



**Karanja v Kangata & another; Kangata (Plaintiff); Karanja & another (Defendant);  
Kiambaa Kawainda Co. Ltd & another (Interested Parties) (Environment &  
Land Case 738 of 2017) [2024] KEELC 22 (KLR) (16 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 22 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 738 OF 2017  
BM EBOSO, J  
JANUARY 16, 2024**

**BETWEEN**

**GEORGE NJUGUNA KARANJA ..... PLAINTIFF**

**AND**

**MARY MUGURE KANGATA ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KIAMBU ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**MARY MUGURE KANGATA ..... PLAINTIFF**

**AND**

**GEORGE NJUGUNA KARANJA ..... DEFENDANT**

**DISTRICT LAND REGISTRAR, KIAMBU ..... DEFENDANT**

**AND**

**KIAMBAA KAWAINDA CO. LTD ..... INTERESTED PARTY**

**WANGUI NYAMU ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. The dispute in this suit revolves around the question of ownership of land parcel number Tigoni/Tigoni Block 1/1369 [referred to in this Judgment as “the suit property” or simply as “the land”]. The land is currently registered in the name of the plaintiff, George Njuguna Karanja [hereinafter referred to as “the plaintiff”]. The Plaintiff alleges to have acquired the land from the 2nd interested



party, Wangui Nyamu, who had earlier acquired it through shareholding from the 1st interested party, Kiambaa Kawainda Company Ltd. The land is located in a subdivision scheme that is owned by the 1st interested party. The plaintiff's pleadings had two defendants and did not have an interested party. When the 1st defendant filed her defence and counterclaim, she introduced the two interested parties.

2. Mary Mugure Karanja [hereinafter referred to as "the 1st defendant"] claims ownership of the land and contends that she acquired the land through purchase of Share Certificate No 4574 from one Waweru Karanja who was a shareholder of the 1st interested party, adding that she subsequently balloted for and was allocated the land through Ballot No 028. By way of counterclaim, she challenges the title held by the plaintiff and seeks, among other reliefs, an order annulling the registration of the plaintiff as proprietor of the land. One of the key issues to be determined in this Judgment is the question as to who between the plaintiff and the 1st defendant is the legitimate owner of the land. Before I dispose the issues that fall for determination, I will briefly outline the parties' respective cases, evidence and submissions.

### **Plaintiff's Case**

3. The plaintiff initiated the suit through a plaint dated 8/9/2017. In summary, the plaintiff's case is that he is the registered owner of land parcel number Tigoni/Tigoni Block 1/1369 [the suit property] which he acquired from one Wangui Nyamu. He contends that he has been in quiet possession of the land since 2009. He adds that on or about April 2017, he leased the land to a church. At that point, the 1st defendant surfaced, claiming to be the owner of the land.
4. Consequently, the plaintiff brought this suit seeking the following reliefs: (i) a declaration that the land belongs to him absolutely; (ii) a permanent injunction restraining the 1st defendant from entering, cultivating, building on, leasing, selling, fencing, charging, transferring, or in any other way, dealing with the suit property; and (iii) costs of the suit.

### **1st Defendant's Case**

5. The 1st defendant filed a statement of defence and counterclaim dated 30/10/2017. Through her defence and counterclaim, she introduced the two interested parties as parties to this case. She admitted that the plaintiff was the current registered proprietor of the land but added that "the acts of execution of the purported transfer in favour of and delivery of the title documents to the plaintiff were fraudulent, illegal and unlawful". It was the case of the 1st defendant that the land was hers. She contended that she acquired the land through purchase of Share Certificate Number 4574 from one Waweru Karanja in the year 1974. She added that in the year 1989, she was allocated Plot number 028 after balloting, stating that the said plot was subsequently registered by the 2nd defendant as parcel number Tigoni/Tigoni Block 1/1369 [the suit property]. The 1st defendant averred that she farmed on the land from 1990 to 1993 when she stopped due to theft of her farm produce. She added that on or about 21/6/2017, she learnt through a neighbour by the name Mary Nancy Wangu, that the suit property had been sold to some unknown persons who intended to put up a church.
6. The 1st defendant sought the following verbatim reliefs in her counterclaim: (i) an order dismissing the plaintiff's suit; (ii) a declaration that the 1st defendant is the beneficial owner of the suit property and is entitled to registration, occupation and possession of the land to the exclusion of the plaintiff and any other person; (iii) an order cancelling the title deed issued to the plaintiff and ordering the plaintiff and/or 2nd defendant and/or the 1st interested party to execute instruments of transfer conveying the land to her and to deliver to her all relevant documents to facilitate registration of the land in her name, and in default of so doing, the Deputy Registrar of this Honourable Court to execute the documents; (iv) an order of permanent injunction restraining the plaintiff from entering upon,



