



**Equity Masters Limited v Muchobia & another (Environment and Land Appeal E032 of 2024) [2025] KEELC 5367 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5367 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E032 OF 2024**

**JM ONYANGO, J**

**JULY 15, 2025**

**BETWEEN**

**EQUITY MASTERS LIMITED ..... APPELLANT**

**AND**

**JANET GACHERI MUCHOBIA ..... 1<sup>ST</sup> RESPONDENT**

**MWIHOKO HOUSING COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. Joseph Were.  
SPM in Ruiru CMELC E126 of 2022 delivered on 25.3.2024)*

**JUDGMENT**

1. This appeal arises from the judgment of Hon. Joseph Were SPM delivered on 25.3.24 in Ruiru CM CMELC E126 of 2022 where the trial court entered judgment in favour of the 1<sup>st</sup> Respondent. In the said case the 1<sup>st</sup> Respondent who was the Plaintiff filed suit against the Appellant and the 2<sup>nd</sup> Respondents who were the Defendants seeking a declaration that she was the proprietor of land parcel number RUIRU/KIU BLOCK 4/1804 situated at Githurai Mwihoko within Kiambu County. She also sought a permanent injunction restraining the Appellant and the 2<sup>nd</sup> Respondent from interfering with the suit property.
2. In his Defence the Appellant denied the 1<sup>st</sup> Respondent's claim and alleged that the suit property initially belonged to Mbo-i-Kamiti Farmers Company Limited who sold it the Appellant pursuant to a sale agreement dated 13<sup>th</sup> August 2009. The Appellant subsequently had the title issued in its name.
3. The 2<sup>nd</sup> Respondent filed a Defence admitting that it sold the suit property to the 1<sup>st</sup> Respondent but it did not call any witness during the hearing.



## 1<sup>st</sup> Respondent's Case

4. In her Amended Complaint dated 31<sup>st</sup> January 2023 and in her testimony the 1<sup>st</sup> Respondent stated that on or about 16<sup>th</sup> September 2010 she entered into a sale agreement with Mwhoko Housing Company Limited (the 2<sup>nd</sup> Respondent) in respect of Plot No. 1918 which is now known as title number RUIRU/KIU BLOCK 4/1804 for a consideration of Kshs. 350,000/=. The sale agreement was signed by one Stanley Kirima M'bagine who was said to be a director of 2<sup>nd</sup> Respondent.
5. The 1<sup>st</sup> Respondent paid the purchase price by a cheque dated 15<sup>th</sup> September 2010 issued to Stanley Kirima M'bagine. She was then issued with a share certificate for plot No. 1918, L.R Number 10901/32 dated 16<sup>th</sup> September 2010 by Mwhoko Housing Company Limited. She explained that the parcel of land she bought later became known as land title No. RUIRU/KIU BLOCK 4/1804.
6. In her evidence, the 1<sup>st</sup> Respondent admitted that the suit property initially belonged to Mbo-i-Kamiti Farmers Company Limited. Apparently, Mwhoko Housing Company Limited subsequently acquired the land from Mbo-i-Kamiti Farmers Company Limited before they sold it to her.
7. The 1<sup>st</sup> Respondent produced an excerpt of the member's register from Mwhoko Housing Company Limited showing that the suit property was transferred from Mbo-i-Kamiti to Stanley M'bagine before he transferred it to her.
8. She stated that sometime in November 2021, the Appellant's director one Alexander Maina Kungu invaded her plot. She reported the matter to Githurai Police Station and later to Mwhoko Police but no action was taken. Instead she was charged with the offence of forcible detainer. The case was however dismissed as it was found to be a civil case.
9. It is the Plaintiff's position that she is the rightful owner of the suit property as she had been in occupation of the suit property since 2010 before the Appellant started laying claim to it. She maintains that the Appellant obtained the title to the suit property in 2021 illegally irregularly and unprocedurally as she had already erected a wall fence and constructed a structure therein. It is the Plaintiff's further contention that Mbo-i-Kamiti did not have a valid title which it could transfer to the Appellant.

