



**Mwiki Company Limited v National Land Commission & 6 others (Civil Appeal E196 of 2023) [2025] KECA 1361 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1361 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL E196 OF 2023  
F TUIYOTT, P NYAMWEYA & FA OCHIENG, JJA  
JULY 25, 2025**

**BETWEEN**

**MWIKI COMPANY LIMITED ..... APPELLANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**JAMES NGUGI (SUED IN HIS CAPACITY AS OFFICIAL OF MWIKI WELFARE ASSOCIATION) ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**CHIEF LAND REGISTRAR OF TITLES NAIROBI ..... 5<sup>TH</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF FINANCE ..... 6<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

*(An appeal arising from the Judgment of the Environment and Land Court at Nairobi (J. A. Mogeni J.) delivered on 23rd February 2023 in ELC Constitutional Petition No E028 of 2022)*

**JUDGMENT**

1. Mwiki Company Limited (hereinafter Mwiki Ltd) has appealed the judgment of the Environment and Land Court at Nairobi (Mogeni J.) delivered on 23<sup>rd</sup> February 2023 in ELC Constitutional Petition No. E028 of 2023, that dismissed its petition. Mwiki Ltd had sought a raft of reliefs in the said petition, arising from the decision of the National Land Commission (NLC) dated 2<sup>nd</sup> November 2015 that revoked its title to LR 8469/4/7 for the reason that the same was reserved for public utilities, and allocated plots nos. 65,69,70,121,174 and 175 in LR 8469/14 as public spaces. The gist of Mwiki Ltd's



case in the Environment and Land Court (hereinafter “the ELC”) was that it had purchased parcels L.R. 8469/14 and LR 8469/4/7 from Mukinyi Enterprises Company Limited and was issued with certificates of lease. It thereafter amalgamated the two properties and after surrender of the title deeds to the Commissioner of Lands, was assigned a new title being Nairobi Block 164 which it subdivided to 522 subplots after receiving approval and change of user which it allotted to its members.

2. Mwiki Ltd also claimed that a suit filed by Mr. James Ngugi, an official of Mwiki Welfare Association (the 2<sup>nd</sup> respondent herein), and the then MP Kasarani Constituency in Nairobi ELC No 1035 of 2013 seeking for part of the sub-divided land to be allotted as public utilities was dismissed on 16<sup>th</sup> May 2019. However, that Mr. James Ngugi and Nairobi City County had in the meantime on 16<sup>th</sup> April 2014, written to NLC claiming that LR. 8469/4/7 was public land additionally, LR. 8469/14 had open spaces and had been grabbed by the Appellant. NLC by the letter dated 2<sup>nd</sup> November 2015, ruled that parcel no. LR. 8469/4/7 was public land and had been illegally transferred to Mwiki Ltd and allocated the same to the 6<sup>th</sup> Respondent to hold in trust for a primary school. In the same letter, NLC allocated parcels numbers 65, 69, 70, 121, 174 and 175 as open spaces for the residents of Mwiki.
3. Mwiki Ltd accordingly sought declarations that its rights under Articles 27, 28, 35, 40, 47, and 50, were violated by the said decision and that section 14 of the National Land Commission Act did not empower NLC to revoke and or review grants and disposition of lands registered to private individuals prior to the enactment of the Act; the decisions of the NLC dated 2<sup>nd</sup> December 2015, as well the decision and report on inquiries/ investigations on the parcel of lands known as IR 194659 Land Reference No. 27206/3 and IR 194660 Land Reference Number 27206/4 dated 21<sup>st</sup> January 2019 be revoked and quashed; the revocation and cancellation of the Mwiki Ltd’s titles to LR 8469/4/7 and plots nos. 65,69,70,121,174 and 175 in LR 8469/14 (hereinafter “the suit properties”) be declared null and void and set aside and it be given vacant possession of the said properties; restraining order against the respondents in relation to the suit properties, compensation of Kshs sixty (60) million; and general and exemplary damages.
4. NLC, which is the 1st respondent herein, did not file any response to the petition in the ELC. Mr. James Ngugi responded on behalf of Mwiki Welfare Association, while Catherine David, the Resident Engineering Technical Officer of Nairobi City Water and Sewerage Company Limited, the 4<sup>th</sup> respondent herein. Nairobi City County, Chief Land Registrar of Titles, Principal Secretary, Ministry of Finance and the Attorney General, the 3<sup>rd</sup>, 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> respondents herein, did not file any response to the petition.
5. Mr. James Ngugi explained that Mwiki Welfare Association was registered on 12<sup>th</sup> July 2001 and among its functions and duties was the safeguarding of the public utilities located within Mwiki Ward, Nairobi County and it was aware that at the time when the Mwiki Ltd purchased L.R no 8469/14, Mukinyi Company Ltd had in the original approved survey map provided for open spaces which were to serve as public utility land and its number was LR No. 8469/4/7, and that before the Department of Survey could approve the subdivision of LR No.8469/14, it was a condition precedent that Mwiki Ltd provides at least 10% of the total acreage to cater for public utility purposes, a condition that was indeed fulfilled as per the subdivision survey map and 3 spaces was provided for.
6. However, Mwiki Ltd went ahead and illegally amalgamated L.R. No 8469/4/7 with L.R. No 8469/14, and the new amalgamated parcel of land was assigned a new number being Nairobi Block 164 and illegally subdivided into 522 plots. After the amalgamation, Mwiki Ltd further subdivided LR. 8469/4/7 which was previously public utility Land into 40 plots, being Nairobi Block 164/132 through to Nairobi Block 164/171, and also subdivided the three open spaces in LR. No. 8469/14 into six parcels being Nairobi Block 164/65, 164/69. 164/70, 164/121, 164/174 and 164/175. Mr.