trespassing upon, remaining on, damaging, developing or in any other manner, howsoever, interfering with the occupation, possession and quiet enjoyment of the land; and (v) an order awarding her costs of the primary suit and the counterclaim against the plaintiff and the 1st interested party jointly and severally and interest thereon.

### **Plaintiff's Evidence**

7. The plaintiff testified as PW1. He adopted his witness statement dated 8/9/2017. He produced the following seven exhibits: (i) Share Certificate in the name of Wangui Nyamu dated 1/12/1978; (ii) Ballot Card No 0172; (iii) Receipt issued to Wangui Nyamu dated 31/12/1989; (iv) Transfer Form dated 24/6/2009; (v) Receipts issued to George Njuguna Karanja dated 24/6/2009 (vi) Title Deed issued to George Njuguna Karanja dated 26/6/2009; and (vii) Certificate of Official Search dated 30/6/2017.
8. The plaintiff's evidence was that he purchased the suit property from one Wangui Nyamu in June 2009. The said Wangui Nyamu was a member of a land-buying company known as Kiambaa Kawainda Co Ltd. She balloted for land in the scheme owned by the company and was allocated the suit property. He subsequently purchased the land from Nyamu Wangui. After the purchase, Wangui Nyamu gave him all the documents she had from the company. He subsequently paid the company Kshs 6,000 for the processing of the title and Kshs 5,000 for the registration of the transfer in their internal registers. The plaintiff testified that a title deed was subsequently issued to him on 26/6/2009. He stated that he had been in possession of the suit property since 2009 though it had neither been fenced nor developed. He added that in April 2017, he leased the suit property to a church that wanted to use it, and when the church brought building materials on the land, the 1st defendant surfaced claiming that the suit property was hers. The church was stopped from constructing on the land and he was summoned to the Area Chief for deliberations on the issue. Both parties were ordered to go back to the Chief's Office on 13/9/2017. The plaintiff stated that he visited the offices of the 1st interested party in the presence of the 1st defendant, to confirm ownership of the suit property. The said company confirmed that, according to their records, the plaintiff was the owner of the suit property. He urged the court to grant him the reliefs sought in the plaint.

### **1st Defendant's Evidence**

9. The 1st defendant testified as DW1. She adopted her witness statement filed on 3/11/2023 as part of her sworn evidence-in-chief. She produced the following exhibits: (i) Certificate of Official Search for land parcel number Tigoni/Tigoni Block 1/1369 dated 26/7/2017; (ii) Green Card for land parcel number Tigoni/Tigoni Block 1/1369; (iii) Chief's Letter dated 22/09/2017; (iv) Receipts from Kiambaa Kawainda relating to Waweru Karanja; (v) Receipts from Kiambaa Kawainda relating to Mary Kangata; (vi) Receipt relating to survey fees from Kiambaa Kawainda Co. Ltd; (vii) Receipt relating to road construction from Kiambaa Kawainda Co. Ltd; (viii) Share Certificate number 4574 issued by Kiambaa Kawainda; (ix) Share Certificate no. 1074; and (x) Map Sheet.
10. DW1's evidence was that in 1974 she bought Share Certificate Number 4574 issued by the 1st interested party from Mr Waweru Karanja. She cleared the balance that Mr Karanja owed to the 1st interested party. In 1989, she was issued with ballot number 028 after a balloting exercise. During the balloting, she was with Nancy Wambui who was a shareholder and her colleague at the Ministry of Finance. After allocation, she started farming on the land. At the time, Nancy Wambui used to also do farming on her adjacent land. She farmed on the land between 1990 and 1993 when she stopped due to theft of her farm produce. She kept visiting the area to check on the land. DW1 stated that on 21/6/2017, she passed through Kawainda and, as was her habit, she passed through the area to check the progress. She met Mary Nancy Wangu, a neighbour, who told her that the suit property had been



