



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Muniu & 9 others (Environment and Land Appeal
E011 of 2022) [2025] KEELC 755 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 755 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E011 OF 2022
JA MOGENI, J
FEBRUARY 24, 2025**

BETWEEN

PETER MBUGUA KAMAU APPELLANT

AND

IRENE NJERI MUNIU 1ST RESPONDENT

**PATRICK NYOTA NJOROGE (BEING SUED ON BEHALF OF THE ESTATE OF
BETH MUTHONI KABIRU) 2ND RESPONDENT**

ANTONY WAMUTU KIARIE 3RD RESPONDENT

DANIEL KARIMI NDUNG’U 4TH RESPONDENT

JOHN WANJAU MAGUTA 5TH RESPONDENT

GABRIEL KAMAU GITAU 6TH RESPONDENT

MULTIPLE GLOBAL (K) LIMITED 7TH RESPONDENT

OLIVIA NYAKERARIO 8TH RESPONDENT

THE CHIEF LAND REGISTRAR THIKA 9TH RESPONDENT

HONORABLE ATTORNEY GENRAL 10TH RESPONDENT

*(Being an Appeal from the Judgment, Decree and Orders of the
Senior Principal Magistrate’s Court delivered by Hon. C.A Otieno
(SPM) on 14th January, 2022 in RUIRU MCLE No. E022 of 2020)*

JUDGMENT

1. This Appeal arises out of the Judgment of Hon. C.A Otieno (SPM) Senior Principal Magistrate in Ruiru MCLE No. E022 OF 2020 delivered on 14/01/2022.



2. The Honorable learned trial Magistrate granted these orders on 14/01/2022:-
 1. A declaration that the 1st Defendant obtained the title Ruiru/Ruiru East Block 2/841 and 842 irregularly through forgery, corruption and fraud which exercise renders the entire transfer and subsequent transfers null and void.
 2. Cancellation of all titles generated from the subdivision of Ruiru/Ruiru East Block 2/841 and 842 by the 2nd Defendant and any other subsequent titles in particular titles No. Ruiru/Ruiru East Block 2/32365-32380 and No. Ruiru/Ruiru East Block 2/34654-34669.
 3. An order of permanent injunction restraining the 1st to 7th Defendants their agents and/or servants or people acting on their behalf from entering, trespassing, developing, transferring, charging, alienating and or in any other way and/or manner from interfering with LR No. Ruiru/Ruiru East Block 2/841 now subdivided to Ruiru/Ruiru East Block 2/32365-32380 and LR NO. Ruiru/Ruiru East Block 2/842 now subdivided to Ruiru/Ruiru East Block 2/34654-34669. The order with regard to trespassing is to take effect within 60 days as regards the 3rd Defendant who is said to have constructed a permanent structure herein.
 4. An order of eviction against the 3rd Defendant which is to take effect after the expiry of 60 days from the date of service of the decree arising from this Judgment on the 3rd Defendant and/or his Advocate on record
 5. An award of Kshs. 20,000/- as general damages for trespass against the 1st to 7th Defendants jointly and severally.
 6. An award of Kshs. 500,000 as aggravated damages against the 1st Defendant.
 7. The Plaintiffs will have costs of the suit as against the 1st Defendant.
 8. The Plaintiffs' suit against the 8th and 9th Defendants is dismissed with no orders as to costs.
 9. An order issues against the 1st Defendant in favour of the 2nd Defendant for refund of Kshs. 6,000,000/= being the purchase price in respect of LR No. Ruiru/Ruiru East Block 2/841 and 842.
 10. The 2nd Defendant will have costs of the counter-claim as against the 1st Defendant.
 11. The 2nd Defendant's case against the 8th and 9th Defendants is dismissed with no order as to costs.
 12. The 3rd Defendant's claim against the 2nd, 8th and 9th Defendant is dismissed with costs to the 2nd, 8th, and 9th Defendants.
3. The 1st Defendant being dissatisfied with the said Judgment filed an appeal dated 10/02/2022 to this Court on the following grounds:-
 1. The learned trial Magistrate erred in law and fact in holding that the Appellant had not proved on a balance of probability that he is the owner of the suit parcel, LR No. Ruiru/Ruiru East Block 2/841 and 842, despite the overwhelming evidence and uncontested documents tendered before her which sufficiently proved the Appellant's case on a balance of probability that he is the bona fide registered owner of it.
 2. That the Learned trial Magistrate erred in law and fact by not taking into consideration that the Appellant was a bona fide purchaser for value without notice thus protected by the law.



