



**Adeti Limited v Kamau & 2 others (Environment and Land Case E106 of 2023) [2025] KEELC 5435 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5435 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E106 OF 2023**

**AA OMOLLO, J  
JULY 17, 2025**

**BETWEEN**

**ADETI LIMITED ..... PLAINTIFF**

**AND**

**JAMES MWANIKI KAMAU ..... 1<sup>ST</sup> DEFENDANT**

**EVANS KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this suit against the Defendants vide Plaintiff dated 14<sup>th</sup> March 2023 seeking for the following orders;
  - a. An Order declaring and affirming that the Plaintiff is the legal and registered proprietor of the suit property known as Title Nairobi Block 105/4988 situated in Utawala Estate, Embakasi area-within Nairobi County.
  - b. An Order that any title issued by the 3<sup>rd</sup> Defendant and held by the 1<sup>st</sup> and/or the 2<sup>nd</sup> Defendant over the property known as Title Nairobi Block 105/4988 situated in Utawala Estate, Embakasi area within Nairobi County be and is hereby revoked or canceled altogether.
  - c. An Order of Permanent or Perpetual injunction is hereby issued directed at the 1<sup>st</sup> and 2<sup>nd</sup> Defendant restraining them, their agents, their employees, or any other person acting under their directions from ever entering, accessing, trespassing, dealing in the suit property or breaking into the suit property and thereon evicting the Plaintiff or its workers or demolishing the buildings, gates, perimeter walls and or in any other way interfering with the Plaintiff's quiet possession of the suit property Title No. Nairobi Block 105/4988 situated in Utawala Estate, Embakasi area within Nairobi County.



- d. Damages.
  - e. Any other relief deemed fit to grant in the interest of justice.
  - f. Costs of this suit.
2. The Plaintiff pleaded that it is the registered owner and has been in occupation of property known as L.R. No. Nairobi Block 105/4988 in Utawala Estate herein after referred to as “the suit property” since 2009, where it constructed a perimeter wall, an electric fence, a workshop, and workers' housing.
  3. The Plaintiff averred that the 1<sup>st</sup> Defendant claims to have received a competing title from the 3<sup>rd</sup> Defendant, which he asserts nullifies the Plaintiff's title, although the Plaintiff's title remains uncontested and valid.
  4. That the 2<sup>nd</sup> Defendant, identified as the 1<sup>st</sup> Defendant's son, has issued threats to evict the Plaintiff unless it relinquishes the property and despite demands to stop, the Defendants have continued their unlawful interference.
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a defence dated 25<sup>th</sup> January 2024. They admit that the Plaintiff has been in occupation of the suit property but argue that the occupation is illegal and has not been continuous.
  6. They deny that the Plaintiff is the registered proprietor and demand strict proof.
  7. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants dispute the Plaintiff's claim of acquiring and developing the property in 2009, citing cheques from 2010–2011 from Plaintiff's bundle as evidence to the contrary.
  8. They allege that if any transaction took place between the Plaintiff and Embakasi Ranching Company Limited, the same was illegal or fraudulent. It is their assertion that the 1<sup>st</sup> Defendant's late mother was the original beneficiary of the plot since 1978 flowing from her membership with Embakasi Ranching Company Limited. That the suit property was initially plot No.R.54 which was later assigned Title Number Nairobi Block 105/4988.
  9. The 1<sup>st</sup> Defendant claims rightful ownership, having received a Certificate of Lease registered on 5<sup>th</sup> November 2020 and the 2<sup>nd</sup> Defendant denies threatening eviction. They denied engaging in any illegal actions or receiving a demand from the Plaintiff.