## Appellant's Case

10. The Appellant's case is that they acquired the suit property from Mbo-i-Kamiti Farmers Company Limited. The Appellant's sole witness Alexander Maina Kungu who testified that he is a director of Equity Masters Limited produced a sale agreement dated 13<sup>th</sup> August 2009 between Mbo-i-Kamiti Farmers Company limited and Equity Masters Limited in respect of L.R No. RUIRU/KIU BLOCK 4 Numbers 1689,1697,1724,1725,1755,1756,1770,1771,1803,1804,1805,1806,1809,1810,1811,1812,1813,1814,1815,1816,1817 and 1833. Sometime in 2016, a dispute arose between Mbo-i-Kamiti Farmers Company Limited and Mwhoko Housing Company Limited over some of properties that had been sold to Equity Masters Limited and after investigations the DCI made a finding that the properties including the suit property belonged to Mbo-i-Kamiti Farmers Company Limited. They were given a clearance certificate dated 4.11.2016 by Mbo-i-Kamiti addressed to the Ministry of Lands indicating that they had paid for the suit property. The title was then processed in the name of Equity Masters Limited in 2021.
11. He testified that by the time they bought the suit property from Mbo-i-Kamiti it had been given the number RUIRU/KIU PLOT 1804. He insisted that the property known as L.R 1918 which the Plaintiff bought from Mwhoko Housing Company was a different parcel of land. He told the court



that he did not know anything about the register produced by the 1<sup>st</sup> Respondent which indicated that the suit property initially belonged to Mbo-i-Kamiti.

12. It was his testimony that the 1<sup>st</sup> Respondent had trespassed onto their property and constructed a perimeter wall prompting them to make a report to the Director of Criminal Investigations (DCI). He testified that they had deposited building materials on the suit property but it was removed at night. He stated that their name did not appear on Mwhoko Housing Company's register. He told the court that he did not know whom Mbo-i-kamiti bought the land from. He insisted that the suit property belonged to Equity Masters Limited.
13. After hearing the case, the trial Magistrate delivered his judgment in favour of the 1<sup>st</sup> Respondent. Being dissatisfied with the said judgment, the Appellant filed this appeal on the grounds that the trial magistrate erred in law and in fact in:-
  - i. Failing to consider and appreciate the evidence adduced, submissions and cases cited by the Appellants.
  - ii. Failing to hold that the Respondents have not in any way satisfied the conditions set out in section 26 of the *Land Registration Act*, 2012 for revoking the title deed.
  - iii. Holding that the Respondents had proved their case whereas the false agreement produced by the 1<sup>st</sup> Respondent was neither registered nor was stamp duty ever paid contrary to section 19 of the *Stamp duty Act*.
  - iv. Ignoring the fact that the Certificate of title held by the Appellant ought to be protected by the provisions of section 26 of the *Land Registration Act* as such registration can only be challenged on grounds of fraud which the Respondents did not plead.
  - v. Failing to uphold that the Appellant was the rightful owner of the suit property.
14. The appeal was canvassed by way of written submissions and Appellant and 1<sup>st</sup> Respondent duly complied.

### **Appellant's Submissions**

15. In his submissions dated 30<sup>th</sup> April 2025 learned counsel for the Appellant submitted that the learned trial magistrate ignored the evidence tendered by the Appellant. It was his submission that the 1<sup>st</sup> Respondent failed to prove that the suit property previously belonged to Mwhoko Housing Company Limited (2<sup>nd</sup> Respondent) and there is no way they could have sold it to the 1<sup>st</sup> Respondent. He pointed out that the finding that the 1<sup>st</sup> Respondent bought the suit property from a shareholder of the 2<sup>nd</sup> Respondent was factually erroneous as this was not pleaded by the 1<sup>st</sup> Respondent. He submitted Alexander Maina, a director of the Appellant company asserted that Equity Masters Limited bought the suit property from Mbo-i-Kamiti Farmers Company limited and has been in possession, ownership and occupation of the suit property without any interruption whatsoever.
16. Apart from the sale agreement dated 13<sup>th</sup> August 2009, between Equity Masters Limited and Mbo-i-Kamiti Farmers Company Limited, the Appellant also produced a letter dated 14th November 2016 and Transfer Form dated 13<sup>th</sup> August 2009. He submitted that investigations by the Directorate of Criminal Investigations had revealed that the suit property belonged to the Appellant.
17. Counsel submitted that the Appellant's evidence of how they acquired the suit property was not controverted by the 1<sup>st</sup> Respondent and there was no way the 2<sup>nd</sup> Respondent could have sold the suit property to the 1<sup>st</sup> Respondent as they had no capacity to sell hence the principle of *nemo dat quod*



non habet came into play. He relied on the case of Daniel Kiprugut Mayiwa v Rebecca Chepkurgat Maim ( 2019 eKLR where the court elucidated the nemo dat principle by stating that one cannot give what one does not have and that the rationale behind the principle is that whoever owns the legal title to property holds it until he or she decides to transfer it to someone else.