3. That the Learned trial Magistrate erred in fact by finding and holding that the Appellant's documents for authentication yet the originals were tendered in Court.
 4. That the trial Magistrate erred in law and in fact in disregarding the uncontroverted evidence of the Appellant that he had regularly acquired his title to the suit parcels devoid of notice of any irregularities affecting the titles thus exhibiting serious bias against the Appellant.
 5. That the trial Magistrate erred in law and fact in disregarding the entirety of the Appellant's evidence and believing the evidence of the 1st and 2nd Respondents without any basis occasioning the Appellant monumental injustice.
 6. That the Learned Trial Magistrate erred in law and in fact by failing to consider the Appellant's submission and exhibited actual bias against the Appellant.
 7. That the Learned Trial Magistrate's Orders have occasioned grave injustice to the Appellant by dispossessing the Appellant of his parcels of land.
 8. That in view of the circumstances set out herein above, the Learned Trial Magistrate totally misdirected herself in delivering Judgment in favour of the 1st and 2nd Respondents by failing to consider and appreciate the evidence on record tendered on behalf of the Appellant.
 9. That trial Magistrate erred in law and facts by failing to uphold the sanctity of the title documents held by the Appellant in respect of LR No. Ruiru/Ruiru East Block 2/841 and 842 issued in favour of the Appellant by the 9th and 10th Respondents thereby occasioning a miscarriage of justice.
4. Reasons Whereof; the Appellant prays:-
- a. That the Judgment, Order and Decree of the Learned Trial Magistrate be set aside.
 - b. That Judgment be entered in favour of the Appellant as prayed for in the Counter-Claim.
 - c. That the Respondents to bear the costs of this Appeal.
 - d. That this Honorable Court be pleased to grant such other and further orders as it may deem just and in the interest of justice.
5. The parties that participate in this appeal are the Appellant and the 1st and 2nd Respondents. The other Respondents did not file any responses to the appeal.
 6. On the 23/01/2025 the Court with the consent of the parties directed that the Appeal be canvassed by way of written submissions.
 7. The Appellant filed their submissions dated 24/01/2025. The gist of the Appellant's submissions was that the Appellant's case was around the issue of fraud and the high standards required to prove fraud were according to the Appellant. Yet the Learned Magistrate erred in law and in fact by holding that the 1st and 2nd Respondents had proved their case to the required standard.
 8. The Appellant submitted that the 1st and 2nd Respondents had not produced any police report in Court nor a forensic examiner report to prove their claim of fraud.
 9. The Appellant referred to several cases to support his averments. On whether the Learned Trial Magistrate erred by failing to accord the Appellant protection accorded to a bona fide purchaser for value, he submitted that his conduct fitted the description of a bona fide purchaser since he undertook a search and physically inspected the suit property before purchasing for value as espoused in Katende



v Haridar & Company Limited [2008] 2 E.A.173 by the Court of Appeal in Uganda, thus he deserved to be protected as a bona fide purchaser for value without notice.

