



Kiarri & another (Suing as Legal Representatives and Administrators of the Estate of Waithira K Kiarri - Deceased) v Gachungei & 19 others (Environment & Land Case 383 of 2016) [2024] KEELC 3260 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEELC 3260 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 383 OF 2016**

JA MOGENI, J

MARCH 7, 2024

BETWEEN

REGINA WAIRIMU KIARII 1ST PLAINTIFF

RAHAB WAIRIMU MUKORA 2ND PLAINTIFF

**SUING AS LEGAL REPRESENTATIVES AND ADMINISTRATORS OF THE
ESTATE OF WAITHIRA K KIARII - DECEASED**

AND

SUSAN WANJIRU GACHUNGEEI & 19 OTHERS DEFENDANT

JUDGMENT

1. Vide a further amended plaint dated 17/07/2019 the plaintiff who are suing on behalf of the estate of Wathira Kiarri (deceased) filed a suit in this court seeking for the following prayers:
 - a. A declaration that the subdivision and subsequent transfer of Lr Ruiru Kiu Block 2 (githunguri) 2755 To Ruiru Kiu Block 2/9061, 9062, 9063, 9064,9065, 9066, 9067,9068, 9069, 9070, 9071 and 9072 and 9075 or any other sub-divisions thereof as irregular, null and void.
 - b. An order for cancellation of Title Numbers Ruiru Kiu Block 2/9061, 9062, 9063, 9064,9065, 9066, 9067,9068, 9069, 9070, 9071 and 9072 and 9075 or any other subdivision thereof from original title in the names of Regina Kiarri (deceased).
 - c. An order restraining the Defendants either by themselves, servants, agent or anybody claiming through them from alienating, disposing off, occupying, cultivating, constructing and/or development on the suit property or interfering in any way with Plaintiffs quiet possession of all parcel of land originally known as Ruiru Kiu Block 2 (githunguri) 2755 To Ruiru Kiu



Block 2/9061, 9062, 9063, 9064,9065, 9066, 9067,9068, 9069, 9070, 9071 and 9072 and 9075 and Githunguri Constituency Ranching Company Ltd Plot No. 001552 share certificate No. 3372.

- d. General damages
 - e. Cost of this suit and interest
 - f. Any other relief that this Honorable Court may deem fit and just to grant.
2. The plaintiffs' claim is based on the illegal process of meddling in the estate of a deceased person and fraud who particulars are set out in the body of the plaint. The defendants filed amended defences denying the plaintiffs' claim. They also filed a list of witness statements.

Plaintiff's Case

3. PW1- Regina Wairimu testified and adopted her witness statement dated 17/07/2014 and her list of documents except for documents at page 26 and 27 to which the advocate for the 6th and 7th defendant objected to their production and the plaintiff withdrew them. Upon cross-examination by advocate for the 1st, 2nd and 3rd defendants Mr Omondi who was holding brief for Mr Ario she stated that Susan who is the 1st defendant was a wife of her elder brother and she was sued since it had been said that she sold the suit property and this was reported to the police.
4. She also stated that she did not know the 4th, 5th and 8th defendants but that she only got to know about Nancy when the land was sold to her. She testified that it had been said the title to the suit property was lost in 2015. That her elder brother only kept the title to the suit property and that her relationship with Susan was strained when she sold the shamba.
5. It was her testimony in further cross-examination that she sued the 6th and 7th defendants and the 19th defendants because they acquired land that had not been successfully processed for succession purposes. That she did not know the 6th and 7th defendants but sued them for obtaining land that Susan had defrauded which belong to Waithira Kiarri and it was sold fraudulently.
6. That the 13th to 18th defendants and the 19th defendant bought land whose title was stolen by Susan Wanjiru who sold it to them and this was reported to Ruiru Police Station.
7. She testified that they got letters of administration on 18/11/2015 and that according to her the title to the suit property got lost in 2012. That from the exhibit of the letter at page 21 she testified that they went to pick the letter about Waithira's death and it indicated 5 survivors.
8. Upon re-examination she stated that she took out letters of administration following her mother's death and she sued Susan because she sold the land without a grant of letters of administration. That she also sued the defendants because they did not check the ownership of the land and that her prayer is that all the titles issued irregularly should be cancelled and the land reverted back to the estate of the deceased. She also testified that she had put a restriction on the suit property.
9. On her part, PW2- Rahab Wairimu Mukora, testified that she was a joint administrator to her mother-in-law's estate and that she was the wife of Micheal Mukora. It was her testimony that she sued the 1st, 2nd, and 3rd defendants because they sold the estate of the deceased to the 19th and 20th defendants when her mother-in-law was dead. She however testified that she did not know who sold the suit property to the other defendants. She produced the witness statement which she adopted as her evidence and her list of documents which she adopted as her exhibits.