18. Similarly, he submitted that Stanley M'bagine with whom the 1<sup>st</sup> Respondent entered into a sale agreement did not have a valid title to the suit property and he could therefore not convey it to the 1<sup>st</sup> Respondent. He relied on the cases of West End Butchery Ltd v Arthi Highway Developers Ltd & 6 Others ( 2012) eKLR and Iqbal Singh Rai v Mark Lecchini and the Registrar of Titles, Civil Case No. 1054 of 2001 where the court held that the 2<sup>nd</sup> Respondent did not obtain a transfer from the registered proprietor but from a fraudulent person who had no claim to the suit property and he could therefore not invoke the provisions of section 23(1) to say that he obtained an indefeasible title.
19. Counsel submitted that the 1<sup>st</sup> Respondent did not plead any ground for revocation of the suit property nor did she adduce any evidence challenging the Appellant's title on grounds of fraud, misrepresentation or illegality and therefore the Appellant's title should be held as conclusive evidence of ownership of the suit property as provided by section 26 of the *Land Registration Act*. It was counsel's submission that the trial magistrate erred in allowing the 1<sup>st</sup> Respondent's case while the title by the Appellant had not been challenged.
20. Counsel submitted that the sale agreement produced by the 1<sup>st</sup> Respondent was neither registered nor was stamp duty paid in respect thereof contrary to section 19 of the *Stamp Duty Act* and the same was therefore inadmissible.
21. He submitted that the 1<sup>st</sup> Respondent's assertion that she constructed a perimeter wall on the suit property was not true or if it was true then the said wall was illegal as no development approval was obtained.
22. It was his further submission that the 1<sup>st</sup> Respondent was not a bona fide purchaser for value without notice and her interest in the suit property could not defeat that of Equity Masters. (Appellant).
23. On her part, learned counsel for the 1<sup>st</sup> Respondent submitted that the trial magistrate considered all the evidence on record. She pointed out that at paragraph 6 of the judgment the trial magistrate specifically referred to the Appellant's Defence and documentary evidence adduced by the Appellant. He further stated at paragraph 10 of the judgment that there was no conclusive evidence by the Appellant to support their ownership of the suit property.
24. Regarding the contention that the trial magistrate ignored the Appellant's submissions, counsel submitted that submissions are not evidence and they cannot take the place of evidence. She relied on the case of John Maina Kahiko T/A Smartmove Vemma Investment v Jackson (Civil Appeal E175 of 2023) [2025] (KLR) (5 March 2025) Judgment.
25. On whether the 1<sup>st</sup> Respondent had successfully challenged the Appellant's title, counsel submitted that the trial court found that land parcel number RUIRU/KIU BLOCK 4 /1804 was originally owned by Mwhoko Housing Company Limited and they sold it the Appellant (sic).
26. She further submitted that the 1<sup>st</sup> Respondent had demonstrated a relationship between herself and the 2<sup>nd</sup> Respondent (Mwhoko Housing Company Limited) by producing a sale agreement, a residential plot certificate and the original register showing ownership.
27. On the other hand, the Appellant did not show any relationship between 2<sup>nd</sup> Respondent and the Appellant. It was her submission that the Appellant could not disregard the register of Mwhoko Housing Company because that would mean that they were disregarding the ownership of the suit



