



**Weru & 3 others v Mwaura & 3 others (Environment & Land Case  
221 of 2019) [2025] KEELC 959 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 959 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 221 OF 2019  
MD MWANGI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**SAMUEL GITHEMO WERU ..... 1<sup>ST</sup> PLAINTIFF  
GRACE KIRIGO GITHEMO ..... 2<sup>ND</sup> PLAINTIFF  
FRANCIS KABERIA NJOROGE ..... 3<sup>RD</sup> PLAINTIFF  
CHRISTOPHER KIMANI NJOROGE ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**PERIS WAMBUI MWAURA ..... 1<sup>ST</sup> DEFENDANT  
THOME FARMERS NO 1 LIMITED ..... 2<sup>ND</sup> DEFENDANT  
THE CHIEF LANDS REGISTRAR ..... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL (BEING SUED FOR AND ON BEHALF OF THE  
MINISTRY OF LANDS & URBAN DEVELOPMENT ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs initiated this suit vide the plaint dated 1<sup>st</sup> July 2019. They claim that they were at all material times, the bona fide shareholders of all that property known as L.R No. Nairobi/Block 110/943 measuring 0.2 hectares and registered in the names of Wanjiku Kariuki and Murugi Kiarie and contained in Plot No. 347 and Share Certificate No. 435 (hereinafter referred to as ‘the suit property’). The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs assert that they purchased one half share of the suit property for valuable consideration from one of the owners, Wanjiku Kariuki, now deceased whereas the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs hold the other half of the suit property by dint of being the lawful beneficiaries of the estate of the other owner, Murugi Kiarie.



2. The suit property was initially allotted to Wanjiku Kariuki and Murugi Kiarie in the form of half a share by the 2<sup>nd</sup> Defendant Company, Thome Farmers No. 1 Limited. The Plaintiffs allege that they have since been in continuous physical possession of the suit property for the last 17 years (as at the date of filing suit).
3. In the year 2018, the Plaintiffs became aware that the 1<sup>st</sup> Defendant was surreptitiously, fraudulently and irregularly registered by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as the sole proprietor of the suit property. They assert that they lodged a formal complaint at the 4<sup>th</sup> Defendant's offices vide a letter dated 6<sup>th</sup> June 2019. They particularize the fraud and impropriety under paragraph 18 of their plaint.
4. The Plaintiffs aver that they have been deprived of and or are in danger of being deprived of their right to possession and enjoyment of the suit property. They therefore pray for judgment against the Defendants jointly and severally for;
  - a. An order directed at the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to forthwith revoke, nullify and or cancel Title No. Nrb/Block 110/943 – Thome Estate in the name of the 1<sup>st</sup> Defendant.
  - b. A mandatory injunction compelling the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to correct the entry in its records to reflect the Plaintiffs as the registered proprietors of the suit property.
  - c. A permanent injunction prohibiting the 1<sup>st</sup> Defendant whether by herself or through her servants, agents, employees or persons acting under her from transferring, alienating, encroaching upon, registering any instrument on, varying any instrument on or in manner howsoever dealing with the suit property and interfering with the Plaintiffs' quiet possession of the suit property.
  - d. A permanent injunction prohibiting the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants whether by itself or through its servants, agents, employees or persons acting for and under them from transferring, alienating, encroaching upon, registering any instrument on, varying any instrument on or in manner howsoever dealing with the suit property and interfering with the Plaintiffs' quiet possession of the suit property.
  - e. General damages for breach of quiet and peaceful enjoyment and possession of the suit property.
  - f. Costs of the suit.
  - g. Interest on (E) and (F) above from the date of judgment to full payment.
  - h. Such further and/or other orders as this court may deem fit in the circumstances.