10. On 29/10/21 after her giving her testimony on 04/10/2021 Rahab Wairimu Mukora made an oral application to withdraw the instant suit and to have her further witness statement which she had moved the court to adopt as her evidence and the further amended plaint to be expunged from the court record. This led to the court ruling dated 23/11/2021 declining to grant the prayer of expungement. The court further directed the witness to file her notice of withdrawal from being an administrator in the estate of the late Wathira Kiira to be filed in the court that issued the grant.
11. It is instructive to indicate that this decision was not set aside through appeal and therefore the instant suit was heard and concluded and the evidence of Rahab formed part of the court records.
12. There was interlocutory judgment applied for against the 9th, 10th, 19th and 20th defendants who did not file any defence statements but the court did not grant the interlocutory orders sought by the plaintiff.

4TH Defendant's Case

13. DW-4 Violet Wambui Njikari testified that she was the 4th defendant and adopted her witness statement as her evidence and also her list of documents which had 9 documents marked as her exhibit 1-9. She denied that she acquired the suit property through fraud and that she did due diligence.
14. Upon cross-examination she testified that she bought the land from Nancy Gitu who she realizes that has also been sued but that she did a search at Thika Lands Office. She stated that if she knew the land belonged to a dead person she would not have bought it. On further cross-examination by the counsel for the 6th and 7th defendant she stated that she did a search and that the land belonged to Nancy Wairimu Gitu who was not dead. It was her testimony that she did not commit fraud
15. When she was re-examined she stated that she found that the land had a caution in 2014 but that this was put on the land after they had bought it in 2012.

5TH Defendant's case

16. DW5 – Helen Kagwiria Kirema testified and stated that she lived in Nyayo Estate Embakasi and that she was the 5th defendant and she adopted her witness statement and her list of documents. She testified that she never acquired the suit property fraudulently.
17. When she was cross-examined she testified that she bought the land from Nancy Gitu after going to the land office in Thika and then appearing before the Thika Land Control Board. She was satisfied that the land belonged to Nancy and she paid for it in two instalments. Her plot number is Ruiru Kiu Block 2 9069 That she never knew that the land belonged to a dead person although having bought the land in 2012 she is unable access the land since there is a caution

8TH Defendant's Case

18. DW 8- Joseph Kamau Maina produced and adopted his witness statement and list of three documents marked as exhibit 1-3. It was his testimony that he never acquired the suit property fraudulently. He testified that he paid Ksh 300,000 to Nancy who sold him the suit property against whom he has not made any claim. That he did a search which revealed that Nancy was the owner of the suit property. He stated that before he bought the suit property there was not caution on it.
19. This marked the close of the 4th, 5th and 8th defendants' case.

6TH Defendant's Case

20. DW6-Jemimah Mumbi Gitu



21. Jemimah testified that she was a business woman who lived at Safari Park and had received the suit property as a gift from her mother
22. DW 7- Nancy Wairimu Gitu
23. She adopted her witness statement and a list of 9 documents marked as exhibit 1-9. In cross-examination she testified having bought RUIRU KIU BLOCK 2 Githunguri Parcel 2755 measuring 0.5 hectares from James Nthendu Gitau and Martha Mueni Mburu who are the 19th and 20th defendants at a cost of Kesh 3.4 million through a sale agreement dated 27/07/2011.
24. That upon purchase she sub-divided the suit property into 12 pieces which I was to sell. She stated that they went to the Land Control Board and she produced the Board application at page 21 of her bundle. The title deed was issued to her on 29/7/2011 and the title to Mr James Gitau was issued to him on 27/07/2011. It was her testimony that she went to the Land Control Board on 11/10/2011.
25. It was her testimony that she the consent to transfer the suit property from the Land Control Board was in October 2011 and the title was issued on 29.07.2011 a copy is contained at page 23 of the bundle. That the sale agreement executed on 27.07.2011 and the title was issued and transferred to DW 7 on 29.07.2011. That she paid Kesh 3.4 million but she did not have a bank transfer nor a receipt to show that she paid the money.
26. She testified that she saw the certificate of death of Waithira Kiarii showing that she died on 22/01/1998 and yet the transfer of title to Mr James Nthendu was done on 29/04/2011.
27. Upon further cross-examination she stated that she sold the land to the 13th to 18th defendants who were not known to her and were not involved in the purchase of the suit property from Mr. Thendu and Martha. She testified to have engaged the surveyor to sub-divide the land. She further stated upon cross-examination that she searched and the search showed that the owners of the suit property were James Nthendu and Martha Mueni and that she never committed any fraud.
28. When she was cross-examined further by the counsel for the 4th, 5th and 8th defendants, she testified that her search at Thika Land Office never showed there was any problem. That she sold the land to the 4th, 5th and 8th defendants and only upon moving to Narok was she told that there is a problem. On re-examination she reiterated her testimony and added that when she did the search she never saw the green card and that she never engaged in any fraud. To her the transaction was above board and she sold clean titles to the 13th-18th defendants including DW6 Jemimah Mumbi Gitu her daughter.