10. He added that the due diligence undertaken led to the 4th Respondent starting construction on the suit property which is even confirmed by the testimony of the 1st Defendant. The 1st Defendant further referred to the case of Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia [2020] eKLR to support his averment that the Court should reinstate the titles of the Appellant and the 3rd Respondent.
11. The submissions of the 1st Respondent are dated 10/02/2025. The gist of the submissions are that title can be challenged if the root of title is in question and that it is not enough to waive the title if the process that led to the acquisition is not right. The 1st Respondent referred to the Court of Appeal in Munyu Maina V Hiram Gathiha Maina Civil Appeal No. 239 of 2009 (2013) eKLR and another Court of Appeal case of Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No. 252 of 2005 (2014)eKLR.
12. The 1st Respondent also referred to the Supreme Court decision of Dina Management Vs. County Government & Others Pet No.8 (EIO) 0(2021) where she has stated that the Supreme had the last word on the issue of instrument of title where they said:

“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible.”
13. The 1st Defendant contends that the Court must interrogate the title that the Appellant has produced and satisfy itself that indeed he was a bona fide purchaser of value of a property whose title has been acquired procedurally. The Respondent also questioned the bona fide purchaser claim and referred to the Court of Appeal decision in Samuel Kamere vs Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 (2015) eKLR.
14. It is the 1st Respondent’s submission that the Appellant did not present a Search Certificate to establish that he confirmed that Antony Wamutu Kiarie who he claimed to be the lawful owner of the suit property was indeed a confirmed registered owner. That the only search that was done was after the property was transferred to the 1st Appellant. Neither did the Appellant adduce any evidence to prove that he interrogated the root of title.
15. The 1st Respondent also submitted that there were other gaps in the Appellant's case because he could not prove that he paid valuable consideration having paid Kshs 4,000,000/- only out of the Kshs 6,000,000/- that he claimed to have paid for the two titles and neither did he adduce evidence to demonstrate that the process he went through to acquire the title was legitimate because he also did not produce evidence to show that duty was paid and the consent.
16. That whereas the Appellant failed to prove ownership, on the part of the 1st and 2nd Respondents they adduced proof that their mother was the registered owner of LR Ruiru/Ruiru East Block 2/841 and 842 and were in possession of the original title which title was not challenged by any of the Defendants including the Appellant.
17. It is the 1st Respondent’s submissions that the Appellant has not indicated any shortcoming of the Judgment of the trial Court and has only indicated that there was no enough evidence to support the claim of fraud. Yet she submits that the Court had enough evidence to go by. Since the evidence of the Land Registrar one Robert Mugendi Mbuba led in the Court on the fact that the ID card used for the transfer of the land to the Appellant belonged to one Justus Muinde Mue.



18. The 1st Respondent urged the Court to find that the Honorable Magistrate took into consideration relevant law and good law and sound interpretation of recent law upon plus all factors and that the appeal should be dismissed.
19. I have considered the Grounds of Appeal, the response, the written submissions filed on behalf of the parties and the authorities cited.
20. This being a first appeal to this Court, it is an appeal in all facts and the law. The duty of a first Appellate Court is well settled. It is to re-evaluate and consider a fresh all the evidence tendered before the trial Court in order to reach its own conclusion having in mind that unlike the trial Court, I did not have the advantage of hearing and seeing witnesses.
21. The Appellant argued that the 1st Respondent failed to prove fraud in Court and that he is a bona fide purchase of the suit property.

Analysis and Determination

22. The Court has carefully considered the appeal, parties submissions and the entire record. The Appellant raised nine grounds of appeal. However, the same have been reduced to three main issues, namely;
 - a. Whether the Respondents proved that the Appellant obtained title to the suit property unlawfully.
 - b. Whether the 1st and 2nd Respondents proved that Beth Muthoni Kabiru (deceased) was the lawful owner of the suit property.
 - c. Whether the trial Court erred in allowing the Respondents' claim.
23. It is trite that the duty of a first Appellate Court is to re-analyze, reassess and reconsider the evidence before the trial Court and make its own independent conclusions bearing in mind that it had no advantage of hearing or seeing the witnesses and therefore give due allowance for that (See *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123). The duty of the first Appellate Court to independently, fairly and fully consider the evidence and make a decision on the facts and the law is crucial as the Court is ordinarily the final Court of fact.
24. The suit that forms the subject matter of this appeal was filed vide a Complaint dated 8/12/2020. As at that time, the suit property was registered in the names of Beth Muthoni Kabiru (deceased) the mother of the 1st and 2nd Respondents in this Appeal, having been registered in her name and title deed issued to her on 20/12/1991. Their mother however was deceased on 24/03/2013. However, the Appellant claims that the 1st Defendant who never entered appearance obtained the Land Control Board Consent in 2016 and had the suit property transferred to him which he then sold and transferred to the Appellant herein.
25. On the first issue, the 1st Respondent stated that they discovered the suit property had been illegally transferred to other parties when they wanted to subdivide it among siblings. That they reported the matter to Juja Police Station and the perpetrators were arrested and charged in a Thika Court. This evidence was not rebutted by the Appellant who however averred that fraud was not proved to the required standards in law. Thus the learned Magistrate erred in holding that there was fraud yet according to the Appellant it was not proved. The 1st Defendant subdivided and sold to the Defendants the suit property passing to them a title he did not own.