#### **Responses by the Defendants.**

- i. 1<sup>st</sup> Defendant's Statement of Defence and Counter-claim.
5. The 1<sup>st</sup> Defendant joins issues with the Plaintiffs and puts them to strict proof of each and every allegation in the plaint in that at all material times she was the absolute sole proprietor and or owner of the suit property.
6. The 1<sup>st</sup> Defendant denies that the share certificate No. 435 translated to a property known as Plot No. 347 or Nrb/Block 110/943 as alleged by the Plaintiffs or at all. Further, the 1<sup>st</sup> Defendant denies the allegations that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs purchased half a share of the suit property from Wanjiku Kariuki (deceased) and that the other half forms part of the estate of Murugi Kiarie (deceased).



7. The 1<sup>st</sup> Defendant too denies that the Plaintiffs have been in continuous physical possession of the suit property for the last 17 years as alleged. She asserts that squatting on someone else's property in any event does not entitle one to ownership of the same.
8. The 1<sup>st</sup> Defendant denied the contents of paragraph 18 of the plaint sub-paragraphs (a) to (i). She states that the allegations of error, mistake and or fraud contained therein are a non-starter and are mere allegations with no legal nor factual basis.
9. In her Counter-claim, the 1<sup>st</sup> Defendant alleges that she leased the suit property from the Government of Kenya and was subsequently issued with a clean and unencumbered title for the property. She affirms that due procedure was followed as provided for under the law. She is therefore the bona fide Lessee/ Proprietor of the suit property.
10. The 1<sup>st</sup> Defendant accuses the Plaintiffs of attempting to maliciously and unfairly, through intimidation and unorthodox means, dispossess her of the suit property. They have not only filed a restriction over the title of the suit property but have also lodged numerous complaints to various authorities contesting her ownership of the property.
11. The 1<sup>st</sup> Defendant avers that the Plaintiffs have no rights whatsoever over the suit property. She prays for the dismissal of the Plaintiffs' suit with costs and entry of judgment in her favour against the Plaintiffs for;-
  - a. A declaration that she is, and at all material times has always been the absolute sole proprietor of the suit property.
  - b. A declaration that she is entitled to exclusive unimpeded right of ownership, possession and occupation of the suit property.
  - c. The Chief Land Registrar do forthwith remove and or cause to be removed the restriction placed over the suit property.
  - d. A permanent injunction restraining the Plaintiffs whether by themselves, their servants, employees, agents and or whomsoever from entering into, trespassing on and or otherwise howsoever from interfering with the 1<sup>st</sup> Defendant's ownership, possession, occupation and or enjoyment of all that parcel of land known as Nrb/Block 110/943 purporting to sell, alienate, transfer, mortgage, lease, rent and or dispose of the said parcel of land or otherwise dealing with any portion thereof at all.
  - e. Costs of this suit with interest thereon.

### **3rd & 4th Defendants' Statement of Defence.**

12. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants' joint statement of Defence is dated 24<sup>th</sup> January 2020. They aver that according to the records in the lands office, the 1<sup>st</sup> Defendant is the registered owner of the suit property but there are no records in support of her registration as such.
13. The 2<sup>nd</sup> Defendant did not enter appearance nor file a statement of defence in this matter.
14. In response to the statement of Defence and Counter-claim by the 1<sup>st</sup> Defendant, the Plaintiffs reiterated their averments in the plaint and denied her claims putting her to strict proof. They prayed for the dismissal of the Counter-claim with costs.