DW1- Chief Land Registrar's Evidence

29. Robert Mugendi Mbuba – testified that he was the land registrar and that the suit property was registered on 17/02/1992 in the name of the Government of Kenya and was transferred to Waithira Kiarii of ID No. 4914741/67 on the even date. That it was transferred to James Thendu Gitau of ID No. 4307365 and Martha Mueni Mburu of ID No. 1461954 and on 29/04/2011 a title was issued and on 29/07/2011 the land was transferred to Nancy Wairimu Gitau and she was issued with a title deed. On 20/01/2012 she divided the land to produce RUIRU KIU BLOCK 2 Githunguri 9061 to 9072. He produced the greed cards as his evidence and they were marked as Exhibit 1-13.
30. In his testimony he went on to testify how the twelve pieces were subsequently transferred which happed between 2013 to 2017 and a prohibition was placed on the parcels on 23/02/2017 prohibiting any dealing until the determination of this suit. He testified that he was not aware that Waithira or Waithera had died and that there is a caution on the suit property placed there on 9/12/2013 which is 10 years after her Waithira's demise.



31. On Cross-Examination he stated that if there was any dealing in the estate of the deceased without going through the succession process then this was against the Law of Succession Act Section 45. On further cross-examination he stated that the 4th entry on the green card show that there was a transfer to Martha but no date was given and that at this time of the transfer the Ruiru Land Registry was not open since it was opened in 2019.
32. That Mr. James Thendu Gitau did not have a transfer form and they are not in the parcel file. That the documents for parcel 9062 has a transfer, stamp duty paying slip and the consent dated 15/05/2012. Even the one for Violet dated 28/05/2013 is attested and signed. The one for parcel 9064 in the name of the 5th defendant also bears all requisite documents including the original title but which was cancelled. Hellen's title was registered on 6/08/2012 and the title was issued on 7/08/2012.
33. He testified that parcel 9067 show that the documents in the folder are not properly filed but in the book it shows that the parcel belongs to Joseph Maina and title was issued on 26/07/2012. That the caution was never registered because the time the plaintiffs sought to lodge it the land and changed hands to Nancy W. Gitu and the 3 parcels have changed hands to third parties.
34. That at paragraph 4 of the Statutory Declaration it states that the land was being sold to unsuspecting members of the public and it was sworn on 5/12/2013.
35. On further cross examination by Counsel for the 6th and 7th defendants, he stated that Waithira got the land through a transfer from Githunguri Ranching Company Limited but entry number 6 show that the land belonged to both James Thendu Gitau and Martha Mueni. It was his testimony that Nancy never dealt with Waithira Kiarie but that at the time she intermeddled and the transactions were done she was dealing with the property of James and Martha. That she subdivided the original block RUIRU KIU BLOCK 2 / 2755 and from the records at the registry the process was proper.
36. That Jemimah Mumbi dealt with parcel numbers 9061, 9063 and 9065 where the transfer was from Nancy and are accompanied by all requisite documents. Upon further cross-examination by counsel for the 13th to 18th defendants he highlighted the important documents that must be submitted to the land registrar for a transfer to be done. This include A transfer form signed by the Transferor who in this case is Waithera Kiarie, Application Form for Land Control Board Land Control Board Consent, Original Title Deed in the name of Waithera Kiarie, Certified Copy of ID and PIN and Stamp Duty Payment Receipts. He further stated that if any document is missing a transfer cannot be done. He concluded by stating that the transmission documents were never lodged and that a registrar cannot proceed to register if they had the documents.
37. With this the Counsel for the 11th and 12th defendants closed their case.
38. The court gave directions on filing of submissions and reserved the date of 7/03/2024 as the judgment date.