- property by Mbo-i-Kamiti Farmers Company Limited yet the Appellant’s director testified that they bought the suit property from Mbo-i-Kamiti Farmers Company Limited.
28. She submitted that the Appellant did not call any witness from Mbo-i-Kamiti to clarify that they purchased the land from them. She questioned the correspondence between Mbo-i-Kamiti and the Ministry of Lands and claimed that Mbo-i-Kamiti Company Limited was known to be faced with numerous land fraud cases. She also faulted the Director of Criminal Investigations for forwarding what she termed as erroneous information regarding the suit property to the Ministry of Lands.
  29. It was counsel’s contention that the Appellant had failed to prove the root of their title as they did not appear in the register of the land selling company. She referred to the case of *James Njoroge Gitau v Chepkurui Kimutai* (2018) eKLR where the court held that for a litigant to succeed, they need to demonstrate the root of title and the root of title must originate from the shares held at Kalenjin Enterprises – (the land selling company).
  30. Counsel submitted that Mbo-i-Kamiti Company Limited lacked a valid title to transfer to the Appellant and the said transfer did not defeat the 1<sup>st</sup> Respondent’s legitimate claim over the suit property. She was of the opinion that the legality of the initial land allocation process was crucial and if the acquisition was flawed then the title could be invalidated. She relied on the case of *In Sehmi & Another v Tarabana Company Limited & 5 Others* (Petition E033 of 2023) [2025] KESC 21 (KLR) 11 April 2025 ( Judgment)
  31. With regards to whether the court ought to have relied on the sale agreement produced by the 1<sup>st</sup> Respondent when the same was neither registered nor stamp duty paid in respect thereof contrary to section 19 of the *Stamp duty Act*, counsel submitted that the Appellant did not challenge the validity of the said agreement and he was attempting to close the stable after the horse had bolted. He was of the view that the failure to have the sale agreement registered did not affect the validity of the title deed.
  32. Counsel wondered why the Appellant did not call an official of Mbo-i-Kamiti to shed light on why they sold the suit property to the 1<sup>st</sup> Respondent who appears on the register as well as the Appellant. She submitted that whereas the 1<sup>st</sup> Respondent was able to demonstrate that she bought the land from Stanley Kirima M’bagine and was issued with a plot certificate by Mwihoko Housing Company Limited, the Appellant had no certificate from Mbo-i-Kamiti.
  33. Counsel submitted that if the Appellant purchased the suit property in 2009 as alleged, nothing stopped him from taking possession immediately yet he waited until 2021 when he attempted to enter land that was already fenced and occupied by the 1<sup>st</sup> Respondent. It is her contention that the Appellant obtained his title after the 1<sup>st</sup> Respondent had been in possession for a period 12 years and he therefore obtained his title unprocedurally and unlawfully.
  34. Having considered the Grounds of appeal, the judgment of the lower court, the proceedings and the entire Record of Appeal as well as the parties’ rival submissions, authorities and relevant law, the issues for determination are:
    - i. Whether the Appellant’s title was obtained illegally, irregularly or unprocedurally.
    - ii. Whether the 1<sup>st</sup> Respondent proved that she was the lawful owner of land parcel number RUIRU/KIU BLOCK 4/1804.
    - iii. Whether the appeal ought to be allowed.



35. This is a first appeal, and the duty of a first appellate court was set out in *Abok James Odera t/a A. J. Odera & Associates vs John Patrick Machira t/a Machira & Co. Advocates* (2013) eKLR, where this Court pronounced itself as follows: -

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority vs Kustron (Kenya) Limited* 2000 2EA 212.”

I will now proceed to determine the issues identified above.

**(i) Whether the Appellant’s title was obtained illegally, irregularly or unprocedurally.**

36. It is not in dispute that the Appellant is the current registered owner of the suit property, having been issued with a Certificate of Lease dated 29<sup>th</sup> April 2021. However it is the 1<sup>st</sup> Respondent’s position that the Appellant acquired his title unlawfully, irregularly and unprocedurally.

Section 26 of the [Land Registration Act](#) stipulates that

“26(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 grounds 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.”

37. It is important to point out that in this case the 1<sup>st</sup> Respondent did not plead nor did she attempt to prove fraud. However, she alleged that the Appellant had acquired its title unlawfully or unprocedurally.
38. In the case of *Elijah Makeri Nyangwara v Stephen Mungai Njuguna & Another* 92013) eKLR Munyao J explained the import of section 26(1) (b) of the [Land Registration Act](#) as follows:

“First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”



39. The Court of Appeal in the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, held as follows:

“We state that 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 of title that is in 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.”

40. In the present case, the Appellant claims that it acquired the suit property from Mbo-i-kamiti Farmers Company Limited. They produced a sale agreement dated 13<sup>th</sup> August 2009 between Equity Masters Limited and Mbo-i-Kamiti Farmers Company Limited. The said agreement was in respect of 25 parcels of land and the suit property was not properly described nor was it clear what consideration was paid for it. The Appellant did not produce any evidence of payment of the purchase price for the suit property nor did he produce a share certificate in respect of the suit property from Mbo-i-Kamiti Farmers Company Limited.

