



**Karenju v Kamau (Environment & Land Case 429 of 2012)
[2025] KEELC 273 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 273 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 429 OF 2012
OA ANGOTE, J
JANUARY 30, 2025**

BETWEEN

NANCY WAIRIMU KARENJU PLAINTIFF

AND

LUCIA WANJIKU KAMAU DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff instituted this suit vide a Plaint dated 29th February 2012. The Plaintiff's case is that she is the registered proprietor of the suit property, being Nairobi/Block 117/53 measuring 0.2023 hectares at Kamiti area Nairobi, which she acquired from her father through inheritance vide Nairobi High Court Succession Cause No. 1756 of 2003.
2. The Plaintiff averred that in 2002, the Defendant, who is the owner of the two parcels on either side of the suit property, Nairobi/ Block 117/52 and Nairobi/Block 117/54, encroached upon the suit property without her knowledge and took steps in expropriating the same to her detriment and that the Defendant has, without any justification, erected a fence around all the three parcels of land and has proceeded to construct a permanent house on the suit property.
3. The Plaintiff prays for judgement against the Defendant for: -
 - a. Eviction of the Defendant from the suit premises.
 - b. Mesne profits together with interest thereon at commercial rates.
 - c. Costs of this suit together with interest thereon at court rates; and
 - d. Any other or further relief that this Honourable Court may deem fit and just to grant.



4. Through a Statement of Defence and Counterclaim dated 2nd March 2022, the Defendant denied the Plaintiff's claims. The Defendant argues that while the Plaintiff may be the registered proprietor of the suit property following the proceedings of Nairobi Succession Cause No. 1756 of 2003, the suit property was however not legitimately, procedurally or regularly acquired by the Plaintiff's father.
5. She avers that the Plaintiff's father, the late Paul Karenju Wambugu unsuccessfully tried to claim the suit property through Kamiti Farmers Company Limited and through the local administration and he must have grabbed the land from her and had it registered in his name, yet the land lawfully belonged to her.
6. The Defendant avers that she purchased the suit property from Lucy Wambui Karau in 1993 and in 1994, she constructed a six-bedroom stone house which she has lived in to date.
7. Through her counterclaim, the Defendant seeks judgment against the Plaintiff and prays for the following orders:
 - a. That this Honourable Court be pleased to declare that the Defendant is the legitimate and the lawful owner of the suit property Plot Number Nairobi/ Block 117/53 having purchased the same from one Lucy Wambui Karau.
 - b. That further or in the alternative, this Honourable Court be pleased to find that the Defendant has been in possession of the suit property for over a period of 12 years which she has developed a lot without any interference and she has therefore acquired the said property by adverse possession.
 - c. That this Honourable Court be pleased to order that the document of ownership in respect of the suit property now in the name of the Plaintiff Nancy Wairimu Karenju be cancelled and another ownership document in the name of the defendant Lucia Wanjiku Kamau be issued.
 - d. That the costs of the counterclaim herein be met by the Plaintiff.
8. In her Reply to the Amended Defence and Defence to Counterclaim, the Plaintiff denied the Defendant's assertions, and stated that the suit property was regularly and legally registered in the name of Paul Karenju Wambugu on 26th July 1999, and the certificate of title was issued accordingly.
9. She asserted that on 24th August 1999, a restriction was placed on the suit property by the Land Registrar pursuant to the Defendant's complaint, and that when the complaint was abandoned, the Land Registrar vacated the same under Section 138 of the Registered Land Act (Repealed).

Hearing and Evidence

10. The Plaintiff, PW1, relied on her witness statement dated 29th February 2012, which she adopted as her evidence in chief. In her statement, PW1 averred that her father was the registered owner of the suit property; that she inherited the suit property pursuant to the Grant of Letters of Administration Intestate which were confirmed on 10th March 2010 and the suit property was transferred to her and that she is in possession of the Certificate of Lease of the suit property.
11. PW1 stated that the Defendant, the owner of two parcels that sandwich the suit property, has fenced off the three plots and constructed a permanent house on the suit property, without a color of right; that the Defendant persists in her illegal occupation despite attempts by the provincial administration to prevail on her to leave the suit property and that neither she nor her deceased father sold the suit property to the Defendant, nor surrendered their legal and equitable interest in any way.