### **Evidence adduced at the trial.**

15. This case proceeded to full hearing.
16. The Plaintiffs called three witnesses in their case whereas two witnesses testified on behalf of the Defendants.
17. PW1 was an advocate of the High Court of Kenya who had been instructed by the 2<sup>nd</sup> Defendant Company to prepare titles for the owners of the Nairobi Block 110. Her instructions were to prepare transfers for the shareholders of the 2<sup>nd</sup> Defendant Company and lodge them at the lands office for issuance of the titles for the individual half acre units. The officials of the 2<sup>nd</sup> Defendant Company gave her the original register which contained the names of the shareholders and their plot numbers and other details. She started the work in 1990.
18. The witness testified that the subject matter of this case is Plot No. 347, title number Nairobi/Block 110/943 and share certificate number 435.
19. According to the witness, the 1<sup>st</sup> Defendant was not in the original register of the 2<sup>nd</sup> Defendant Company and was therefore not entitled to be registered as a proprietor of the suit property or any other property for that matter within Nairobi Block 110.
20. The 1<sup>st</sup> Plaintiff testified as PW2. He adopted his witness statement dated 28<sup>th</sup> June 2019 as his evidence in chief. His testimony affirmed the assertions in the plaint. He informed the court that he has been in continuous uninterrupted possession of the suit property for 18 years since purchasing the half share of the suit property. He commenced construction of his house on the suit property in the year 2003 and partially completed it on 30<sup>th</sup> December 2004, when he moved in with his family. Since then he has lived in the said house.
21. The 1<sup>st</sup> Plaintiff testified that they (Plaintiffs) had progressed well with processing the documents of title of the suit property until the tail end when they were shocked to learn that the 1<sup>st</sup> Defendant had obtained the title.
22. The 1<sup>st</sup> Plaintiff informed the court that the 2<sup>nd</sup> Plaintiff was his wife. The 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs were the sons of the late Murugi Kiarie. He had purchased the ½ share of the suit property from the late Wanjiku Kariuki. At the time of purchase, the map of the block 110 where the suit property is situated showed that Plot No. 347 was also L.R No. 943. He was able to see that at the time of purchase.
23. PW3 was Francis Kaberia Njoroge, the 3<sup>rd</sup> Plaintiff, who also testified in the Plaintiffs' case, producing his affidavit sworn on 17<sup>th</sup> February 2011. It was an affidavit confirming the names of Murugi Kiarie in the succession cause that eventually confirmed the half share plot to the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs.
24. The Land Registrar, one Gildine Katwiri Karani testified as DW1. She adopted her witness statement dated 15<sup>th</sup> July 2022 as her evidence in chief. She further produced the documents on the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' list and bundle of documents as exhibits.
25. In responding to questions from the advocate for the 1<sup>st</sup> Defendant, DW1 confirmed the Nrb/Block/110 was owned by Thome Farmers No. 1 Limited. It was not owned by the Government of Kenya. She confirmed that the suit property was registered in the name of the 1<sup>st</sup> Defendant but there were no documents supporting the registration. It was also not possible to tell when the registration in favour of the 1<sup>st</sup> Defendant was done. She affirmed that there was totally no trace of documents showing how the 1<sup>st</sup> Defendant ended up as the registered owner of the suit property unlike the Plaintiffs who have documents to support their claim of ownership of the suit property.



26. DW1 admitted that the documents she had produced support the Plaintiffs claim of ownership. The lease form produced as PE4 was in respect to the suit property and was in the name of the Plaintiffs. It was executed on 4<sup>th</sup> April 2018.
27. The 1<sup>st</sup> Defendant testified as DW2 by adopting her witness statement dated 10<sup>th</sup> March 2022 as her evidence in chief. She further produced the documents on her list of documents as exhibits in support of her case.
28. DW2 testified that she lodged her documents on 4<sup>th</sup> May 2015 and they were registered on 28<sup>th</sup> August 2015. She stated that she had acquired the suit property from her father.
29. Responding to questions in cross-examination, the 1<sup>st</sup> Defendant admitted that the transfer she had produced showed that she was getting the lease from the County Government of Nairobi not from the Government of Kenya neither from her father. She had no prior letter of allocation or allotment from the County Government of Nairobi. The transfer too was not a 'transfer of lease'.
30. She further admitted that the documents do not show when they were booked for registration. They have no presentation number. There are no receipts to confirm payment of registration charges or stamp duty. She allegedly had sent 'someone' to the lands office; she did not personally go there.
31. DW2 alleged that her father was a shareholder of Thome Farmers No. 1 Limited, though she had no evidence to support that. Her father's brother helped her get the documents.
32. DW2 confirmed that she does not live within the suit property. Finally, the Kenya Revenue Authority PIN Certificate she had produced indicated that it was generated on 27<sup>th</sup> April 2017 yet it was the one she had allegedly produced in the year 2015 for purpose of registration of her documents.