- Ngugi made reference to various correspondence between NLC and Nairobi City County which confirmed that the said 46 parcels were carved out of public utility land meant for a primary school and 3 open spaces. Further, they were informed by the NLC vide a letter dated 2nd November 2015, its determination pursuant to review hearing, that the amalgamation of LR No. 8469/4/7/ with LR. No 8469/14 was cancelled and consequently all allocations in LR. No 8469/4/7 comprising of Nairobi Block 164/132 to Nairobi Block 164/171 were also cancelled with the land reverting to the intended user of a primary school and the same was to be allocated to the Principal Secretary, Ministry of Finance to hold in trust for the school.
7. Nairobi City Water and Sewerage Company Limited reiterated these facts, and deponed that after the allocation of plot numbers 174, 175, 65, 69 70 and 121 was cancelled, the NLC directed the open spaces contained in the said plots to be allocated to, and were vested in Nairobi City County to hold in trust for Mwiki residents, while parcel No. 8469/4/7 was vested in the Permanent Secretary, Treasury in trust for the planned primary school. Further, that the NLC published its findings and directions in the Kenya Gazette on 22<sup>nd</sup> January 2016, and it was on the strength of this determination and the need for the public utility that the Nairobi City County authorized the construction of an ablution block and Mwiki Ward Water extension- Daykio on plot number 65, 69 and 70 for the sole benefit of the residents of Mwiki and that Nairobi City Water and Sewerage Company Limited proceeded to award the tender for the project,
  8. Nairobi City Water and Sewerage Company Limited therefore denied being a trespasser on Mwiki Ltd's parcel of land or interfering with the quiet possession of Mwiki Ltd's members to any of their property, and stated that Mwiki Ltd did not provide any evidence that Nairobi City Water and Sewerage Company Limited evicted it or its members from the disputed property or instructed anyone to conduct the eviction on its behalf nor cause the said eviction to be done. In addition, there was no evidence that Nairobi City Water and Sewerage Company Limited endangered the lives of Mwiki Ltd's members. Lastly, Nairobi City Water and Sewerage Company Limited was not a party to the proceedings in Nairobi ELC No. 1035 of 2013, which suit was in any event not substantively heard and determined on merit in respect of the question of whether LR. No 6469/4/7 was public land, and was struck out for want of prosecution, and public interest and need take precedence over the individual claims of Mwiki Ltd.
  9. The ELC after considering submissions filed by the parties, found that the petition by Mwiki Ltd was validly before the court, to the extent that it had prayed for a declaration that its rights had been breached by the respondents; the suit property was unlawfully acquired and amalgamated by Mwiki Ltd without considering the provision for public utilities which were already in place when it purchased it from Mukinyi Enterprises Limited; none of Mwiki Ltd rights were therefore violated, nor was it a bona fide purchaser for value without notice of a defect in the title; the determination by NLC showed that Mwiki Ltd made presentations at the NLC meetings held to discuss the issues pertaining to LR 8469/4/2, 8469/4/5 (LR No. 28395), 8469/4/7 and various open spaces within Mwiki Estate and there was thus no violation of its rights under Article 47 of *the Constitution*; and a determination on ownership of the subject titles can only be made upon a formal hearing of the matter by the court in an appeal from the decision by NLC and not through a constitutional petition. Therefore, the decision by NLC could not be quashed, there was no basis upon which the Chief Land Registrar of Titles could be compelled to register Mwiki Ltd's proprietary interest of ownership in the register and issue certificates of lease, and an order of vacant possession could not obtain in the circumstances.
  10. Being dissatisfied with the decision of the ELC, Mwiki Ltd filed the appeal in this Court, and has raised sixteen (16) grounds of appeal in its Memorandum of Appeal dated 28<sup>th</sup> March 2023, which its counsel collapsed into three grounds in his submissions, namely, whether NLC had jurisdiction to review the



