered to the legal processes to acquire their respective portions of land. Further, that they entered into valid sale agreements with Shamba Poa Investments Company Ltd, hereinafter referred to as 'Shamba Poa'. They reiterated that they are bona fide purchasers for value without notice. The 17th Defendant in his statement of Defence denied the averments in the Plaint except the descriptive. He contended that he purchased various parcels of land from Shamba Poa being Mavoko Town Block 3/10493, 10494 and 10495 respectively and a transfer was effected to him. Further, that he is not privy to allegations of fraud.
 5. In ELC 41 of 2017, the 1st Defendant in its Defence denied the averments in the Plaint except the descriptive. It denied that it refused to transfer Mavoko Town Block 3/10504, Mavoko Town Block 3/10505, Mavoko Town Block 3/10506, Mavoko Town Block 3/10507 and Mavoko Town Block 3/10508. Further, that consent to transfer aforementioned properties in favour of the Plaintiffs was procured but the transfer could not be effected due to the fact that 2nd Defendant was charged in MAVOKO PMCRC No. 407 of 2013 Republic v Veronica Kangwele Kibwau alias known as Wayua Muthama.
 6. In ELC 41 of 2017, the 2nd Defendant denied the averments in the Plaint. She denied selling land parcel number Mavoko Town Block 3/2719 to Patrick Wandeto Wanyeki, John Githirwa Maina and Paddy Kamau Nganga. Further, that she had no knowledge of any undertakings made between the Plaintiff and the 1st Defendant over the subdivision and transfer of subject parcels alluded to under paragraph 7 of the Plaint. She insisted that subdivision of Mavoko Town Block 3/2719 was done fraudulently. Further, that land title number Mavoko Town Block 2/10504, 10505, 10506, 10507 and 10508 are unlawful. She provided the history of Mavoko Town Block 3/2719 and confirmed that it was transferred to her on 13th September, 2005. She filed a Counterclaim where she prayed for the Plaintiffs' suit against her to be dismissed and for judgement to be entered against the Plaintiffs jointly and severally for:
 - a. General damages for trespass.
 - b. Costs plus interest.
 7. The matter proceeded for hearing where the Plaintiff in ELC 347 of 2014 called two witnesses while Plaintiff in 41 of 2017 had one witness. Further, the Defendants called a total of five witnesses.



Evidence of the Plaintiffs

8. The Plaintiffs in ELC 37 of 2014 claimed their mother Wayua Muthama was the owner of Mavoko Town Block 3/ 2719. They confirmed that their mother was allocated the said by Lukenya Ranching Company Limited and obtained her Certificate of title in September 2005. PW2 James Zakayo Mugambi adopted his witness statement dated the 25th June, 2018 as his evidence in chief. He confirmed that their mother who is in her late nineties and illiterate donated a Power of Attorney to him, to handle the suit on her behalf. PW2 presented the original Certificate of Title for Mavoko Town Block 3/2719 in Court. He denied that their mother sold the land to a third party. Further, PW2 confirmed that his mother's Identity Card No. was 5051002. He was categorical that even though the mother's ID Card and 'Wayua Muthama's ID Card numbers were the same, the photographs therein were distinct. PW2 thereafter produced the List and Bundle of documents dated the 20th May, 2014, 28th June, 2018 and 8th December, 2021 as the Plaintiffs exhibits No. 1 – 72.
9. The Plaintiff in ELC 41 of 2017 confirmed that it purchased various parcels of land from Shamba Poa but it was yet to effect transfer to them. PW3 Francis Wabara Gachiri who was the Chairman of Good Neighbours Self Help Group adopted his witness statement dated the 10th February, 2017 as his evidence in chief. He further produced the List and Bundle of Documents dated the 10th February, 2017 as exhibits No. 1 – 10. PW3 confirmed that Good Neighbour Self Help Group entered into a Sale Agreement dated the 12th August, 2010. He testified that he saw a Sale Agreement between 'Wayua Muthama' and Shamba Poa dated the 4th May, 2010. He further confirmed that Good Neighbours Self Help Group paid the full purchase price. It was his testimony that Good Neighbours never signed any contract with 'Wayua Muthama'. Further, that even though they took possession in 2011, Shamba Poa is yet to transfer to them the parcels of land they had purchased.