12. PW1 produced in evidence a bundle of documents as PEXB1, which included a Certificate of Lease dated 7th June 2010; grant of letters of Administration Intestate dated 27th August 2003; a lease issued to Paul Karenju Wambugu in respect of the suit property; Certificate of Confirmation of Grant dated 10th March 2010 and a survey map in respect of Nairobi/ Block 117 (Kamiti Farmers).
13. In cross-examination, PW1 asserted that the company that sold the land was Kamiti Farmers, although she had never dealt with the company. She denied knowing the history of the land.
14. DW1, George Makomi Thyaka, asserted that the Defendant is his aunt and he has worked for her for many years. He relied on his statement dated 13th October 2023 and a bundle of documents, which he produced as DEXB1.
15. DW1 asserted that the Defendant bought the suit property from Dr. Lucy Wambui in 1993 and they went with the vendor to Kamiti Farmers Limited, where she was issued with a share certificate as proof of ownership, which she still holds.
16. DW1 deponed that the late Paul Karenju went to the Ministry and obtained a title to the suit property; that Plot Number 52, 53 and 54 as indicated in the map belong to the Defendant, and that while the plots in the agreement were indicated as Plot 54 and 53, they represent Plots 52 and 53 (103 and 104). The suit property is parcel No. 54.
17. DW1 asserted that following the issuance of the title to Paul Karenju, the Defendant raised the claim with Kamiti Farmers and the Ministry of Lands on 20th August 1999; that there were negotiations organized by the DC Kasarani and that as per the decision of the DC dated 11/04/2000, Paul Karenju was compensated.
18. DW1 stated that at Page 20 of his bundle of documents, was an agreement between Kamiti Farmers and the Defendant with respect to the three plots, 104, 103 and 33; that the Defendant was also given a letter of allotment and that Kamiti Farmers formally informed the Ministry of Lands that the land was grabbed by Paul Karenju.
19. DW2, Michael Macharia Kamau, stated that he is a founder member of Kamiti Farmers Limited and that he knew both the Plaintiff and the Defendant. He averred that L.R. No. 8570 belonged to Kamiti Farmers, and that the Defendant bought three plots therein. According to DW2, it was reported to him that Paul Karenju had a letter to the three plots, and that they reported the issue to the Commissioner of Lands.
20. DW2 asserted that the company did not give any notification to the Ministry of Lands with respect to the suit property; that they would usually inform the Commissioner of Lands the owner of the land plus their identifications and that following the intervention by the Provincial Administration, it was decided that Karenju be given other three plots after getting documents from the company. He thereafter left the company and did not know if he was allocated the substituted plots.
21. In cross-examination, DW2 stated that Karenju was told that the land did not belong to him; that while he was aware that the Defendant had a certificate of shares, he was not aware that Karenju had any such certificate. He however indicated that Paul Karenju was a paid-up member of the company.
22. According to DW2, it is the DO who decided that Mr. Karenju should be given alternative land and that the company informed the Ministry that the land belongs to the Defendant.