#### **Court's direction.**

33. Upon close of the hearing of the case, the court directed parties to file written submissions. All the parties complied and filed their respective submissions which now form a part of the record of the court.  
Submissions by the parties.
  - i. Submissions by the Plaintiffs.
34. The Plaintiffs' submissions are dated 24<sup>th</sup> October 2024. The Plaintiffs identify two issues for determination as follows;
  - a. Who is the rightful owner of the suit property; &
  - b. What relief is available to such owner.
35. The Plaintiffs submit that they have been in physical possession of the suit property since the year 2002. The Plaintiffs refer to the case of Danson Kimani Gacina & ano –vs- Embakasi Ranching Company Limited, where the court held that proof of ownership in case of unregistered land is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered, then the holder of the documents is entitled to protection of the law.
36. The Plaintiffs submit that they have given a comprehensive account of how the suit property was acquired way back in 1979 through share certificate No. 435 jointly registered in the names of Wanjiku



Kariuki and Murugi Kiarie. On the other hand, the 1<sup>st</sup> Defendant has just a title to the suit property and nothing else.

37. The Plaintiffs invite the court to the decision of the Court of Appeal in *Munyu Maina –vs- Hiram Gathiha Maina* (2013) eKLR, where the court stated that where a registered proprietor's root of title is under challenge it is not sufficient to dangle the instrument of title as proof of ownership. He must go beyond the instrument of title and prove the legality of how he acquired it and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.
38. The Plaintiffs submit that the title held by the 1<sup>st</sup> Defendant was irregularly and fraudulently obtained.

### **Submissions by the 1st Defendant**

39. On her part, the 1<sup>st</sup> Defendant's submissions are dated 1<sup>st</sup> December 2024. The 1<sup>st</sup> Defendant identified three issues for determination as follows.
  - i. Who is the owner of the suit property?
  - ii. Whether the Plaintiffs have proven the particulars of fraud as against the 1<sup>st</sup> Defendant; and
  - iii. Whether the orders sought can be granted.
40. On the 1<sup>st</sup> issue, the 1<sup>st</sup> Defendant submits on the indefeasibility of title as provided for under Section 26 (1) of the *Land Registration Act*.
41. She further submits that she has proven the root of her title since the register of the suit property maintained by the 3<sup>rd</sup> Defendant has her name as the owner of the suit property.
42. The 1<sup>st</sup> Defendant submits that there is no evidence adduced by the Plaintiffs to prove that the 2<sup>nd</sup> Defendant Company ever owned Plot No. 347. She alleges that evidence too was not adduced how the plot No. 347 translated into the reference number currently identifying the suit property. She therefore urges the court to find that the Plaintiffs have not proved the root of their title or interest in the suit property.
43. On the 2<sup>nd</sup> issue, the 1<sup>st</sup> Defendant submits that allegations of fraud must be strictly pleaded and proved on a standard higher than balance of probabilities. She submits that the Plaintiffs have not proved the alleged fraud against her and against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
44. Consequently, the 1<sup>st</sup> Defendant submits that the orders sought by the Plaintiffs cannot be granted. She urges the court to dismiss the Plaintiffs' case and instead allow her Counter-claim.

### **Submissions by the 3rd and 4th Defendants.**

45. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants' submissions are dated 25<sup>th</sup> November 2024. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants identified two issues for determination, namely;
  - a. Who is the bona fide owner of the suit property? and
  - b. Whether the Plaintiffs are entitled to the orders sought.
46. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit that the duty of the court in this matter is to interrogate the title held by the 1<sup>st</sup> Defendant since the Land Registrar who holds the land records testified that the registration of the 1<sup>st</sup> Defendant's title was not supported by any documents. The root of the 1<sup>st</sup> Defendant's title has therefore been put to question by both the 3<sup>rd</sup> Defendant and the Plaintiffs.



47. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants pointed out that the 1<sup>st</sup> Defendant's evidence was contradictory and unconvincing. They listed eight reasons for that assertion. They submitted that the suit property was a subdivision of a block of property owned by Thome 1 Company Limited who allocated the subdivided plots to its members.
48. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants claimed that the 1<sup>st</sup> Defendant did not produce any document in form of a share certificate, ballot or receipt from the allocating company. This gives credence to the testimony that the 1<sup>st</sup> Defendant was not a shareholder of the allocating company.
49. The transfer forms that caused the registration of the 1<sup>st</sup> Defendant as the owner of the suit property were not booked for registration. No receipts were exhibited to confirm payment of stamp duty or registration fees.
50. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants referred the court to the decision in the case of *Elijah Makeri –vs- Stephen Mungai Njuguna & Ano (2013) eKLR*, where the court held that even the title of an innocent purchaser is impeachable as long as it was obtained either illegally, unprocedurally or through a corrupt scheme even though the title holder had not contributed to those vitiating factors.
51. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants reiterated that it is settled law that where a person's ownership to a property is called into question, the said proprietor has to prove the root of his/her ownership and the legality of how he/she acquired the registration. The 1<sup>st</sup> Defendant had failed to do so in this case.
52. On the 2<sup>nd</sup> issue, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit that the Plaintiffs are entitled to the orders sought having proved that they are the bona fide owners of the suit property. They urge the court to order a cancellation of the title held by the 1<sup>st</sup> Defendant and the rectification of the register under Section 80 of the [\*Land Registration Act\*](#).

#### **Issues for determination.**

53. Having carefully considered the pleadings filed in this case, the evidence adduced at the hearing and the submissions filed by the parties, the court is of the opinion that the issues for determination in this case are:-
  - a. Who is the bona fide owner of the suit property?
  - b. Who between the Plaintiffs and the 1<sup>st</sup> Defendant is entitled to the orders sought in their respective suits.
  - c. What orders should issue in respect of the costs of the suit and the Counter-claim?

#### **Analysis for determination**

- a. Who is the bona fide owner of the suit property?
54. Both the Plaintiffs and the 1<sup>st</sup> Defendant are claiming ownership of the suit property. Either side set their respective cases in their pleadings and called evidence in support of their claims.
55. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs pleaded that they bought a half share of the suit property from Wanjiku Kariuki (now deceased) for valuable consideration. The 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs on their part pleaded that they hold the other half of the suit property by dint of being the beneficiaries of the estate of Murugi Kiarie (deceased). The late Wanjiku Kiarie and Murugi Kiarie were the original owners of the suit property having acquired it by virtue of being shareholders of the 2<sup>nd</sup> Defendant company.