Evidence of the Defendants

10. The 17th Defendant, Ngoima Cooperative Society Limited in ELC 37 of 2014 was represented by its Chairman Anthony Mwangi Maina who testified as DW1. He adopted his witness statement dated the 29th January, 2021 as his evidence in chief. He produced the 17th Defendant's List and Bundle of Documents dated the 22nd April, 2022 as their exhibits No. 1 – 32. It was his testimony that the 17th Defendant purchased three acres of land from Shamba Poa which it subdivided to twenty-four (24) parcels and gave to its members. He testified that it got a copy of the title of Mavoko Town Block 3/2719 from Shamba Poa and noted the land belonged to 'Wayua Muthama'. It was his further testimony that the 17th Defendant did not obtain Consent of the Land Control Board for transfer but it is Shamba Poa that did. Further, that although the 17th Defendant did not transact with 'Wayua Muthama', she transferred the land directly to it. DW1 confirmed that Transfer form was not signed in their presence but Shamba Poa gave them the said Transfer forms duly signed. Further, that he was not present when Transfer was done and Shamba Poa paid the Stamp Duty. He clarified that the 17th Defendant purchased LR Nos. Mavoko Town Block 3/ 10493, 10494 and 10495 vide Sale Agreement dated the 2nd June, 2010. DW1 further stated that the 17th Defendant did not execute the Transfer forms. Further, that Identity Card of 'Wayua Muthama' which they got from Shamba Poa only had a front page while date of birth was indicated as 1964 as was also contained in the KRA PIN.
11. DW2 Anderson Peter Muchiri Mutwiri adopted his witness statement dated the 29th January, 2021 as his evidence in chief. He confirmed that he purchased land parcel number Mavoko Town Block 3/ 10481 together with his sister Monica Kirunja and his brother James Kirunja. He denied signing his witness statement. He confirmed that he did not appear before the Land Control Board to obtain consent to Transfer.



12. DW3 Maurice Gikundi Miriti adopted his witness statement dated the 29th January, 2021 as his evidence in chief. He confirmed that he purchased LR No. Mavoko Block 3/10480 from Shamba Poa. It was his testimony that he did not apply for the Consent of the Land Control Board but Shamba Poa did it. Further, he was shown the Sale Agreement dated the 4th May, 2010 between ‘Wayua Muthama’ and Shamba Poa. He reiterated that directors of Shamba Poa processed everything for him.
13. DW4 Paddy Kamau Nganga confirmed that he is one of the directors of Shamba Poa Investments Limited together with George Kariuki, Patrick Wandeto Wanyeki and John Maina Githirwa. It was his testimony that they acquired Land parcel number Mavoko Block 3/2719 from Wayua Muthama. Further, that they entered into a Sale Agreement and paid Kshs. 7.6 million to F.M Mulwa Advocate. He explained that F. M Mulwa Advocate authorized them to write a Cheque of Kshs. 700,000/- to ‘Wayua Muthama’. He claimed that ‘Wayua Muthama’ agreed to transfer parcels of land directly to the buyers. It was his further testimony that Shamba Poa sold land to twenty (20) Defendants. Further, that Defendants paid them the full purchase price. He clarified that the 6th, 7th, 8th 9th, 17th and 22nd Defendants paid Shamba Poa for various plots. Further, that they all submitted documents to enable Shamba Poa effect transfers. He contended that the buyers paid Stamp Duty and Surveyor did the subdivision on their behalf. DW4 stated that purchasers later got their title deeds. Further, that they submitted the old title in the name of ‘Wayua Muthama’ to the Lands office. He later learnt that F M Mulwa Advocate and ‘Wayua Muthama’ were Charged for forging documents in respect to land parcel number Mavoko Town Block 3/2719. Further, that he tried to pursue F M Mulwa Advocate but it was in vain and he was not ready to refund the buyers their monies. In cross examination he confirmed that the Sale Agreement with ‘Wayua Muthama’ was with the directors of Shamba Poa but this was with the intention of binding the Company. He further confirmed that Plaintiffs in 41 of 2017 had an agreement with them dated 20th August, 2010 and it paid Kshs. 1.4 million. He reiterated that the parcels of land for the Plaintiff in 41 of 2017 were Mavoko Town Block 3/ 10504, 10505, 10506, 10507 and 10508 but they were yet to effect transfer. He explained that they never took full copies of the title deed but only the front page and also never filed the other pages in Court. Further, that ID No. for Veronica Kibwau is xxxxxxxx and was not ID number for Wayua Muthama.
14. DW5 Gilbert Waiti Muchiri confirmed that he has a Sale Agreement dated the 26th August, 2010 in respect to LR No. 10503 with Shamba Poa Investments Limited. He insisted that he legally acquired his land and had seen an original title in the name of Wayua Muthama for Mavoko Town Block 3/2719. In cross examination he clarified that he saw a Sale Agreement dated the 4th May, 2010 between ‘Wayua Muthama’ and Shamba Poa.