Submissions

23. Counsel for the Plaintiff submitted that from the evidence of the District Officer Kasarani's letter dated 11th April 2000, Kamiti Farmers had done a double allocation of the plots, and that although the company had offered to issue alternative plots to Paul Karenju, it did not do so.
24. Further, it was submitted, the Defendant did not process or make any payments for the processing of the allocated titles as agreed. The Agreement therefore fell by the wayside. In any case, counsel submitted, the Defendant cannot rely upon it as she failed to honour any part of the agreement herself.
25. Counsel additionally asserted that the Defendant has no privity of contract with the Plaintiff. Counsel relied on the definition of privity of contract set out in the 8th Edition of the Black's Law Dictionary. Counsel also relied on the case of Securicor Guards (K) Limited vs Dr. Mohamed Salim Malik & Another on the definition of privity of contract.
26. The Plaintiff's counsel argued that the Defendant failed to list any particulars of fraud and did not give any evidence of dishonesty on the Plaintiff's part. He argued that the Defendant confused the Plaintiff as the owner of the suit property and the deceased as the previous owner of the suit property.
27. As to the Defendant's claim of adverse possession, the Plaintiff's Counsel submitted that the Defendant has presented evidence to show that she was served an eviction notice by the deceased on 15th August 1999. They urge that the Defendant's possession could therefore not be said to be peaceful.
28. Further, it was submitted, as at 11th April 2000, the parties were involved in mediation over the suit property; that the restriction placed on the land on 24th August 1999 was removed on 7th June 2010 upon the action of the legal representatives of the deceased, showing that the property has always been in dispute. He urged that the Defendant failed to lead any evidence that shows when the peaceful enjoyment of the property for 12 years commenced. Counsel relied on the cases of Daniel Kimani Ruchine vs Swift Rutherford Co. Ltd & Another (1977) eKLR and Rose Akello Otieno vs Joseph Odote & Another [2022] eKLR.
29. Counsel for the Defendant submitted that the Plaintiff has not adduced or produced any evidence to prove that her father legitimately acquired the suit parcel from Kamiti Farmers Company Limited or from any other person who might have purchased the suit property from the company.
30. Counsel submitted that the Defendant has filed documents that prove that she purchased the suit property from Lucy Wambui Karau in 1993, who had purchased the three plots from Kamiti Farmers Company in 1986.
31. Counsel further submitted that after Paul Karenju lost his claim for the suit property before Kamiti Farmers and the local administration, the Defendant sought and was issued with a letter of clearance from Kamiti Farmers Company Limited dated 20th August 1999, which she took to the Commissioner of Lands who issued her with the necessary leasehold and the certificate of lease.
32. It was Counsel's submission that Paul Karenju never used any of the methods set out in Section 7 of the Lands Act 2012 to acquire ownership to the suit property, and that he must have obtained the ownership documents stealthily and through corrupt means. He relied on Sections 26 and 162 of the [Land Registration Act](#).

Analysis and Determination

33. The issues for the determination by this court are as follows:



- a. Whether the Plaintiff has lawful title over the suit property.
 - b. Whether the Defendant has ownership rights over the suit property.
 - c. The orders which this court should issue.
34. This suit concerns the ownership of Nairobi/Block 117/53 measuring 0.2023 hectares at Kamiti area Nairobi, the suit property. The Plaintiff asserts that she is the lawfully registered proprietor of the suit property, which she inherited from her father following his demise, through confirmation of the grant issued in Nairobi High Court Succession Cause No. 1756 of 2003.
35. The Defendant argues that the Plaintiff's father, Paul Karenju Wambugu, irregularly and illegally acquired title to the suit property, and that no good title passed to the Plaintiff. She asserted that she purchased the suit property alongside the two properties on each side of the suit land from Kamiti Farmers Company Limited. In the alternative, the Defendant argued that she has acquired title to the suit property by adverse possession.
36. It is not disputed that the Plaintiff is the registered owner of the suit property. It is further not disputed that the title to the suit property was transmitted to her from the Estate of her later father, Paul Karenju Wambugu.
37. Under Section 26 of the *Land Registration Act*, a court takes a certificate of title as prima facie evidence that the person named as the proprietor of the suit property is the absolute and indefeasible owner, except where ownership is challenged on the basis of fraud or misrepresentation. It provides as follows:
- “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
38. Where the validity of a certificate of title has been challenged, it is not enough to waive a certificate or title as proof of ownership. A person must therefore establish the root of his title. This position has been upheld by the Supreme Court in the case of *Dina Management Limited vs County Government of Mombasa & 5 Others* [2023] KESC 30 (KLR) as follows:
- “As held by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* Civil Appeal No 239 of 2009 [2013] eKLR, where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”