56. The Plaintiffs called PW1 as their witness. PW1 was instructed by Thome Farmers No. 1 Limited to prepare transfers for its shareholders in respect of Nairobi Block 110 which had been subdivided into ½ acre plots. The witness testified that the 2<sup>nd</sup> Defendant Company handed over to her the original register of the shareholders which contained amongst other issues the names of the shareholders, their respective plot number, share certificate number and the title number.
57. It was the testimony of PW1 that in respect of the suit property, the owners according to the original register were Wanjiku Kariuki and Murugi Kiarie, who were the holders of share certificate number 435. Wanjiku Kiarie however sold her share to Samuel Githemo Weru, the 1<sup>st</sup> Plaintiff in this case. Documents were produced in evidence to confirm the sale.
58. Murugi Kiarie on the other hand was deceased. A grant was issued to Kaberia Njoroge in her estate and the half share in the plot was confirmed in favour of Francis Kaberia Njoroge and Christopher Kimani Njoroge, the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs respectively.
59. PW1 confirmed that she forwarded a transfer to the lands office for purposes of processing a title in favour of the Plaintiffs in the year 2012. However, the mother title for Nairobi Block 110 had then disappeared and the transfer was therefore not acted on. When the file re-appeared at the lands office in the year 2017, it was discovered that one Peris Wanjiku Maina, the 1<sup>st</sup> Defendant had mysteriously been issued with a title to the suit property.
60. PW1 was categorical that Peris Wanjiku Maina was not a shareholder of the 2<sup>nd</sup> Defendant Company and was therefore not entitled to be issued with a title to the suit property.
61. The 1<sup>st</sup> Defendant on her part had pleaded her claim of title to the suit property in her statement of Defence and Counter-claim. She stated that she leased the suit property from the Government of Kenya and was accordingly issued with a clean and unencumbered title to the property. She affirmed that due process was followed as by law provided. She therefore insisted that she was the bona fide lessee (proprietor) of the suit property. That was also her testimony in accordance with her witness statement dated 10<sup>th</sup> March 2022 which she adopted as her evidence in chief during the hearing of the case.
62. In her testimony before the court however, she testified that she acquired the suit property from her father. She lodged her documents for registration on 4<sup>th</sup> May 2015 and they were registered on 28<sup>th</sup> August 2015.
63. Responding to questions in cross examination, the 1<sup>st</sup> Defendant admitted that she had not produced documents before the court to confirm how and when the suit property was transferred to her from her father. The transfer she had produced showed that she was getting the transfer from the County Government of Nairobi City County. She however had no letter of allocation or allotment from the County Government of Nairobi City County. The transfer again was not a transfer of a lease.
64. The alleged transfer as admitted by the 1<sup>st</sup> Defendant does not show when it was booked for registration at the Lands Office; it does not show any presentation number. The 1<sup>st</sup> Defendant did not also have receipts to confirm payment of stamp duty.
65. The 1<sup>st</sup> Defendant claimed that her father had shares with Thome Farmers No. 1 Limited and that must have been the way he had acquired the suit property.
66. Responding to the advocate for the Plaintiffs, the 1<sup>st</sup> Defendant stated that she had inherited the property from her father when she was below 18 years. She was allegedly assisted by her father's brother to get the documents of ownership.



67. Though the 1<sup>st</sup> Defendant had in her statement stated that she had occupation of the suit property, she admitted that she does not live in the suit property.
68. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants called a Land Registrar as a witness in this matter. The Land Registrar who testified as DW1 adopted her witness statement dated 15<sup>th</sup> July 2022 as her evidence in chief. She further produced the seven (7) documents listed on her list of documents dated 24/1/2020 as exhibits in this case.
69. DW1 confirmed that Nairobi Block 110 was owned by Thome Farmers No. 1 Limited. It was not owned by the Government of Kenya. It was actually a freehold title.
70. The witness confirmed from the records with the Registrar that Nairobi Block 110/943 (the suit property) is registered in the name of Peris Wanjiku Mwaura. However, the registration is not supported by any documents.
71. The witness confirmed that the Plaintiffs in this case had presented their lease for registration after it had been prepared by the Directorate of Land Administration but it could not be registered in view of the prior registration in favour of the 1<sup>st</sup> Defendant. The Plaintiffs were accordingly advised to seek legal redress in court, hence this case. She explained that they (Chief Land Registrar) were ready to cancel the title of the 1<sup>st</sup> Defendant if ordered by the court to do so.
72. The Registrar further confirmed that the documents she had produced constituted a trail of documents that support the Plaintiffs' claim of ownership of the suit property.
73. Having considered the contesting claims of ownership, it is the court's responsibility to determine, after consideration of the evidence presented before it, who the bona fide owner of the suit property is. The parties on their part have the responsibility of establishing the root of their titles as explained by the Court of Appeal in the case of *Munyu Maina –vs- Hiram Gathiha Maina (2013) eKLR*. The court was explicit 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 of any encumbrances including any and all interests which need not be noted on the register.”
74. The sentiments of the Court of Appeal are very relevant and applicable in this case. The court notes that the 1<sup>st</sup> Defendant who has a certificate of title in her name has merely dangled it at the court as her evidence of ownership of the suit property. Indeed in her submissions, the 1<sup>st</sup> Defendant passionately submitted on the indefeasibility of the title as provided under Section 26 of the *Land Registration Act*.
75. The 1<sup>st</sup> Defendant further averred that she had proven the root of her title since the register of the suit property indicates that she is the owner of the suit property. To her that was sufficient.
76. The instrument of title alone cannot sufficient as aptly stated by the Court of Appeal in the *Munyu* case (*supra*). The 1<sup>st</sup> Defendant needed to go beyond the instrument of title and demonstrate that she lawfully and regularly acquired the title.