## **Evidence**

10. Aldrin Ojiambo testified as PW1 on behalf of the Plaintiff and adopted his Witness Statement dated 16<sup>th</sup> March 2023 and further statement dated 26<sup>th</sup> February 2024 as evidence in chief. He produced documents contained in the Plaintiff's List and Bundle of Documents dated 14 March 2023 as PExh1-18 and the additional List and Bundle dated 1<sup>st</sup> March 2024, comprising 13 documents as PExh 19-31, all of which he avers are crucial to the Plaintiff's case.
11. PW1 stated that through him as the Plaintiff's Director, it lawfully acquired the suit property from Embakasi Ranching Company Limited (ERCL) through the vendor who had a share in Embakasi Ranching Company Ltd. That they signed a sale agreement dated 27/2/2008, vendor's share in ERCL was surrendered and the Plaintiff was issued a share, took possession, and has since developed and occupied the same without interruption.
12. It was his testimony that the Plaintiff's title was formally registered on 22/6/2012, following due process including payment of consideration, obtained consent of the Commissioner of Lands, paid of stamp duty, and clearance of rates. He produced the documents including the Certificate of



- Lease, Share Certificate, Transfer of Lease, valuation report, court orders lifting inhibitory orders, and certified records from the 3<sup>rd</sup> Defendant confirming its ownership.
13. The witness also stated that the 1<sup>st</sup> Defendant's title is suspect, as it purports to have been issued in 1970, long before the suit property was even created via the subdivision in 1994. He contends that the 3<sup>rd</sup> Defendant's own records, including a green card and summons issued to both parties, affirm the Plaintiff's ownership.
  14. The Plaintiff firmly denies that Share Certificate No. 4048, issued in 1978 to Mary Wairimu Kamau that conferred any rights over the suit property (Nairobi Block 105/4988) to the Defendants. He asserted that the certificate makes no reference to land and only permitted allocation of one plot, which was already transferred to the 1<sup>st</sup> Defendant as Nairobi Block 105/4987.
  15. The Plaintiff highlighted the inconsistencies and contradictions in the Defendants' documents, particularly the attempt to rely on handwritten and unverified entries to claim additional plots R54B and R55B in 2019, despite already holding a registered title since 2016.
  16. The Plaintiff emphasized that no lawful allocation, transfer, or payment by the Defendants exists concerning the suit property, and that the property had already been sold to and occupied by the Plaintiff since 2008, with title issued in 2012. He posited that the suit property originally had two numbers Plot A & B before the title was processed with one plot measuring  $\frac{1}{4}$  acre and in total  $\frac{1}{2}$  acres.
  17. Evanson Kamau Mwaniki who is the 2<sup>nd</sup> Defendant gave evidence on his behalf and on behalf of the 1<sup>st</sup> Defendant. He adopted his written statement dated 2<sup>nd</sup> February 2024 and produced the bundle of documents dated 25<sup>th</sup> January 2024 as DEx 1-7.
  18. He stated that the 1<sup>st</sup> Defendant's late mother, Mary Wairimu Kamau who died in the year 2014 held two shares in Embakasi Ranching Company Ltd (ERC Ltd) under Share Certificate No. 4048, which entitled her to plots R.54 and R.55 later assigned Title Numbers Nairobi/Block 105/4988 and 105/4987, respectively.
  19. That she transferred one share to the 1<sup>st</sup> Defendant in 2007, and upon her death in 2014, the family agreed that the 1<sup>st</sup> Defendant would inherit both plots. It is his testimony that while the 1<sup>st</sup> Defendant was registered as proprietor of Nairobi/Block 105/4987 in 2016, he obtained title to Nairobi/Block 105/4988, the suit property in 2020 under a government special titling programme, after claiming that ERC Ltd could not trace the lease.
  20. He disputed the Plaintiff's ownership and claimed that the Plaintiff took illegal possession despite lacking proper documentation at the time and deny issuing threats and allege the Plaintiff failed to enjoin ERC Ltd in the suit to obscure its questionable title acquisition, vowing to initiate fraud investigations into the Plaintiff's title.
  21. During cross examination, the witness confirmed that the green card was opened on 12/4/2012 and lease issued to Embakasi Ranching on 12/4/2012. That the first entry is on 12/4/2012 when certificate of lease was issued and the second entry was on 22/6/2012 when the certificate of lease was issued to the Plaintiff. Thereafter, an inhibition is registered on the title on 3/9/2013.
  22. The 2<sup>nd</sup> Defendant admitted that he has not produced a transfer of the suit property from ERC Ltd executed to them nor payment for the suit property. Dw1 confirmed that the allotment letter at page 1 in their bundle was issued on 1/8/1978 and collected on 24/5/1990 but does not know why it took him so long to collect it. He also affirmed that the same is not signed by the Chairman of ERC Ltd.