39. It was therefore essential for the Plaintiff to adduce evidence to establish the root of her title, which she inherited from Paul Karenju Wambugu. In support of her claim, the Plaintiff annexed Letters of Administration Intestate with respect to the estate of Paul Karenju Wambugu dated 27th August 2003; a certificate of confirmation of grant dated 10th March 2010; a lease to the suit property registered in the name of Paul Karenju Wambugu; and a copy of the green card of the suit property which indicates that Paul Karenju Wambugu was the first registered proprietor of the suit property.
40. The Plaintiff also presented a letter from the District Officer, Kasarani Area to the Provincial Commissioner dated 11th April, which gives the tumultuous history of the relationship between Paul Karenju Wambugu and Kamiti Farmers Company Limited; a letter from Kamiti Farmers Company Limited to the Commissioner of Lands dated 20th August 1999 confirming that the Defendant is the registered appropriator of the suit property and requesting issuance of a lease to her and a clearance letter from Kamiti Farmers to the Commissioner of Lands in favour of the Defendant dated 26th June 2002 and a survey map of the suit property and surrounding plots.
41. Through her pleadings and evidence, the Plaintiff failed to lay any factual foundation as to how her late father obtained ownership of the suit property. It is only during cross-examination that she indicated that Paul Karenju Wambugu purchased the suit property from Kamiti Farmers Company Limited, a land buying company.
42. In *Lucia Wambui Kariuki & Another vs Grace Wanjiru & Another* [2022] eKLR, this court considered the question of ownership of land through a land buying company. The court stated as follows:
- “It is not in dispute that the suit land originated from Githunguri Constituency Ranching Company Limited, a cooperative Company owned through membership. It incorporated Kenyans of all walks of life in the quest to acquire land and so it was basically a land buying company which acquired large chunks of land at the advent of Independence from the white settlers who were folding up their agricultural activities to return to their native countries. The members pay a membership fee to join and acquire shares in the company. The shareholding was critical as it was the basis of allocation of land. One would then be issued with a share certificate and various receipts for all manner of payments that was demanded for by the company. At the right time, the land would be surveyed by the land buying company and subdivided into smaller portions according to the number of its members and to cater for common utilities as and when desired by the membership. Membership was therefore denoted by the share certificate. The company would maintain a register of members indicating their details, the share certificate number, plot number and such other details as may be peculiar to the membership. Allocation of land would be through balloting. Members would then be issued with a ballot denoting the plot number balloted for. The instruments required to process the title therefore would be the share certificate, the ballot, the payment receipts and the clearance certificate by the company informing the Land Registrar that the holder of these documents is the rightful proprietor of the land. The ballot number must agree or correspond with the land reference number as shown on the Registry Index map, which denotes the land on the ground.”
43. To establish the root of the late Paul Karenju Wambugu’s title, the Plaintiff needed to present a copy of a share certificate in favour of Paul Karenju Wambugu; receipts of payments made to the company, the ballot and a clearance certificate from the company to the Land Registrar informing them that the holder of these documents is the rightful proprietor of the land.