Issues for Determination

39. The issues for determination in this case are fairly simple and are drawn as follows:
 1. Whether the plaintiffs have proved illegal and fraudulent acts in the sub-division and transfer of suit property RUIRU KIU BLOCK 2 Githunguri Parcel 2755 to the defendants?
 2. Whether the sale agreements and the statutory consents giving effect to the transfer of the parcels of land from the plaintiff to the defendants was above board?
 - (3) Whether the plaintiffs have proved their case on the required standard?



3. What are the appropriate orders to issue?
4. Who will bear the costs of this suit?

Analysis and Determination

40. I have considered the evidence adduced by the plaintiff and the defendants. I have also read through the pleadings and the documents produced by the parties and their submissions. I will now analyze the dispute and make the appropriate decision.
41. Prior to instituting this suit, the plaintiffs obtained a limited grant ad litem on 18/11/2015 authorizing them to file suit on behalf of the estate of Waithira Kiarrii (deceased).
42. From my reading, listening the various witnesses in court and perusal of the crucial documents filed I note that the main contention of the plaintiffs is that the suit properties were transferred when their mother and mother-in-law respectively was already deceased and no succession proceedings had been undertaken. It is the view of the plaintiffs that all transactions conducted are therefore illegal and unprocedural, if not fraudulent.
43. It is not in dispute that Waithira Kiarrii died on 22/1/1998. At the time of her demise, she was the registered proprietor of the suit properties. Thirteen years after her demise it appears that the suit property was transferred to James Thendu Gitau and Martha Mueni Mburu. In the court documents produced I did not see any sale agreement between Waithira Kiarrii (deceased) and the duo.
44. The duo sold the suit property to Nancy Wairimu Gitu who got a title on 29/07/2011. She has produced a sale agreement dated 27/07/2011. In turn James Nthendu and Martha Mueni sold the properties to Nancy and she produced it at page 18 of her bundle.
45. Nancy's title was issued to her on 29/07/2011 and the sale agreement is dated 27/07/2011 which is a transaction of two days. She however went to the Land Control Board for Consent on 11/10/2011. She stated that this was consent for sub-division but she never presented before the court the Land Control Board Consent for sale. This is a critical process in the sale of agricultural land which renders a sale null and void if not obtained.
46. According to her testimony she paid Ksh 3.4 million but did not produce proof of the same neither is this amount acknowledged in the sale agreement. There is therefore no proof that Nancy Wairimu indeed bought and paid for the said suit property.
47. The sale agreement as produced by Nancy is not sufficient proof of the purchase of the suit property without any supporting documentation payment such as payment of stamp duty and other auxiliary processes that are critical for sale of land.
48. In fact the sale agreement dated 27/07/2011 clearly cannot be enforced, for at that point in time, the two vendors had no capacity to sell, the estate of Waithira Kiarrii having not been distributed to any of her beneficiaries. It is an agreement that is null and void and devoid of passing any proprietary interest.
49. It is not even clear how the duo became the registered proprietors of the suit property and who signed the transfer form on behalf of the deceased Waithira Kiarrii. Neither is it clear whether the consent of the Land Control Board was ever obtained for none was produced in evidence. Be as it may, the consent of the Land Control Board could not have been obtained without the presence of Waithira Kiarrii, and she could not have been present, for at that time she was already dead. It follows that there could not have been a proper consent issued by the Land Control Board giving consent for the transfer of the suit properties from Waithira Kiarrii James Nthendu Gitau and Martha Mueni Mburu (the duo). I



therefore hold that the transfer of the suit properties from Waithira Kiarri to the duo was irregular and unprocedural and the same cannot be allowed to stand.