23. Further, he could not ascertain who made the writing on Pag 2 and that he was not sure why the Land Registrar did not sign. That the document reads that the suit property was allocated in 1992. He does not know when the sub division took place but from the Plaintiff's document it shows the land was sub divided in 1994.
24. DW1 testified that the document at page 19 has a stamp endorsed on it which states that this title is issued under special titling program exempted from survey, Stamp Duty, Conveyancing and Registration fees but the stamping is not signed nor dated and does not bear a number of any land registrar. That was the end of oral hearing by both sides with no evidence adduced on behalf of the Land Registrar.

**Submissions:**

25. The Plaintiff filed the submissions dated 26<sup>th</sup> February 2025 while the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed submissions dated 7<sup>th</sup> April 2025.
26. The Plaintiff stated that the Defendants challenged PW1's authority to testify on its behalf, being a limited company, but had not raised this issue in their pleadings or by formal application. It submitted that Mr. Ojiambo, PW1 signed the Transfer of Lease on behalf of the Plaintiff and was directly engaged by the 1<sup>st</sup> Defendant in discussions over the suit property.
27. Relying on the case of Makupa Transit Shade Ltd v KPA [2015] eKLR, where it was held that it is enough for a company representative to state they are authorized to testify; the burden shifts to the opposing party to disprove it. Hence, the Plaintiff submitted that the Defendants failed to do.
28. The Plaintiff submits that it holds a valid lease over the suit property since 2012, granted by the National Government to Embakasi Ranching Company Ltd then transferred it. That the 1<sup>st</sup> Defendant's lease issued in 2020 came 8 years after the Plaintiff's title thus lacks a proper legal basis. Further it argues that the 1<sup>st</sup> Defendant's title is suspicious as it references a lease from 1988, but the subdivision of the larger parcel occurred in 1994 and land search claims the title was issued in 1970 which is clearly impossible.
29. The Plaintiff submitted that the defendants have not produced any Registry Index Map or referenced any deed plan and also no consideration (payment) was made by the 1<sup>st</sup> Defendant to the government making the issuance of their title questionable and possibly fraudulent.
30. The Plaintiff submitted that its title is valid and traced the full root of the title by narrating that it purchased the same from the previous allottee and occupier, Hon. Justus Murunga (now Deceased), under a Sale Agreement dated 27/2/2008 and produced evidence of payment. That the late Hon. Justus Murunga transferred his stake in the suit property and share certificate to the Plaintiff.
31. It added that Embakasi Ranching was granted a lease in 2012 and transferred it to the Plaintiff after paying the consideration of Ksh 1.73M, obtained the requisite consents, paid stamp duty, and registered the transfer and certified government documents, including the Green Card, confirm their story.
32. In support of its argument, the Plaintiff cited the case of Dina Management v Mombasa County (2023) which held that title is only indefeasible if obtained legally and regularly, Wreck Motors v Commissioner of Lands which held that when two titles exist, the first in time prevails and Munyu Maina v Hiram Maina which stated that the holder of a challenged title must prove its root.