Submissions

15. The Plaintiffs in 37 of 2014 reiterated their averments as per their pleadings and witness testimonies. They highlighted the evidence tendered by all the parties herein and insisted that under section 26 (1) of the *Land Registration Act*, when a proprietor seeks to subdivide their land, they have to surrender the title to the Land Registrar for the intended subdivision. They insisted that from the evidence tendered in court, it is clear Wayua Muthama did not sell land parcel number Mavoko Town Block 3/ 2719 to anyone. Further, that the title deed was issued to her on 16th September, 2005 and was still in her custody. They sought for their suit to be allowed and for the suit filed by Good Neighbours against Wayua Muthama to be dismissed with costs but the Counterclaim filed by Wayua Muthama to be allowed as prayed. To support their averments, they relied on the following decisions: Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others (2015) eKLR; Arthi Highway Developers Ltd v West End Butchery Limited & 6 Others (2015) eKLR and Dina Management Limited v County Government of Mombasa (2023) eKLR.



16. The Plaintiffs in ELC 41 of 2017 in their submissions reiterated the averments in their pleadings, relied on the evidence tendered including the exhibits produced. They highlighted the pleadings and evidence of the Defendants. They submitted that the copy of the Certificate of Title presented by Shamba Poa seems to be fake. Further, that Shamba Poa even admitted that Veronica Kangwele Kibwau impersonated Wayua Muthama. They submitted that Shamba Poa can hence not be deemed as a bona fide purchaser for value. They argued that the proprietary interest in the title held by Wayua Muthama will determine whether or not the titles resulting from the subdivision are valid. They insisted that Wayua Muthama was a party to the fraud and protection accorded to innocent holders of legal title does not extend to her. They reiterated that the subdivision exercise cannot be challenged unless it is proven that the current registered owners thereof were aware of the fraudulent scheme and in fact participated therein. They urged the Court to dismiss the first suit and enter judgement in their favour and the parcels of land they had purchased from Shamba Poa to transferred to them. They however submitted that in case the Court finds that Wayua Muthama's interest in the suit land was not divested, then the Court should order a refund of Kshs. 1,400,000/- being the purchase price paid, inclusive of 18% interest per annum from 24th June, 2011 to date. To buttress their averments, they relied on the following decisions: Lawrence P. Mukiri Mungai & Another v Attorney General & 4 Others (2014) KECA 559 (KLR); Said vs Shume (2023) KECA 292 (KLR); Tarabana Company Limited v Sehmi & Others (2021) KECA 76 (KLR; Maina & 87 Others v Kagiri (2014) KECA 880 (KLR).
17. The 6th, 7th, 8th, 9th, 17th and 22nd Defendants in their submissions also reiterated the averments in their pleadings and evidence tendered. They highlighted the pleadings herein. They insisted that in absence of fraud, they are bona fide purchasers for value and hold indefeasible titles. They reiterated that the Defendants having acquired titles in the year 2011 were free to deal with their land parcels as they deem fit. They insisted that the two titles for Mavoko Town Block 3/2719 belong to one and the same person as there is no proof of fraud. They further submitted that incase their titles are indicted, then they should be compensated for loss. They sought for the Plaintiffs suit to be dismissed with costs. To buttress their averments, they relied on the following decisions: Katende v Haridar & Company (2008) 2 EA 173; Muranga ELC Case No. 10 of 2022 Kimani v Njeri & 3 Others (Environment Land Case 10 of 2022) (2023) KEELC 17771 (KLR) (8 June 2023) Judgement and Joseph Muchemi Wanyeki v Premji Bhimji Kerai & Another (2019) eKLR.
18. The 1st Defendant Shamba Poa Investments Company Limited in their submissions provided a background of the two suits, highlighted averments in the respective pleadings filed herein and evidence tendered by all the parties. It insisted that it had no notice of fraud. It contended that it conducted due diligence before purchasing the suit land and executed a Sale Agreement to that effect. To support its averments, it relied on the following decisions: Too & 2 Others v Too & 2 Others (2020) eKLR which favourably cited the case of Katende v Haridar & Company (2008) 2 EA 173; David Peterson Kiengo & 2 Others v Kariuki Thuo (2012) eKLR; Omar Said Mwatayari v Vipinkumar Nathalal Shah & Another; Coastland Properties Limited (2020) eKLR; Vijay Morjaria v Nansingh Madhusing Darba & Another (2000) eKLR and Martin F Kangara v Samuel Macharia Kimani (2019) eKLR.