77. In the case of Daudi Kiptugen –vs- Commissioner of lands & 4 others (2015) eKLR, the court emphasized that,
- “...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were the position then all one would need to do is to manufacture a lease or a certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”
78. The Court of Appeal in the case of Mwangi James Njehia –vs- Janet Wanjiku Mwangi & ano (2021) eKLR, observed this growing trend of manufactured titles and asserted the position that courts must protect genuine owners of land from fraudsters. The court stated that;
- “...in recent past and even presently, fraudsters have upped their game and we have come across several cases where Title Deeds manufactured in the backstreets have, with collusion of officers in the land registries, been transplanted at the lands office and intending buyers have been duped to believe that such documents are genuine and on that basis they have “purchased” properties which later turn out to belong to other people when the correct documents mysteriously reappear on the register or the genuine owner shows up after seeing strangers on their properties waving other instruments of title. It is the prevalence of these incidents that have necessitated the current overhaul and computerization of the registration systems at the land registry in Nairobi. The elephant in the room is whether genuine, legitimate owners of property should be dispossessed of their hard earned property.”
79. The Court of Appeal answered the question with a capital NO! It stated that, “...no legitimate owner of property should be divested of their property unlawfully.”
80. As already pointed out, the 1<sup>st</sup> Defendant was not forthcoming on how she acquired her title to the suit property. In her pleadings, she had claimed that she leased it from the Government of Kenya. In her testimony, she changed and instead alleged that she inherited it from her father but provided no evidence of transfer or transmission from her father or his estate. It is evident that the 1<sup>st</sup> Defendant too has not had physical possession of the suit property at any one time. All she has in her hands is a certificate of lease in her name which is not even accompanied by a lease. At the lands office, there are no documents whatsoever supporting the registration of the 1<sup>st</sup> Defendant as the proprietor of the suit property.
81. The Land Registrar renounced the 1<sup>st</sup> Defendant’s title. In their submissions, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants urge the court to cancel the title held by the 1<sup>st</sup> Defendant and order the rectification of the register. Clearly, the registration of the 1<sup>st</sup> Defendant as the proprietor was unprocedural, illegal and fraudulent.
82. Fraud as defined in the Black’s Law Dictionary, 9<sup>th</sup> Edition, includes a knowing misrepresentation of the truth or concealment of a material fact. The 1<sup>st</sup> Defendant misrepresented and presented herself as the bona fide owner of the suit property when she had no valid claim of ownership over the suit property. It was deception; it constitutes fraud.
83. On their part, the Plaintiffs have proved the root of their title or claim of title to the suit property. Their evidence backed up by the evidence of the advocate instructed by the 2<sup>nd</sup> Defendant Company and that of the Land Registrar provides a clear trail of their claim of title from the 2<sup>nd</sup> Defendant Company to the late Wanjiku Kariuki and the late Murugi Kiarie. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs purchased their half