sold to some people who intended to put up a church on the land. On 28/6/2017, she went to the office of the 1st interested party and paid Kshs 2000 for the directors to go with her to the land to verify her ownership. DW1 stated that according to the records at the 1st interested party's office, Plot Number 028 belonged to her. She added that the directors of the 1st interested party went with her to the plot and confirmed that Plot Number 028 was the land that was registered as parcel number Tigoni/Tigoni Block 1/1369. She added that she got contacts of the person alleged to be selling the land, and the said person turned out to be the plaintiff. They arranged a meeting at the 1st interested party's offices. However, the directors of the 1st interested party stated that the dispute was beyond their scope. This prompted her to report the matter to the Chief of Cianda Location who called a meeting between both parties on 16/8/2017. Another meeting was set for 13/9/2017 for the parties to call their witnesses. However, it did not take place because the plaintiff filed the present suit.

11. The 1st defendant led evidence by Nancy Wambui who testified as DW2. She adopted her witness statement filed on 3/11/2017 as part of her sworn evidence-in-chief. She stated that the 1st defendant was her former colleague at the Ministry of Finance. She added that she was a shareholder of the 1st interested party, adding that her share entitled her to one plot. She stated that she and the 1st defendant balloted for land in the scheme on the same day and they were allocated plots on the same day. Immediately after the allocation, they started farming on the plots. However, due to locals stealing their farm produce, they stopped farming and she subsequently sold her plot in 2000.

### **Evidence of the 1st Interested Party**

12. The plaintiff and the 1st defendant caused the Chairman of the 1st interested party to be summoned to produce all the books, records and registers relating to parcel number Tigoni/Tigoni Block 1/1369. The Chairman of the 1st interested party, one Peter Njoroge Njau, however, passed on before he could testify. A director and Vice-Chairman of the 1st interested party, Johana Gitau Ndungu, was summoned and testified as DW4. He produced the relevant balloting register and the relevant members' register. He testified that Wangui Nyamu was a member of the company and she was the original owner of ballot number 0172. He added that the said ballot number was assigned land parcel number Tigoni/Tigoni Block 1/1369 [the suit property]. He added that Wangui Nyamu's name was cancelled and replaced with the name of George Njuguna Karanja [the plaintiff] which meant that she sold the property to George Njuguna Karanja. He confirmed that the documents produced by the plaintiff expressed as having emanated from the company were authentic documents from the company. He added that Mary Mugure Kangata [the 1<sup>st</sup> defendant] is a member of Kiambaa Kawainda Company Ltd in possession of ballot number 028, adding that the said ballot did not have a corresponding plot. He testified that there were more than 500 members of Kawainda Company Ltd who balloted but were not allocated land. He added that the 500 holders of ballot cards are to be allocated land by the company in a different scheme.

### **2nd Interested Party's Evidence**

13. Wangui Nyamu testified as DW3. She stated that she sold the suit property to the plaintiff though she could not remember the plot number. She stated that the suit property is located within the Kiambaa Kawainda land subdivision scheme. She testified that she held two shares in the 1st interested party hence she acquired two parcels of land. She sold one of the properties to the plaintiff and developed the other. DW3 stated that she could not remember her share certificate number, the survey number and the year she sold the suit property to the plaintiff.