Analysis and Determination

19. Upon consideration of all the pleadings in the consolidated suits, testimonies of the witnesses, exhibits and rivalling submissions, the following are the issues for determination: Who is the legal owner of LR No. Mavoko Town Block 3/2719 and whether Wayua Muthama sold it to Shamba Poa Investments Limited. Whether Shamba Poa Investments Limited legally acquired a proprietary interest on Mavoko Town Block 3/2719. Whether the 6th, 7th, 8th, 9th, 17th and 22nd Defendants including the other Defendants who did not defend this suit can be deemed as bona fide purchasers for value without



notice. Whether the Plaintiffs are entitled to the Orders as sought. Whether Wayua Muthama is entitled to the Orders as sought in the Counter claim. Who should bear the costs of this suit.

Who is the legal owner of LR No. Mavoko Town Block 3/2719 and whether Wayua Muthama sold it to Shamba Poa Investments Limited.

20. The Plaintiffs claimed their mother Wayua Muthama was owner of LR No. Mavoko Town Block 3/2719, which was allocated to her, by Lukenya Ranching Company Limited. Further, that Wayua Muthama obtained her Certificate of title on 16th September 2005. PW2 presented the original Certificate of Title for Mavoko Town Block 3/2719 in Court. He denied that their mother who was illiterate and in her late nineties ever sold the said land to any third party. PW2 explained that their mother's Identity Card No. was 5051002. He was categorical that even though the mother's ID and 'Wayua Muthama' the vendor's ID numbers were the same, the photographs therein were distinct. DW1 in his testimony claimed to have purchased land from Shamba Poa but transfers were effected directly from 'Wayua Muthama'. He however explained that the Identity Card of 'Wayua Muthama' which they got from Shamba Poa only had a front page while date of birth was indicated as 1964, which was also contained in the KRA PIN. DW4 who is one of the directors of Shamba Poa claimed to have acquired Land parcel number Mavoko Block 3/2719 from 'Wayua Muthama'. He explained that after paying the purchase price, they learnt that F M Mulwa Advocate and Wayua Muthama were Charged for forging documents in respect to land parcel number Mavoko Town Block 3/2719. Further, that he tried to pursue F M Mulwa Advocate but it was in vain. He insisted that he was not ready to refund the buyers their monies.
21. From his testimony, he confirmed he never took full copies of the title deed but only the front page and also never filed the other pages in Court. DW4 clarified that ID No. for Veronica Kibwau is 16097488 and was not ID for Wayua Muthama. From testimonies of the Defendants' witnesses, it seems except one witness, none interacted with the original copy of the title deed for Mavoko Town Block 3/2719 which was presented in court by PW2. Further, even though 'Wayua Muthama' transferred land directly to the purchasers, no one seem to have gone to the Land Control Board with her. Even DW4 from Shamba Poa did not seem to have seen the title deed. I note they only filed the front page of the title deed in Court. PW1 who was a Land Registrar while comparing features of the title held by Wayua Muthama and the one used by Shamba Poa as well as the 17th Defendant had this to say: 'in the features in the title used by Shamba Poa, Wayua Muthama's address is not indicated; Signature of Land Registrar is different; no Stamp of the Land Registrar is exhibited.' Further, that only one page of the title was presented. She was also not able to confirm the Serial number of the said title deed. She explained that the title held by the 17th Defendant contained discrepancies and it indicated Map is Sheet No. 9, yet it is supposed to be No. 4. It further emerged that the imposter of Wayua Muthama called Veronica Kangwele Kibwau together with F. M Mulwa Advocate were Charged in MAVOKO PMCRC No. 407 of 2013 Republic v Veronica Kangwele Kibwau alias known as Wayua Muthama. but the suit was withdrawn, to pave way for further investigations. Be that as it may, even though the Plaintiffs in 41 of 2017 tried to cast aspersions on evidence of PW2 and claimed Wayua Muthama seemed to have been in cahoots with the fraudster, I beg to disagree. There were too many glaring inconsistencies in respect to the transaction in respect to this land. Further, Wayua Muthama still has custody of her original title. I opine that the actions of three parties involved being FM Mulwa Advocate, 'Wayua Muthama' (Veronica Kangwele Kibwau) and Shamba Poa reeked of suspicion. I note the directors of Shamba Poa were even supposed to be witnesses in the aforementioned criminal case against Veronica Kangwele Kibwau, hence they cannot now turn around and deny that they were not aware of the fraud. In my view even, the way they paid the purchase price to F M Mulwa Advocate who directed them on how to write a Cheque, was abit suspicious. I note both Veronica Kangwele