- share of the suit property from the late Wanjiku Kariuki. The 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs own the other half share of the suit property by dint of a grant issued and confirmed in their favour.
84. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs too provided evidence confirming that they have had occupation of the suit property since they purchased their half share of the suit property. They have built their home therein and have been residing therein since then.
85. The 1<sup>st</sup> Defendant in her submissions contended that the Plaintiffs had not proved that the suit property originally belonged to the 2<sup>nd</sup> Defendant Company. On that issue, the Land Registrar came out very clearly that Nairobi Block 110 was owned by the 2<sup>nd</sup> Defendant Company and not by the Government of Kenya. The suit property is a subdivision out of Nairobi block 110. This testimony by the Registrar corroborates the testimony of the advocate instructed by the 2<sup>nd</sup> Defendant Company to process titles for its shareholders and who testified as PW1. A lease had even been issued in favour of the Plaintiffs by the Director of Land Administration. It is that lease that ought to have been registered and a certificate thereof issued in favour of the Plaintiffs.
86. Consequently, this court is persuaded that the Plaintiffs have established the root of their title and their claim of ownership of the suit property. The court declares that the Plaintiffs are the bona fide owners of the suit property.
- b. Which of the orders sought should be issued.
87. From the foregoing, the Plaintiffs having been declared the bona fide owners of the suit property are entitled to the orders sought in their plaint. Section 80 of the [Land Registration Act](#) empowers the court to order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that such registration was obtained, made or omitted by fraud or mistake. I so direct in this case.
88. I further issue an order of permanent injunction in favour of the Plaintiffs against the 1<sup>st</sup> Defendant as sought in the plaint. I do this guided by the decision in the case of Kenya Power & Lightning Company Ltd –vs- Sheriff Molana Habib (2018) eKLR, where the court made the following pronouncement as regards a perpetual permanent injunction;
- “A permanent injunction also known as a perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the Plaintiff to be protected.”
89. In regard to the prayer for general damages for breach of quiet enjoyment and possession of the suit property, it has been demonstrated that the Plaintiffs have had possession of the suit property. I am therefore not persuaded that they are entitled to general damages for breach of quiet and peaceful enjoyment. In any event, they have not provided any evidence to guide the court in making such an award.
90. From the foregoing, the Counter-claim by the 1<sup>st</sup> Defendant against the Plaintiffs must fail in its entirety. It is hereby dismissed in its entirety.
91. On the issue of costs, I am guided by the provisions of section 27 of the [Civil Procedure Act](#) and various decision including the case of DGM v EWG [2021] eKLR, where Kariuki Charles J, addressed the issue of costs in details making reference to a number of decided cases. He cited with approval the case of Republic v. Rosemary Wairimu Munene (Ex parte Applicant) v. Ihururu Dairy Farmers Co-



operative Society Ltd, Judicial Review Application No. 6 of 2004, where Mativo J, (as he then was) held that the issue of costs is the discretion of the Court and is used to compensate the successful party for the trouble taken in prosecuting or defending the case and not to penalize the losing party. This position was adopted by the court in Cecilia Karuru Ngayu vs. Barclays Bank of Kenya & Another [2016] eKLR.

92. The Judge observed that a successful party is entitled to costs unless he or she is guilty of any misconduct or there exists some other good reasons and or cause for not awarding costs to the successful party.

93. In the case of Party of Independent Candidate of Kenya & another vs Mutula Kilonzo & 2 others (2013) eKLR which cited with approval the words of Murray C J in Levben Products vs Alexander Films (SA) (PTY) Ltd 1957 (4) SA 225 (SR) at 227 where the court stated that:

“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion... But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at.....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

94. I award the Plaintiffs the costs of the suit and the costs of the counter-claim against the 1<sup>st</sup> Defendant.

#### **Final disposition**

95. The final disposition is that the Plaintiffs’ case succeeds in the following terms:

- a. An order be and is hereby issued directed at the 3rd and 4th Defendants to forthwith revoke, nullify and or cancel Title No. Nrb/Block 110/943 – Thome Estate in the name of the 1st Defendant and to rectify the register to reflect the Plaintiffs as the registered proprietors of the suit property, Title No. Nrb/Block 110/943.
- b. An order of permanent injunction be and is hereby issued prohibiting the 1st Defendant whether by herself or through her servants, agents, employees or persons acting under her from transferring, alienating, encroaching upon, registering any instrument on, varying any instrument on or in manner howsoever dealing with the suit property and interfering with the Plaintiffs’ quiet possession of the suit property.
- c. The Counter-claim by the 1st Defendant against the Plaintiffs is dismissed in its entirety.
- d. The Plaintiffs are awarded the costs of the suit and the costs of the Counter-claim against the 1st Defendant.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27TH DAY OF FEBRUARY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Opolo for the Plaintiffs

Mr. Angwenyi for the 1<sup>st</sup> Defendant



N/A by the 2<sup>nd</sup> Defendant

Ms. Ndundu for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