allocation of the suit properties to Mwiki Ltd, whether NLC's determination could be challenged by a constitutional petition, and whether Mwiki Ltd was a bona fide purchaser for value.

11. During the hearing of the appeal on this Court's virtual platform on 23<sup>rd</sup> September 2024, learned counsel Mr. Mageto appeared for Mwiki Ltd, learned counsel Mr. Brian Onyango together with Mr. Limo appeared for the Nairobi City Water and Sewerage Company Limited, and learned counsel, Mr. Motari, appeared for the Chief Land Registrar of Titles, Principal Secretary, Ministry of Finance and the Attorney General. Counsel relied on their respective submissions dated 1<sup>st</sup> September 2023, 17<sup>th</sup> September 2024 and 16<sup>th</sup> September 2024 in highlighting their cases. There was no appearance for the NLC, Mwiki Welfare Association and Nairobi City County despite their advocates having been duly served with the hearing notice, nor did they file any submissions on the appeal.
12. We are guided in our determination by the principles that apply to the duty of a first appellate Court, as reiterated and set out in the decision of *Selle and another vs Associated Motor Boat Co. Ltd & Others* (1968) EA 123. These are to reconsider the evidence, evaluate it, and draw conclusions of facts and law, and we will only depart from the findings by the Trial Court if they were not based on evidence on record; where the said Court is shown to have acted on the wrong principles of law as was held in *Jabane vs Olenja* (1986) KLR 661, or where its discretion was exercised injudiciously as was held in *Mbogo & another vs Shah* (1968) EA 93.
13. On the first issue as regards the jurisdiction of the NLC to review the allocation of the suit properties to Mwiki Ltd, Mr. Mageto, while making reference to Article 68 (c) (v) of *the Constitution* and section 14 of the *National Land Commission Act*, submitted that NLC had no jurisdiction over Mwiki Ltd's property, since the said property had not been declared to be public property under any statute; a court of law had declared it private property; and this decision was the one being challenged by Mwiki Welfare Association when it approached NLC. Therefore, that NLC's investigations and review of Mwiki Ltd's title was a ploy to unprocedurally overturn the decision of the Court, and the right procedure for Mwiki Welfare Association should have been to appeal to a higher Court, which it did not do. Furthermore, that the review of Mwiki Ltd's title by NLC without their knowledge or input was contrary to section 14 of its Act, which required that each party should be accorded an opportunity to be heard by presenting all documents relating to the property, to allow the commission to make informed decision.
14. Mr. Limo on his part submitted that the ELC did not make a finding in Nairobi ELC No 1035 of 2013 that the suit properties were private land, therefore, the NLC determined the complaint within the exercise of its powers and constitutional mandate and did not usurp the power of the Court or overturn the decision of the Court. Reliance was placed on the decisions in *Tom Dola & 2 others vs Chairman, National Land Commission & 5 others* [2020] eKLR that the jurisdiction of the NLC cannot be ousted on the bare argument that land which was previously public land, has since become private land. Mr. Motari's position was that the review of grants and disposition of public land entailed NLC analysing the process under which public land was converted to private land and make a finding of the legality of the grants in question, and detailed the procedure that is followed once NLC received a complaint or determined on its own motion that a particular grant warrants review.
15. We have considered the arguments made by counsel, and note that the case by Mwiki Ltd that NLC had no jurisdiction to review the allocation of the suit properties is hinged on a finding that the suit properties were private land. Our evaluation of the evidence and law however does not lend itself to such a finding for two reasons. Firstly, Mwiki Ltd did not controvert the averments made by Mwiki Welfare Association that at the time the said land was being purchased by Mwiki Ltd and later subdivided, part of the land was indicated in the survey maps and plans as reserved for public utilities and public spaces. Evidence of the said survey maps and plans was also provided during the