## Plaintiff's Submissions

14. The plaintiff filed written submissions dated 18/7/2023 through M/s J.K Gachie & Co Advocates. Counsel for the plaintiff submitted that it was clear from the oral and documentary evidence that the plaintiff tendered in court that he acquired the suit property procedurally and legally, hence he was entitled to the prayers sought in the plaint. Counsel added that the 1st and 2nd interested parties corroborated the plaintiff's testimony. He added that DW4 [Vice Chairman of Kiambaa Kawainda Co Ltd] testified that the 1st defendant was not given a plot despite holding a share certificate issued by Kiambaa Kawainda Company, adding that she was one of the 500 shareholders who are to be allocated land in a different scheme. Counsel argued that the 1st defendant did not produce any evidence to controvert the evidence of the plaintiff or the evidence of the interested parties. Counsel further argued that given the fact that there was no fraud proved on the part of the plaintiff, his title should be upheld. Counsel relied on the decision in [Elizabeth Wambui Gitinji & 29 Others v Kura & 4 Others](#) [2019] eKLR.

## 1st Defendant's Submissions

15. The 1st defendant filed written submissions dated 2/10/2023 through M/s Charles Mbugua & Co Advocates. Counsel for the 1st defendant identified the following as the four issues that fell for determination in the suit: (i) Whether the 2nd interested party's ballot number 0172 ought to have corresponded to title number 1369 (the suit property); (ii) Whether the 2nd interested party fraudulently acquired land parcel number 1369 (the suit property); (iii) Whether the 2nd interested party passed a clean title to the plaintiff; and (iv) Whether the 1st defendant ought to be registered as the owner of title number 1369 (suit property).
16. On the 1st and 2nd issues, counsel submitted that the 1st interested party tendered evidence showing that there was clear sequence in the allocation of titles to the members who had balloted. Counsel argued that ballot number 0028 which was not allocated a title ought to have been allocated title number 1369 as per the sequence. Counsel added that the 1st defendant in his defence and counterclaim alluded to the suit land being registered in the name of the plaintiff fraudulently. Counsel submitted that from the evidence adduced, it was clear that the interested parties colluded and fraudulently allocated the suit property to the 2nd interested party yet her ballot number did not correspond to the title number.
17. On whether the 2nd interested party passed a clean title to the plaintiff, counsel submitted that the 2nd interested party acquired the land fraudulently hence she did not pass a clean title to the plaintiff. Counsel further submitted that whereas Section 26 of the [Land Registration Act](#) is categorical that a certificate of title is *prima facie* evidence that the person named in the title is the proprietor of the land, the same can be challenged where the certificate of title has been acquired fraudulently, un-procedurally or through corrupt practice. Counsel contended that the 1st and 2nd interested parties failed to tender evidence to show how the suit property was allocated to the 2nd interested party yet her ballot number did not correspond to the title number. Counsel argued that the only logical inference that could be made is that of fraud and un-procedural practices. Counsel relied on the decision in the cases of [Alice Chemutai Too v Nickson Kipkurui Korir & 2 others & Ano](#) [2015] eKLR and [Samuel Odhiambo Oludhe & others v Jubilee Jambo Hardware Limited & Another](#) [2018] eKLR.
18. On the 4th issue, counsel submitted that the 1st defendant had proved on a balance of probabilities that her ballot number corresponded to the suit property and thus the interested parties fraudulently and un-procedurally dispossessed her ownership of the suit property by registering it in the name of the 1st interested party who later sold it to the plaintiff while being aware of the scheme they had



hatched. Counsel urged the court to dismiss the plaintiff's suit with costs and allow the 1st defendant's counterclaim.