26. The Land Registrar in his testimony indicated that the Deputy County Commissioner indicated that they did not have minutes of a Land Control Board meeting held on 2/02/2016. Thus the conclusion of the report he produced was that Beth Muthoni Kabiru (deceased) did not transact with the 1st Defendant.
27. The question therefore that I need to address in this appeal is; What was the legal position regarding the suit property as at the time the suit forming the subject of this appeal was filed?
28. The answer to the above question is captured in Sections 24, 25 and 26 of the [Land Registration Act, 2012](#) thus:-

“ 24. Subject to this Act-

a. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights belonging or appurtenant there to; and

b.

25. the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-

a. to the leases, charges and any other encumbrances and to conditions and restrictions, if any, shown in the register; and

b. to such liabilities, rights, interests as affect the same and are not declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.2. Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26.

(1). The certificate of title issued by the Registrar upon registration 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 party;

b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



29. It is therefore clear that although a title is prima facie evidence of indefeasibility and absolute ownership by the registered proprietor, where it is proved and or found that the same was obtained by unlawful means including fraud, misrepresentation, want of procedure or corruption, such title can be challenged on those grounds.
30. In the case of *David Kiptugen v. Commissioner of Lands & 4 Others* [2015] eKLR, the Court held as follows;
- “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 not the position, then all one would need to do is 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.”
31. Similarly, in *Munyu Maina v. Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal held as follows;
- “We state 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 and how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
32. Since the suit property was registered in the name of Beth Muthoni Kabiru (deceased) as the registered proprietor of the suit property when the suit that forms the subject matter of this appeal was filed, to succeed in impugning the title held by her, the Appellant must prove one or more of the grounds contemplated in Section 26 of the Land Registration (*supra*).
33. In the suit filed before the lower Court, the Appellant contended that the suit property was legally transferred to him by the 3rd Respondent who did not enter appearance despite having been served several times. The Appellant filed a counter-claim against the 3rd Defendant and the Court in its Judgment issued an order against the 1st Defendant in favour of the 2nd Defendant for a refund of Kshs. 6,000,000/- being the purchase price that he paid the 1st Defendant for the suit property. Also the costs of the counter-claim were awarded to the 2nd Defendant/Appellant as against the 1st Defendant in the lower Court’s Judgment.
34. Section 107 of the *Evidence Act* places the burden of proof in a case on the Plaintiff while Section 108 of the said Act provides that the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. Besides, Section 109 of the *Evidence Act* provides that the burden of proof of any particular fact lies on the person who wishes the Court to believe in its existence unless proof of such fact is placed on any particular person by law.
35. In this case, the 1st and 2nd Respondents having proved that the suit property was lawfully owned by Beth Muthoni Kabiru, it was upon the Appellant to demonstrate that his alleged purchase of the suit property from 3rd Respondent was lawful. I have considered the Appellant’s witness statement dated 27/08/2021 which was adopted as his evidence in chief. His position was that he purchased the suit property from Antony Wamutu Kiarie the 3rd Respondent but there was no corroboration of this evidence since the said Antony Wamutu Kiarie never filed a defence or appeared in Court. Again the Land Registrar was not able to support the contention that the suit property is registered in the 3rd