50. James Nthendu and Martha Mueni Mburu purport to have sold and transferred the suit property to the 7th defendant, one Nancy Wairimu for Kesh 3.4 million and she in turn sub-divided it and sold and transferred to 4th, 5th, 6th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th and 18th defendants.
51. Again these subsequent transactions by Nancy are tainted by various irregularities. Nancy having not obtained title procedurally to the property could not pass a good title to the defendants that she sold the sub-divided parcels to. Even if I am wrong on this point, the transfer of the suit properties to the defendants would still be irregular, for the consent of the Land Control Board cannot be obtained before the land was transferred to the duo then to Nancy and to the subsequent third parties. The consent she presented dated 11/10/2011 was for sub-division.
52. Some of the subsequent sale agreements presented are undated such as the one for Joseph Kamau Maina in fact for Joseph there is no Land Control Board Consent. The Letter of Consent for the Land Control Board for Hellen K. Kirema is the same one that reflects the name of Violet Wambui yet the application for consent is made by Hellen Kagwiria Kirema.
53. Anyway these and other anomalies were noted from the documentation but I choose not to delve in that but focus on whether the suit property belonging to Waithira Kiira deceased had been properly transferred and conferred title to the duo? The answer is an absolute and resolute NO.
54. I already pointed out the co-administrator has sought to withdraw this suit because she wanted out of the co-administration duty but this not being the court that issued the limited grant she needed to make an application before the right court.
55. It may be that the co-administrators have their own differences but that is not what is before this court. What I have before me is a dispute about transfer of the suit property before the succession was done. Further that the suit property has been taken away from the beneficiaries of the estate of the deceased Waithira Kiarri illegally without due regard to the law on ownership of land.
56. The law protects the title of a registered proprietor, but where title has been obtained irregularly, the same cannot be protected and is liable to be cancelled. This is brought out by Section 26 of the [Land Registration Act](#), Act No. 3 of 2012, which is drawn as follows: -

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 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,
 - c. unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.



57. Therefore, from the above provision, any title obtained by way of fraud or misrepresentation to which the person is proved to be a party is liable to be cancelled. So too, a title that has been obtained illegally, unprocedurally, or through a corrupt scheme. The title of Nancy cannot be said to have been one that was obtained legally or procedurally, as it was obtained after the demise of Waithira Kiarrii, and without there being any person with capacity to transact on behalf of Waithira Kiarrii. Further, the transfer of titles from Nancy Wairimu Gitu to subsequent buyers was also tainted with anomalies, irregularities that could not lead to transfer of a clean title.
58. The 1st defendant confessed to having sold the suit property without letters of administration and in fact that is the reason the plaintiffs sued her. In essence she intermeddled in the estate of a deceased person without legal authority.
59. In fact in response to the second issue as to whether there was good title to pass to the defendants, it is clear from the facts presented that James Nthendu Gitu and Martha Mueni had no good title to transfer to 7th defendant Nancy Wairimu Gitu since there no letters of administration that had been obtained.
60. This being the case then Nancy had no good title to enable her pass any to the 4th, 5th, 6th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th and 18th defendants. With no letters of administration having been taken out in respect of the deceased's estate nobody had the right to dispose of or interfere with the said property whatsoever. The sale of the suit property to anybody was null and void ab initio.
61. The duo who never testified in court never presented any consent obtained from the Land Control Board signed by the Waithira Kiarrii (deceased) to facilitate transfer of the said land as per the requirement of Section 6(1) (a) of the Land Control Board.
62. No succession proceedings had been filed in respect of the estate of the deceased by the time the suit property is purported to have changed ownership thus the estate of the deceased had not been distributed.
63. It will therefore not be necessary to belabor the point that resulting titles were improperly acquired. Section 45 of the *Law of Succession Act* provides as follows: -
1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 2. Any person who contravenes the provisions of this section shall—
 - a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - b. be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
64. The court in the case of Bahola Mkalindi vs. Michael Seth Kseme & 2 others [2012] eKLR held that;
- ‘The *Law of Succession Act*, Cap. 160 is concerned with the administration of the estate of deceased persons. The estate of a deceased person has been defined by the Act as property which the deceased person was legally competent to freely dispose of during his lifetime, and in respect of which his interest has not been terminated by his death.



65. Additionally, Further, Section 55 of the *Law of Succession Act* stipulates that: -

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property unless and until the grant has been confirmed as provided by section 71.”

66. Having considered the evidence before me as well as the exhibits herein produced, it clearly emerges that Section 55 of the *Law of Succession Act* was not complied with before these properties were transferred. I therefore find that the said registration was a nullity as the estate of deceased could only have been dealt with under the *law of succession Act* after her death and not otherwise. In essence therefore, I find that the deceased Waithira Kiarri was the proprietor of Lr Ruiru Kiu Block 2 (githunguri) 2755 even after her death, having been registered as such on 17/02/1992.