Kibwau and F M Mulwa Advocate despite being the masterminds of the transaction herein and being joined as third parties in these proceedings, failed to even defend this suit.

22. Insofar as the parties are claiming the real Wayua Muthama's family have not proved fraud, to my mind, I find that they have done so. In the foregoing, I find that Wayua Muthama ID No. 5051002 is the legal owner of LR No. Mavoko Town Block 3/2719 and not Veronica Kangwele Kibwau.
23. On proof of ownership of land, Sections 26 (1) (b) of the [Land Registration Act](#) stipulates thus:

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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 ... 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. Emphasis Mine

24. In the case of *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, the Court of Appeal held that:

“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. See *Davy v Garrett* (1878) 7 Ch. D 473 at 489”

See also the case of [Munyu Maina v Hiram Gathiba Maina, Civil Appeal No. 239 of 2009](#).

25. Based on my analysis above while relying on the legal provisions cited and associating myself with decisions quoted, I find that the Plaintiffs in 37 of 2014 have proved Wayua Muthama of ID No. 5051002 was indeed the real owner of the suit land as they have demonstrated the root of her title. Further, that Veronica Kangwele Kibwau who was an imposter, in cahoots with FM Mulwa Advocate proceeded to fraudulently obtain a copy of another title bearing the same parcel number as the suit land herein, to use in the transactions which form the fulcrum of the dispute herein. I hence find that the real Wayua Muthama did not sell her land to Shamba Poa as claimed but it was an imposter in cahoots with the Advocate who did it. In the foregoing, I will proceed to uphold the title for Mavoko Town Block 3/2719 in the name of the real Wayua Muthama.

As to whether Shamba Poa Investments Limited legally acquired a proprietary interest on Mavoko Town Block 3/2719.

26. DW4 who was one of the directors of Shamba Poa together with George Kariuki, Patrick Wandeto Wanyeki and John Maina Githirwa, claimed that they acquired Land parcel number Mavoko Block 3/2719 from Wayua Muthama. It was his testimony that they entered into a Sale Agreement and paid Kshs. 7.6 million to F.M Mulwa Advocate. He confirmed that he later learnt that F M Mulwa Advocate and the imposter of Wayua Muthama (Veronica Kangwele Kibwau) were Charged for forging documents in respect to land parcel number Mavoko Town Block 3/2719. Further, that he tried to pursue F M Mulwa Advocate but it was in vain. He was categorical that he was not ready to refund the buyers their monies. He explained that they never took full copies of the title deed but only



the front page and also never filed the other pages in Court. He also confirmed that ID No. for Veronica Kangwele Kibwau is 16097488 and was not ID for Wayua Muthama. Even though DW4 confirmed entering into a Sale Agreement with a Wayua Muthama, and based on my findings above, I note the alleged vendor was an imposter and not the owner of the said land.