hearing of the petition in the ELC by Mwiki Welfare Association. It is notable that under section 14 of the *National Land Commission Act*, the NLC has jurisdiction to review not only direct grants, but also dispositions of public land. A disposition in property law refers to the transfer of ownership or possession of property, and would therefore cover the purchase of land designated as public land. The other parcels were designated as open spaces during sub-division of and thereafter became public land, and within the review jurisdiction of the NLC. We accordingly find that the NLC was within its powers to review how these parcels of land metamorphosed from public spaces to private lands.

16. Secondly, Mwiki Ltd annexed a ruling delivered by the ELC (Gitumbi J.) on 17<sup>th</sup> October 2014 in Nairobi ELC No. 1035 of 2013 dismissing an application by the plaintiffs therein for a temporary injunction on account of having not demonstrated a prima facie case, and by its own pleadings, Mwiki Ltd averred that the main suit was dismissed for want of prosecution in 16<sup>th</sup> May 2019 by the same court (Komingoi J.) and provided a copy of an order to this effect. It did not provide any judgment to support its arguments that the ELC declared the suit properties to be private land, and this issue was evidently never heard and decided on merit.
17. This finding leads us to the second issue of whether a constitutional petition was the right vehicle to challenge the decision of the NLC. Mr. Mageto in this respect submitted that being dissatisfied with the decision by the NLC, Mwiki Ltd applied to the ELC to review the decision through a constitutional petition, but that the ELC found that the determination on ownership of the subject title could only not be made by way of a formal hearing, even though this had already been done in Nairobi ELC No. 1035 of 2013. That the ELC therefore erred by failing to perform its supervisory duty over the NLC. Mr. Limo and Mr. Motari reiterated that there was no determination on merit made in Nairobi ELC No. 1035 of 2013, and the trial Judge therefore did not err in finding that no constitutional rights were violated by NLC.
18. We in this regard note that the context of the finding made by the ELC was when determining the issue whether there had been a violation of Mwiki Ltd's constitutional rights, and not in the context of a determination of Mwiki Ltd's proprietary rights to the suit properties. The ELC held as follows in this respect as regards to the purpose and objective of constitutional petitions:

“76. A determination on ownership of the subject title can only be made upon a formal hearing of the matter by the court in an Appeal and not through a Constitutional Petition; that a Constitutional Petition can only be filed for purposes of curing injured rights and freedoms and that the Petitioners are yet to establish their proprietary interest in the suit land.