44. This court must then find that the Plaintiff failed to prove the root of title in favour of the late Paul Karenju Wambugu. The registration of title in his name is unsupported and is therefore irregular. As the Plaintiff cannot gain better title than her later father, the registration of title of the suit property in her favor is consequently irregular and is hereby voided.
45. The Defendant asserted that she acquired three plots from Kamiti Farmers Company Limited, including the suit property. She asserts that she purchased the suit property through an agreement between herself and Dr. Lucy Wambui Karau.
46. She supported her counterclaim by attaching a sale agreement between herself and Dr Lucy Wambui Karau with respect to Plot Nos 103 and 104 in Kamiti Farmers Cooperative Society dated 15th March 1993; a sale agreement between Kamiti Farmers and Lucy Wambui Karau for Plot No.s 104, 103 and 33 for consideration of Kshs. 75,000/- and a Share Certificate in her favor with respect to Plot No. 104/8570 dated 17th November 1996.
47. The Defendant also produced in evidence a letter dated 15th July 1999 from Kamiti Farmers Co. Ltd to the Commissioner of Lands in which it indicated that although Mr. Karenju Wambugu owned several plots, he did not own the suit property; A further letter from the company to the Commissioner of Lands requesting cancellation of the title of the suit property issued to Karenju Wambugu was also produced in evidence.
48. The letter from Kamiti Farmers Co. Ltd to the Commissioner of Lands dated 20th August 1999 confirming the Defendant as the legal proprietor of the suit property and a letter dated 11th April 2000 from the District Officer Kasarani Division to the Provincial Commissioner concerning his efforts to resolve the disputes between the parties was also produced.
49. It is the latter letter that explains the crux of the dispute between the parties. The District Officer's letter indicates that Kamiti Farmer Co. Ltd allocated the late Paul Karenju Wambugu Plot Nos 132,133,104 and 33. However, in what is clearly a case of double allocation, the company later issued plot 132 (296) to Jane Bengua, Plot 133 (2979) to Francis Muiruri and Plot 104 (53) to Lucia Wanjiku Kamau. The District Officer noted that it was agreed that Paul Karenju Wambugu surrender the above plots and be issued with three other plots, and the company offered 117/544/117/119/117/96 to Mr. Karenju.
50. From the above, it is then clear that Kamiti Farmers Company Limited are significantly at fault in this matter, in issuing the same plot to both Paul Karenju Wambugu and Lucy Wambui Karau.
51. The Plaintiff however failed to join Kamiti Farmers in this suit and has not sought any relief against them. Indeed, the Plaintiff's claim should be directed to Kamiti Farmers. As parties are bound by their pleadings, this court shall restrict itself to the Plaintiff's claim and the Defendant's counterclaim.
52. This court has found above that the Plaintiff failed to establish the root of her title. The Defendant, on her part has adduced a share certificate with respect to the suit property; a sale agreement between herself and Lucy Wambui, from whom she purchased the suit property; a sale agreement between Lucy Wambui and Kamiti Farmers; and a clearance certificate from the company to the Land Registrar indicating ownership of the subject matter land.
53. On the preponderance of this evidence, this court is persuaded that the Defendant has established that it bought the suit property from the person who bought it from Kamiti Farmers Company Limited and therefore has ownership rights with respect to the suit property.



54. Further, having acquired the ownership documents, the Defendant took possession of the land. Having found so, it would be superfluous to consider the Defendant's alternative claim that she has obtained title to the suit property by way of adverse possession.
55. In conclusion, this court has found that the Plaintiff has failed to prove her title to the suit property whereas the Defendant has established her legal rights to the land. The Plaintiff's suit as set out in the Plaint dated 29th February 2012 is hereby dismissed, and the Defendant's counterclaim is deemed successful.
56. For those reasons, the following orders do hereby issue:
- a. A Declaration be and is hereby issued that the Defendant is the legitimate and the lawful owner of the suit property Plot Number Nairobi/ Block 117/53 having purchased the same from one Lucy Wambui Karau.
 - b. The Chief Land Registrar is hereby directed to cancel and revoke the registration title to the suit property issued to Nancy Wairimu Karenju and instead issue the title document in the name of the Defendant, Lucia Wanjiku Kamau, be issued.
 - c. That the costs of the suit and counterclaim herein to be met by the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF JANUARY, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Kamata for Defendant

Mr. Karungo for Plaintiff

Court Assistant: Tracy