27. In *Wambui v Mwangi & 3 Others* [Civil Appeal 465 of 2019] KECA 144 (KLR) (19 November 2021) (Judgment), the Court of Appeal while dealing with a dispute revolving around an illegal contract held as follows:

“No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing the obligations alleged to arise out of a contract or transaction which is illegal if the illegality is duly brought to the notice of the court; and lastly, that it is trite law that where an act is a nullity it is void and every proceeding founded on it is also in law a nullity. (para. 42 (v)). Every subsequent act premised on a nullity cannot accrue legitimacy or legality (para. 46 (i)). Sixth, the title was also tainted with nullity in that the court process on the basis of which the title to the suit property was anchored was subsequently declared null and void ab initio. The position in law as we have already highlighted above is that anything founded on nullity is also null and void and of no consequence. The title allegedly vested in the 3rd Respondent and subsequently passed on to the appellant having stemmed from court proceedings that were subsequently declared null and void also stood vitiated by the same nullity and of no consequence” (para 70).”

28. In the foregoing while relying on the decision cited, I find that Veronica Kangwele Kibwau an imposter of Wayua Muthama did not have any proprietary interest or title to pass to Shamba Poa since she did not own the suit land. I hence find that Shamba Poa Investments Limited did not legally acquire any proprietary interest over Mavoko Town Block 3/2719.

As whether the 6th, 7th, 8th, 9th, 17th and 22nd Defendants including the other Defendants who did not defend this suit can be deemed as bona fide purchasers for value without notice.

29. The 6th, 7th, 8th, 9th, 17th and 22nd Defendants have claimed they are bona fide purchasers for value with notice as they acquired their respective parcels of land from Shamba Poa. It emerged that all these purchasers had their respective titles transferred directly to them from an imposter of Wayua Muthama known as Veronica Kangwele Kibwau. None of the purchasers herein ever attended the Land Control Board to obtain consent to transfer. Even Shamba Poa that entered into respective Sale Agreements with the said purchasers, never attended the Land Control Board with the alleged ‘Wayua Muthama’. DW1 in his testimony confirmed that Ngoima Cooperative Society Limited purchased several parcels of land from Shamba Poa but they never procured consent of the Land Control Board for transfer. Further, that the Transfer Forms were never signed in their presence and it is Shamba Poa that paid Stamp Duty on their behalf. I note Ngoima Cooperative Society Limited however obtained their titles. DW4 who represented Shamba Poa confirmed that it is FM Mulwa Advocate that was handling the transaction. He claimed that ‘Wayua Muthama’ agreed to transfer parcels of land directly to the buyers. It was his further testimony that Shamba Poa sold land to twenty (20) Defendants. Further, that the Defendants including 6th, 7th, 8th, 9th, 17th and 22nd Defendants paid Shamba Poa, the full purchase price for their respective plots. Further, he confirmed that they all submitted documents to enable Shamba Poa effect transfers. He contended that the buyers paid Stamp Duty and Surveyor did the subdivision on their behalf. However, this was contrary to the evidence of DW1 who stated that Shamba Poa had paid their Stamp Duty. DW4 stated that purchasers got their respective title deeds. In cross examination he confirmed that the Sale Agreement with ‘Wayua Muthama’ was with the directors of Shamba Poa but this was with the intention of binding the Company. He further confirmed that Plaintiffs in 41



of 2017 had an agreement with them dated the 20th August, 2010 and they paid Kshs. 1.4 million as purchase price. He reiterated that the parcels of land which the Plaintiff in 41 of 2017 purchased were Mavoko Town Block 3/ 10504, 10505, 10506, 10507 and 10508 but they were yet to effect transfer to them. Since the titles for the 6th, 7th, 8th, 9th, 17th and 22nd Defendants are under challenge, I opine that it incumbent upon them to prove their roots. On validity of a title, Section 26 of the [Land Registration Act](#) provides that:

“Certificate of title to be held as conclusive evidence of proprietorship (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, 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.”

30. In *Daudi Kiptugen v Commissioner of Lands & 4 others* [2015] eKLR, it was held;

“...The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

31. Further, in *Dina Management Ltd v. County Government of Mombasa & 5 Others, Pet. No. E010 of 2021*, the Supreme Court stated that:

“...where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

32. While in the case of *Alberta Mae Gacci v Attorney General & 4 Others* (2006 (eKLR), the Court held that:

“Cursed should be the day when any crooks in the street of Nairobi or any town in this jurisdiction using forgery, deceit or any kind of fraud would acquire a legal and valid title deceitfully, snatched from a legal registered innocent proprietor. Indeed, cursed would be the day when such a crook would have a legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration....”