### Analysis and Determination

19. I have considered the parties' pleadings, evidence and submissions. I have also considered the relevant legal frameworks and jurisprudence. Parties did not agree on a concise common statement of issues to be determined by the court. Taking into account the pleadings, evidence and submissions that were tendered, the following are the five key issues that fall for determination in this suit: (i) Whether the threshold for impeaching a title under Section 26(1) of the [Land Registration Act](#) has been established; (ii) Who between the plaintiff and the 1st defendant is the legitimate owner of land parcel number Tigoni/Tigoni Block 1/1369; (iii) Whether the plaintiff is entitled to the reliefs sought in the primary suit; (iv) Whether the 1st defendant is entitled to the reliefs sought in the counter claim; and (v) What order should be made in relation to costs of the primary suit and the counterclaim. I will dispose the five issues sequentially in the above order.
20. Issue number 1 and issue number 2 are intertwined. I will therefore dispose the two issues simultaneously. The plaintiff is the registered proprietor of the suit property. He initiated the primary suit after the 1st defendant asserted that the suit property belonged to her. In response to the plaintiff's claim, the 1st defendant filed a defence and a counterclaim, contending that the suit property belonged to her. She invited the court to annul the registration and title of the plaintiff. In her subsequent written submissions, the 1st defendant contended that the title held by the plaintiff was procured fraudulently and illegally through collusion between the plaintiff and the 1st interested party.
21. It is trite law that to procure an order annulling a title, the threshold specified in Section 26(1) of the [Land Registration Act](#) must be satisfied. The said Section provides thus:
  - “(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.
22. The court has perused the counterclaim brought by the 1st defendant. She neither pleaded nor particularized fraud and illegality on the part of the plaintiff. All that the 1st defendant pleaded in relation to fraud and illegality is to be found at paragraph 19(b) of the plaint which reads as follows:

“The acts of execution of the purported transfer in favour of and delivery of the title documents to the plaintiff were fraudulent, illegal and unlawful in light of the 1st defendant's indefeasible interests in and rights over the suit properties as the beneficial owner.”
23. Under the law, the 1st defendant was supposed to join as defendants in the counterclaim all persons alleged to have perpetuated the fraud and the illegality. Secondly, she was required to specifically plead



fraud and illegality against the parties either separately or jointly. Thirdly, she was supposed to set out the particulars of the alleged fraud or illegality.

24. A perusal of the 1st defendant's pleadings reveals that she did not satisfy the above requirements. Indeed, she did not bother to join the 1st and 2nd interested parties as defendants in the counterclaim. As a consequence, the 1st and 2nd interested parties had no claim to respond to. Indeed, their evidence was tendered after the court issued witness summonses at the request of the parties.
25. Did the 1st defendant establish fraud on the part of the plaintiff? I do not think so. The suit property is a subdivision within a scheme that was owned by the 1st interested party. The 1st interested party was the proprietor of the scheme. They subdivided and allocated various subdivisions in the scheme to their shareholders. The 1st interested party's Vice Chairman testified as DW4. His testimony was that Wangui Nyamu balloted for land in the scheme and was allocated the suit property. He also testified that Wangui Nyamu subsequently sold the suit property to the plaintiff. He confirmed that their internal records reflected the plaintiff as the legitimate owner of the suit property.
26. DW4 also testified that the 1st defendant is a shareholder of the 1st interested party, adding that she is one of the about 500 shareholders of the 1st interested party who balloted for land and are to be allocated land in a different scheme owned by the company.
27. Wangui Nyamu testified as DW3. At the time of her testimony, she was an elderly lady and her memory appeared to be fading. She nonetheless testified that she owned two shares in Kiambaa Kawainda Company Ltd which entitled her to two parcels of land. She also confirmed that she sold one of her two parcels to the plaintiff and developed her other parcel.
28. The 1st defendant urged the court to infer fraud from the fact that in terms of sequence, Wangui Nyamu's ballot number does not correspond with the other ballot numbers that are in the internal registers of the 1st interested party. She contended that because the holders of ballot numbers 0027 and 0029 were allocated land surveyed as parcel numbers 1370 and 1368 respectively, it follows that the 1st defendant was allocated land surveyed as parcel number 1369.
29. I have reflected on the above argument. Firstly, assigning of survey numbers to ballot numbers was an internal exercise of the 1st interested party. The 1st interested party assigned survey number 1369 to Wangui Nyamu who had ballot number 0172. Upon the plaintiff purchasing the land, the 1st interested party conveyed the land to the plaintiff. There was no evidence adduced to suggest that the plaintiff was privy to any form of fraud or illegality relating to the assignment of survey number 1369 to ballot number 0172. Indeed, DW4 [Vice Chair of the 1st interested party], confirmed that parcel number 1369 was assigned to Wangui Nyamu and upon sale of the land to the plaintiff, the land was conveyed to the plaintiff by the 1st interested party.
30. Our superior courts have in a line of decisions stated that a party alleging fraud has a heavier evidential burden of distinctively proving the fraud. In *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR, Tunoi JA (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”