33. The Plaintiff submitted that the 1<sup>st</sup> Defendant's documents, share certificate and allotment letter are defective because they contain erasures and are unsigned. Further, there is no evidence of payment of fees required in the allotment letter and there is no Letters of Administration to show authority to inherit from his mother.
34. The Plaintiff submitted that even if allotment were valid, it was never perfected due to non-compliance with its conditions. It is their argument that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants allege they are innocent purchasers but failed to show a transfer from Embakasi Ranching, proof of payment or due diligence conducted. That a mere issuance of title under a "special titling program" is not enough.
35. The Plaintiff added that the Defendants have not filed a counterclaim or specifically pleaded fraud or illegality in how the Plaintiff obtained its title and in support cited the case of Sangale Ole Langas v Stephen Mishish [2018] eKLR which held that a valid title is prima facie proof of ownership unless specifically challenged and proven otherwise.
36. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants argue that title under the Land Registration Act is not absolute, and can be impeached under Section 26(1) of the Land Registration Act if obtained fraudulently, illegally, or unprocedurally. That while the Plaintiff's title is first in time, they assert that it was fraudulently obtained as the Plaintiff inconsistently stated the date and manner of acquisition and that the Agreement for sale was only introduced after the Defence was filed.
37. The Defendants submitted that the Certificate of Lease was issued during the pendency of a blanket inhibitory order and further the Plaintiff paid KShs. 1 million to a Third Party unrelated to the original sale agreement. It is their submission that the inconsistencies and procedural breaches taint the Plaintiff's title. In support they cited the case of Gitwany Investment Ltd and Hubert L. Martin v Margaret J. Kamar to emphasize the need for the court to scrutinize the root of both titles and uphold the one that followed due process.
38. The Defendants maintain that the 1<sup>st</sup> Defendant's mother was the original and legitimate allottee of the property and had transferred it to him legally through a special government titling programme in 2020.
39. They also stated that the Plaintiff introduced Hon. Justus Murunga posthumously, without calling any legal representatives of his estate as the one who facilitated its transfer and had no legal interest in the suit property by the time of the alleged transaction. The Defendants contend that no valid rights could have passed to the Plaintiff, as the suit property was already allocated to the 1<sup>st</sup> Defendant's mother and in support cited the case of Jane Gatheca v Priscilla Gitungu.
40. The Defendants submitted that the Plaintiff's case lacks merit and is based on an improperly obtained title and that it concealed the core sale agreement until rebuttal and relied on defective documentation such as mismatched plot numbers. Thus the court should not aid a party with "unclean hands".
41. In support of their argument that fraud invalidates title, and a title holder must prove a clean and legal chain of acquisition they relied on Section 80 of the Land Registration Act and the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] Eklr and Munyu Maina v Hiram Gathiha Maina [2013] Eklr.

#### **Analysis and Determination:**

42. I have read the parties' pleadings and considered their evidence tendered and submissions filed in support of their respective cases. This is land ownership dispute with each party holding a title to the same parcel. From the pleadings, by virtue of statement that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have threatened the Plaintiff with eviction infers that it is the Plaintiff in occupation.



43. Consequently, the main issue for determination is, which of the two titles should be upheld as the proof of genuine and valid ownership of the suit property. The Plaintiff through its evidence and supporting documents tabled before this court, outlined the process on how it acquired the certificate of title to the suit property.
44. The plot ownership card from which the Plaintiff's title traces its root was issued to Justus Murunga Makhoha on 26<sup>th</sup> August 2004. The Plaintiff has referenced to a sale agreement between it and the vendor, Hon. Justus Murunga dated 27/2/2008 produced at pages 2-4 of its bundle as well as a copy of identity card of the seller.
45. The Plaintiff further adduced payment proof for the purchase price expended in purchasing the suit property and acknowledgements of the said payments by the vendor. It also produced a receipt of payment application issued by the Embakasi Ranching Ltd. Besides its documents, the Plaintiff argued that the title held by the Defendants traces its root to an allotment that was done in 1992 yet the subdivision resulting to the suit property was conducted in the year 1994. It also contended that the Defendants' alleged allotment letter bears no signature from the Chairman of ERC Ltd and that the Defendants have not provided any payment proof for the suit property.
46. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have challenged the Plaintiff's title stating that the same was fraudulently obtained and that the transaction between the Plaintiff and ERC Ltd was fraudulent. The Defendants did not apply to join Embakasi Ranching Ltd who they assert colluded with the Plaintiff. In their statement of defence filed, the particulars of fraud were not pleaded as required under order 2 rule 4 of the Civil Procedure Rules.
47. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants pleaded that if the Plaintiff made payment for the title in 2010, then it is misleading to state that it commenced development in the year 2009. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants do not plead if they were ever put in occupation from the November 1982 when the land was allocated to Mrs Mary Wairimu Kamau. The Plaintiff has produced a sale agreement dated 27<sup>th</sup> February 2008 to link it with the property and therefore having purchased and paid for it in 2008, nothing stopped it from undertaking any developments.
48. Section 26(1) of the *Land Registration Act* provides as follows:
- “the Certificate of Title issued by the Registrar upon registration, 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 the 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
- b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme
49. It is a well-established rule of law that he who alleges must prove. The burden of proof is on the party alleging the existence of a fact he wants the Court to believe. In *Miller .V. Minister of Pensions 1947*