33. From the facts as presented while relying on the legal provisions I have cited and associating myself with the decisions quoted, I find that since the 6th, 7th, 8th, 9th, 17th and 22nd Defendants have failed to demonstrate, the root of their titles, noting that the alleged vendor of Mavoko Town Block 3/2719



who sold to Shamba Poa, who in turn sold to them, was an imposter and not its owner, I find that those titles were acquired illegally, unprocedurally and irregularly and should hence be cancelled. Even though they insist that they are bona fide purchasers for value without notice, I opine that as at the time they purchased their respective portions of land, the mother title was not registered in the name of Shamba Poa. Further, they never transacted with the real Wayua Muthama nor appeared before the Land Control Board to obtain consent to transfer but the fake Wayua Muthama was transferred all their respective parcels of land directly to them.

34. In the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 Others* (2015) eKLR the Court of Appeal outlined the principles to be relied upon when a party seeks to be deemed to be a bona fide purchaser for value without notice, wherein they favourably cited the Uganda Court of Appeal Case of *Katende V Haridar & Company Ltd*, that described it as follows:

“A bonafide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a certificate of Title
- b. He purchased the Property in good faith;
- c. He has no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

A bona fide purchase of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

35. In applying the principles established in the aforementioned decisions to the circumstances at hand, I note that since the root of title held by Veronica Kangwele Kibwau an imposter of Wayua Muthama was fettered, it, she was not in a capacity to transfer any land to the purchasers. I hence find that the 6th, 7th, 8th, 9th, 17th and 22nd Defendants including the other Defendants who did not defend this suit cannot be deemed as bona fide purchasers for value without notice, for having purchased parcels of land emanating from Mavoko Town Block 3/2719. In my view, they can still seek remedy against Shamba Poa who sold to them, their respective parcels of land.
36. I further find that even though the Plaintiffs in 41 of 2017 had made a case to be transferred for the respective parcels of land that they had purchased from Shamba Poa, I opine that since Shamba Poa did not have capacity to sell the said parcels of land to them, they are not entitled to the orders as sought in their Plaint except for refund of the purchase price which they had paid.
37. In the foregoing, I further find that the real Wayua Muthama is entitled to the orders as sought in the Counterclaim.
38. On costs, since the Plaintiffs in both suits are the inconvenienced parties, I find that they are entitled to the same but to be borne by Shamba Poa and the Third Parties.
39. It is against the foregoing that I find that the Plaintiffs in 37 of 2014 and Counterclaimant in 41 of 2017 have proved their case on a balance of probability and will proceed to enter judgment in their favour in the following terms:



- i. An order of injunction be and is hereby issued restraining the Defendants from using in any manner whatsoever land parcels known as land title No's Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
- ii. An order of inhibition be and is hereby restraining the Defendants from dealing in any manner whatsoever with land title Nos. Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
- iii. An declaration be and is hereby issued that the donor Wayua Muthama did not subdivide land title No. Mavoko Town Block 3/2719.
- iv. A declaration be and is hereby issued that the donor Wayua Muthama did not transfer to any of the Defendants land title No's Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503 respectively.
- v. An order be and is hereby issued directing the Machakos County Land Registrar to cancel transfers made to the Defendants over Mavoko Town Block 3/10475, 10477, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10489, 10491, 10493, 10494, 10495, 10498, 10500, 10501 & 10503.
- vi. An order be and is hereby issued directing the Machakos County Land Registrar to cancel any subdivisions made on 18.11.2010 or any other date, over land title No. Mavoko Town Block 3/2719.
- vii. Costs of this suit and Counterclaim is awarded to the Plaintiffs.
As for Plaintiffs in ELC 41 of 2017:
 - i. Shamba Poa Investments Company Limited (1st Defendant) be and is hereby ordered to refund to the Plaintiffs, the full purchase price of Ksh. 1, 400,000/- plus interest calculated at Court rates per annum from 24th June 2011 until payment in full.
 - ii. Costs of this suit is awarded to the Plaintiffs to be borne by Shamba Poa Investments Company Limited.

I so order

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JULY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Otto Nduva for Plaintiff in 37 of 2014

Ms. Mugo for 6th, 7th, 8th, 9th, 17th and 22nd Defendants in 37 of 2014

Awuor for Plaintiff in 41 of 2017

Odongo holding brief for Makau for 1st Defendant

Court Assistant: Joan