31. The standard of proving fraud was emphasized by the Court of Appeal in *Central Bank of Kenya Limited v Trust Bank Limited & 4 Others* [1996] eKLR as being beyond that of balance of probabilities but not beyond reasonable doubt. The Court of Appeal rendered itself thus:
- “The appellant has made vague and very general allegations of fraud against the respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the appellant in this case than in an ordinary civil case.”
32. In the present suit, the 1st defendant elected not to make the two interested parties substantive defendants in the counterclaim. She failed to properly plead and particularize fraud and illegality against the plaintiff. She did not tender evidence to demonstrate fraud or illegality on the part of the plaintiff.
33. The totality of the foregoing is that the 1st defendant has not satisfied the threshold set out in Section 26(1) of the *Land Registration Act* to warrant annulment of the plaintiff’s title. That is the finding of the court on the first issue. Based on the same analysis, it is the finding of the court that the plaintiff acquired a valid title to the suit property and is the legitimate owner of the suit property.
34. Is the plaintiff entitled to the reliefs sought in the primary suit? The court has made a finding to the effect that the title held by the plaintiff in relation to the suit property is valid. It therefore follows that the plaintiff is entitled to the protection conferred by Article 40 of the *Constitution* and Section 24 of the *Land Registration Act*. Consequently, it is the finding of the court that the plaintiff is entitled to the reliefs sought in the primary suit.
35. The converse is that, the 1st defendant having failed to impeach the title held by the plaintiff, her counterclaim fails wholly. Put differently, as against the plaintiff and the Land Registrar, the 1st defendant is not entitled to the reliefs sought in the counterclaim.
36. What order should be made in relation to costs of the primary suit and the counterclaim? It is clear from the evidence tendered that the dispute in this suit arose largely as a result of the 1st interested party’s decision to conduct balloting and issue ballot numbers without assigning each ballot number an identical survey number. Ideally, survey should have been conducted first and ballot cards prepared and numbered in terms of the surveyed parcel numbers. Secondly, the 1st interested party ought to have limited the number of ballot cards to the number of surveyed subdivision parcels. Had that been the case, this dispute would not be in this court. Had the 1st interested party been made a substantive party to this suit, I would not have hesitated to order them to bear costs of this suit. However, given that the 1st interested party was not made a substantive party to this cause, the view the court takes is that parties should bear their respective costs of both the primary suit and the counterclaim.

### Disposal Orders

37. In the end, the primary suit by the plaintiff and the counterclaim by the 1st defendant are disposed as follows:
- a) A declaration is hereby made that land parcel number Tigoni/Tigoni block 1/1369 belongs to the plaintiff in the primary suit, George Njuguna Karanja.
  - b) A permanent injunction is hereby issued restraining Mary Mugure Kangata together with her agents and servants against entering, cultivating, building on, leasing, selling, fencing, charging, transferring, or in any other way dealing with land parcel number Tigoni/ Tigoni Block 1/1369.



- c) The counterclaim by Mary Mugure Kangata is dismissed for lack of merit.
- d) Parties shall bear their respective costs of the primary suit and the counterclaim.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF  
JANUARY 2024**

**B M EBOSO**

**JUDGE**

In the presence of:

Mr John Gachie for the Plaintiff

Mr Charles Mbugua for the 1st Defendant

Court Assistant: Hinga