All E.R 372 which is relied on in *Kinyanjui v Kinyanjui & another (Civil Appeal E201 of 2022)* [2024] KEHC 11217 (KLR), Lord Denning put this standard to proof fraud in the following terms:

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: We think it more probable than not; the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

50. The original owner of the land before allocating to either of the parties was Embakasi Ranching Ltd. In the event the said Company double allocated same parcel of land since both parties are claiming it, then either party had a duty to prove the illegalities committed by the party who has wronged it. For the Plaintiff, they have pointed out the inconsistencies in the documents presented by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Inter alia, the crossings on the allocating documents presented by the 2<sup>nd</sup> Defendant without explanation.
51. Second, the 2<sup>nd</sup> Defendant alluded that the plot was allocated to his mother who is deceased and who is recorded to have died in the year 2014 as per the death certificate they produced. He produced a receipt dated 17<sup>th</sup> July/September 2007 paying for transfer but the receipt does not state transfer from who to who as it presents itself as if the property was in joint names. Further at page 4 of their bundle speaks to allocation of R54 and R55 (inside a box) done in the year 1992. On the same page are handwritten numbers Map 3C 2929 and 2944 made on 26<sup>th</sup> August 1999. There are also notes written referring to entries made in the year 2006.
52. Thus, on the face of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants documents, one cannot discern easily exactly what was taking place with their documentation. Taking into consideration the fact that they were not in physical possession and the Plaintiff’s title was issued the first in time, I hold that it was not open for the officials of Embakasi Ranching Ltd to sign for them the undated transfer of lease registered on 19<sup>th</sup> September 2019 when the Plaintiff had already acquired title. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants allude to the Plaintiff’s title being issued when there was a moratorium however, no such evidence was presented.
53. The equitable doctrine of the first in time was emphasized in the case of *Wreck Motors Enterprises vs. The Commissioner of Lands and Others Civil Appeal Civil Appeal No. 71 of 1997*, where the court held that where there are two competing titles the one registered earlier is the one that takes priority. Similarly, in the case of *Gitwany Investment ltd vs. Tajmal Ltd & 3 Others (2006) eKLR* it was held that:-

....the first in time prevails, so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issues two title in respect of the same parcel of land, then if both are apparently and on the face of them issued regularly and procedurally, without fraud save for the mistake then the first in time must prevail
54. This is not to say that the Plaintiff’s title is prevailing only on account that it was the first in time rather, the sequence of events on how the land was acquired, paid for and possession taken looks more credible. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants who alleged fraud against the Plaintiff’s title have not shown that the Plaintiff was party to the fraud if any committed by the Embakasi Ranching Co. Ltd. It is not enough to assert fraud in the statement of pleadings.



55. With regard to the claim for damages, the Plaintiff has not proved that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants trespassing on the suit property occasioned any loss directly attributed to them. They are still in possession doing their business. I find no basis to award any damages.
56. Accordingly, I dismiss the prayers sought in the statement of defence and instead enter judgement for the Plaintiff against the Defendants as follows (b), (c) and (f) as sought in the Plaint.
- a. An Order declaring and affirming that the Plaintiff is the legal and registered proprietor of the suit property known as Title Nairobi Block 105/4988 situated in Utawala Estate, Embakasi area-within Nairobi County.
  - b. An Order that any title issued by the 3<sup>rd</sup> Defendant and held by the 1<sup>st</sup> and/or the 2<sup>nd</sup> Defendant over the property known as Title Nairobi Block 105/4988 situated in Utawala Estate, Embakasi area within Nairobi County be and is hereby revoked or canceled altogether.
  - c. An Order of Permanent or Perpetual injunction is hereby issued directed at the 1<sup>st</sup> and 2<sup>nd</sup> Defendant restraining them, their agents, their employees, or any other person acting under their directions from ever entering, accessing, trespassing, dealing in the suit property or breaking into the suit property and thereon evicting the Plaintiff or its workers or demolishing the buildings, gates, perimeter walls and or in any other way interfering with the Plaintiff's quiet possession of the suit property Title No. Nairobi Block 105/4988 situated in Utawala Estate, Embakasi area within Nairobi County.
  - d. Costs of the suit

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY, 2025**

**A. OMOLLO**

**JUDGE**