41. Although the Appellant produced correspondence between Mbo-i-Kamiti Farmers Company Limited and the Commissioner of Lands certifying that the Appellant had purchased the suit property from them, the said letters are not copied to Equity Masters. The fact that the Appellant did not call any official of Mbo-i-Kamiti Farmers Company Limited to produce the said letters makes one wonder how they obtained the copies.

42. The Appellant admitted that there was a dispute between Mwioko Housing Company Limited and Mbo-i-Kamiti Farmers Company Limited over some properties including the suit property but they claimed that investigations revealed that the suit property belonged to Mbo-i-Kamiti Farmers Company Limited. The investigation report by DCI was neither produced nor was an officer from DCI called to testify with regard to the alleged investigations.

43. All in all, apart from Certificate of lease which is specific to the suit property, the other documents in support of the Appellant’s claim are general with the suit property merely being mentioned as one of the properties in the correspondence and it cannot be said that the Appellant has successfully traced the root of its title. It is no wonder that the trial magistrate correctly observed in his judgment that there was no conclusive evidence by the Appellant as to their ownership of the suit property. It is therefore surprising that he was issued with a Certificate of Lease on the basis of such inadequate documents and it lends credence to the conclusion that the title was obtained unprocedurally or unlawfully.

44. In the case of *James Njoroge Gitau v Chepkurui Kimutai* (2018) eKLR the court faced with a similar case held that:

“What is before me is a straight contest over who between the plaintiff and the defendant ought to own the land. For either litigant to succeed, they need to demonstrate the root of their title and the root of the title must originate from the shares held at Kalenjun Enterprises. I have already outlined that the Plaintiff purchased shares from Mr. Chumo who had in turn purchased shares from Morogochi. This is affirmed by the company through its director Mr. Chelaite who produced the register of the company and I have absolutely no reason to doubt that the evidence is coming from the company itself and cannot be taken lightly. It is the company which knows its members and which knows what land it assigned to the members. If the company refutes that one is a member then the person



needs to rebut this with cogent evidence. I am afraid that the defendant has not delivered any evidence to me that Kimutai held any shares at Kalenjin Enterprises. She has not delivered any share certificate, nor any receipt for payment for survey so as to be assigned the suit land. All that the plaintiff had was a document titled “Rift Valley Enterprises ( Koelel Farm ) List of Allottees” as proof that the suit land was assigned to the deceased”.

**(ii) Whether the 1<sup>st</sup> Respondent proved that she was the lawful owner of land parcel number Ruiru/ Kiu Block 4/1804**

45. In support of her claim the 1<sup>st</sup> Respondent produced a sale agreement dated 16<sup>th</sup> September 2010 with Stanley M’bagine, a director of the 2<sup>nd</sup> Respondent, a copy of cheque for the sum of Kshs. 350,000 being payment of the purchase price, a share Certificate from Mwhoko Housing Company Limited as well an excerpt of the register of the said company indicating that the land was initially owned by Mbo-i-kamiti Farmers Company Limited after which it was transferred to Stanley Mb’agine the director of Mwhoko Housing Company Limited who in turn sold it to the 1<sup>st</sup> Respondent. The Appellant’s reliance on the principle of *nemo dat quod non habet* and his contention that the 2<sup>nd</sup> Respondent could not sell the suit property to the 1<sup>st</sup> Respondent as they did not own it is therefore not supported by the evidence on record.
46. The 1<sup>st</sup> Respondent also testified that she had been in occupation of the suit property since 2010, and had put up a structure and a perimeter wall. All this evidence goes to show that the 1<sup>st</sup> Respondent lawfully acquired the suit property and therefore she is entitled to be registered as the proprietor thereof.
47. Although the Appellant raised the issue that the sale agreement was not registered and that stamp duty in respect thereof was not paid, this does not affect the validity of the sale agreement as it does not form one of the instruments of transfer of land under the *Land Registration Act*.
48. Having arrived at the conclusion that the Appellant obtained its title unprocedurally and unlawfully, there is no valid reason to warrant disturbing the decision of the trial magistrate. Consequently, the appeal lacks merit and it is hereby dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF JULY 2025.**

.....  
**J. M ONYANGO**

**JUDGE**

In the presence of:

Mr Malende for the Appellant.

Miss Kyuli for Ms Onsemberr for the 1<sup>st</sup> Respondent

Mr. Tumuta for the 2<sup>nd</sup> Respondent

Court Assistant: Hinga.