67. Since the present case is based on the dispute regarding the said parcel I shall not say much regarding the resultant portions allegedly transferred to the 4th, 5th, 6th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th and 18th, I shall restrict myself to the said parcel of land.

68. From the discourse above and having found that the proprietor of the suit land was the deceased Waithira Kiarri, it therefore goes without saying that the said James Nthendu and Martha Mueni who was neither the registered owner nor a beneficiary to the estate of the deceased, had no interest on the land to pass. Further, the said sale transaction was carried out 10 (ten) years after the death of the proprietor of the suit land and before a grant of representation had been issued with the result that there was intermeddling with the deceased's estate.

69. The provisions of Section 26 of the *Land Registration Act*, Act No.3 of 2012 provide as follows:

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.

70. As it may be observed, the law is extremely protective of title but the protection can be removed and title impeached, on two instances. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

71. The import of Section 26 of the *Land Registration Act* was considered in the case of Elijah Makeri Nyangwra _vs- Stephen Mungai Njuguna & Another [2013] eKLR where Munyao J, answered the question as to whether title is impeachable under section 26 (1) (b) of the said 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, unproceduarally 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.”

72. Having found that deceased Waithira Kiarri was the proprietor of land parcel No. Lr Ruiru Kiu Block 2 (githunguri) 2755 even after her death, it therefore follows that the title of the Defendant was obtained by fraud or misrepresentation.
73. Although there was no evidence adduced that pointed out to the Defendants being party to the fraud or misrepresentation and that they might have been innocent purchasers for value, yet I am satisfied that the conditions provided for impeachment of a title as per the provisions of Section 26 (1) (b) have been met.
74. I find that the titles of the defendants having been obtained illegally, unprocedurally and/or through a corrupt scheme, the same are liable to be cancelled.
75. I find that the Plaintiffs herein have proved their case on a balance of probabilities and I do proceed to cancel the titles of all the defendants and direct that the title should revert back to the name of Waithira Kiarri as proprietor. I do direct also that the Land Registrar who has custody of the titles herein, to give effect to this order. The suit property should be subjected to the process of succession for distribution in accordance with the law.
76. I will not award any damages because it has emerged that there is a caution on the subsequent divisions arising from the suit property and so the land is preserved.
77. Given the foregoing I make the following disposals orders:
 - a. A declaration is hereby made that the subdivision and subsequent transfer of Lr Ruiru Kiu Block 2 (githunguri) 2755 To Ruiru Kiu Block 2/9061, 9062, 9063, 9064,9065, 9066, 9067,9068, 9069, 9070, 9071 and 9072 and 9075 or any other sub-divisions thereof are irregular, null and void.
 - b. An order is hereby issued for cancellation of Title Numbers Ruiru Kiu Block 2/9061, 9062, 9063, 9064,9065, 9066, 9067,9068, 9069, 9070, 9071 and 9072 and 9075 or any other subdivision thereof from original title in the names of Regina Kiarri (deceased).
 - c. An order is hereby issued restraining the Defendants either by themselves, servants, agent or anybody claiming through them from alienating, disposing off, occupying, cultivating, constructing and/or development on the suit property or interfering in any way with Plaintiffs quiet possession of all parcel of land originally known as Ruiru Kiu Block 2 (githunguri) 2755 To Ruiru Kiu Block 2/9061, 9062, 9063, 9064,9065, 9066, 9067,9068, 9069, 9070, 9071 and 9072 and 9075 and Githunguri Constituency Ranching Company Ltd Plot No. 001552 share certificate No. 3372.
 - d. Costs and interests of this suit from the date of judgment are awarded to the plaintiffs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF MARCH 2024.

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MOGENI J.



JUDGE

In the Virtual Presence of: -

Mr. Ngani for the Plaintiff

Mr. Gatumuta for the 13th to 18th Defendants

Mr. Mathenge for the 4th, 5th and 8th Defendants

Mr Gachumba for the 6th and 7th Defendants

Mr. Omondi holding brief for Mr. Ariyo for the 1st, 2nd and 3rd Defendants

None appearance for the 11th and 12th Defendants, 19th and 20th Defendants

Ms Caroline Sagina: Court Assistant