We have also already found that there was no determination in Nairobi ELC No. 1035 of 2013 that the suit properties were private land and belonged to Mwiki Ltd. The ELC therefore did not err in finding that the issue of Mwiki Ltd's ownership of the suit properties could not be determined through the constitutional petition before it.
19. The last issue is whether Mwiki Ltd was a bona fide purchaser for value. Mr. Mageto, while citing the decisions in *Katende v Haridar & Company Ltd* (2008) 2 EA 173 and *Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No. 28 of 2005* [2015] eKLR on the requirements for one to be considered a bona fide purchaser for value, submitted that Mwiki Ltd purchased the properties 8469/4/7 and 8469/4/17 after conducting due diligence and paying good consideration, and that the respondents therefore failed to prove that its title was fraudulent, Consequently, that its title ought not to have been cancelled and reliance was placed on the Court of Appeal decision in *Dr. Joseph N.K. Ng'ok vs Justice Moiyo Ole Keiwua and 2 others C.A No. 60/1997* that the title of an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party.



20. Mr. Limo on his part submitted that an innocent purchaser for value cannot obtain a good title where the title is void ab initio having been obtained in violation of the law. Reference was made to the Court's holding in the case of Kenya Anti-corruption Commission vs Ahmed Karama Said & 2 others [2011] eKLR and the case of Kipsirgoi Investment Ltd vs Kenya Anti-Corruption Commission, [\*CA No. 288 of 2010\*](#) which held that a bona fide purchaser for value is protected subject to the qualification that the title in issue was not created in breach of statute.
21. Further reliance was placed on the case of Isaac Gathungo Wanjohi & another vs Attorney General & 6 others [2012] eKLR where the Court held that the protection of the right to property in Article 40 of *the Constitution* does not extend to illegally acquired property, and the case of [\*Munyu Maina vs Hiram Gathiba Maina, Civil Appeal Number 239 of 2009\*](#) where the Court held that when a registered proprietor's root of title is under challenge, the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title. Therefore, fact that the title was improperly allocated given the evidence on its reservation for public use meant that Mwiki Ltd acquired a flawed title upon purchase which cannot be protected by *the Constitution*. This position was also reiterated by Mr. Motari.
22. There have been developments in Kenyan law since the decision cited by Mwiki Ltd in Dr. Joseph N.K. Ng'ok vs Justice Moiyo Ole Keiwua and 2 others C.A No. 60/1997, and the Supreme Court of Kenya has clarified the scope and limitations of the doctrine of the innocent purchaser for value in relation to public land. In the cases of Dina Management Limited vs County Government of Mombasa & 5 Others [2023] KESC 30 (KLR) and Torino Enterprises Limited vs Attorney General [2023] KESC 79 (KLR) the Supreme Court held that if the process that was followed before issuance of a title did not comply with the law, then such a title cannot be held as indefeasible.
23. Further, that to establish whether one is a bona fide purchaser for value therefore, the Court must first go to the root of the title, right from the first allotment. Therefore, regardless of the fact that there has been subsequent transfer of land to a purchaser, if the original allocation was illegal, the current holder cannot claim protection as an innocent purchaser even if he was not aware of the illegality. In the present appeal Mwiki Ltd purchased land that was reserved for public purposes, and we are bound by the decision in Dina Management Limited vs County Government of Mombasa & 5 Others (supra), that Mwiki Ltd cannot claim to be an innocent purchaser for value in the circumstances.
24. The appeal by Mwiki Ltd must therefore fail for the foregoing reasons. As this is a matter involving the purchase of public land and the public interest, we order that each party bears their own costs of the appeal.
25. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2025.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

**F. OCHIENG**



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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