- Respondent's name and he even stated that there were no minutes from the Land Control Board on the date the 3rd Respondent claims to have had Beth Muthoni Kabiru (deceased) sign the consent.
36. In my opinion this is a clear act of obtaining the impugned title through fraud as claimed by the 1st Respondent. This is because the 1st and 2nd Respondents stated that their mother was already deceased by 2016 and they produced the Death Certificate as proof of their allegations. Consequently when the meeting of the Land Control Board took place Beth Muthoni Kabiru was deceased. Thus the 1st Respondent had proved that the Appellant obtained a title from someone who could not pass it to him and the whole process was flawed.
 37. The above position supports the position advanced at the trial by the 1st and 2nd Respondents that indeed Beth Muthoni Kabiru (deceased) is the registered proprietor of the suit property. It is clear that there is no evidence on record to show that at the alleged time of sale to the Appellant, the 3rd Respondent owned the suit property having acquired it lawfully. Also there is no evidence that the suit property was lawfully transferred from Beth Muthoni Kabiru. It is clear that Antony Wamutu Kiarie, 3rd Respondent did not own the suit property as at 24/03/2013 when the Beth Muthoni Kabiru passed or on 2/02/2016 when the Appellant alleges that the 3rd Respondent obtained Consent from the Land Control Board.
 38. The last issue is whether the Court erred in allowing the 1st and 2nd Respondents' claim. Now in the Appellant's contention that the Court made a contradictory Judgment by failing to endorse him as a bona fide purchaser for value, the Learned Trial Magistrate found that the Appellant herein paid money without confirming whether the 1st Defendant who is now the 3rd Respondent had title. That was an express indictment on the Appellant's part. He was found not to be a bona fide purchaser for value on that basis.
 39. Therefore this Court is convinced that Beth Muthoni Kabiru is the lawful owner of the suit property whose administrators are the 1st and 2nd Respondents. While the Appellant purchased the property from a person who had no good title to pass on. I find and hold that the 1st and 2nd Respondents proved that the Appellant's registration of the suit property was unlawful as the same was obtained from a person that did not own the suit property and therefore lacked capacity to sell the same. On the other hand, the 1st and 2nd Respondents having demonstrated that they were lawfully issued with a Confirmation of Grant for the Estate of the late Beth Muthoni Kabiru, have proved who the lawful owner the suit property is and is therefore entitled to legal protection. They even have the original title to the suit property in their custody.
 40. Now the Appellant has over and over again claimed that he bought the suit property from the 3rd Respondent. Who has failed to appear in Court but for purposes of advancing this case let us assume that indeed the 3rd Respondent exists somewhere. The point of departure will be that the 3rd Respondent sold a parcel of land belonging to a deceased person because the said Beth Muthoni Kabiru (deceased) was long dead in 2016. So then how could the 3rd Respondent get the authority to transact in a property of a deceased person without obtaining Letters of Administration?
 41. The Appellant failed to prove to the Court how the 3rd Respondent obtained his title and whether he truly owned his parcel of land to make him legible to pass it on. It therefore follows that the decision of the Honourable Magistrate was not erroneous.
 42. Section 80 of the [Land Registration Act](#) provides for cancellation of title where registration is unlawfully obtained and states as follows;



1. Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
 2. The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.
43. In this case, the registration of the suit property in the Appellant's name and subsequent subdivisions was unlawfully done as the Appellant had no good title to pass on having received a title whose root is questionable. The person who alleged to have sold the suit property to the Appellant did not own the land they were purporting to sell. Hence the trial Court had the power to order cancellation of the registration of the suit property in the Appellant's name.
44. In the premises, I agree with the trial Court's findings that the root of the Appellant's title could not be traced and the Appellant's explanation failed to satisfy Section 26 of the Land Registration Act.
45. In the end, I find no merit in the appeal which I consequently dismiss, with costs to the 1st and 2nd Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Mwangi K. for 1st and 2nd Respondents

No appearance for the Appellant

No appearance for the 3rd – 10th Respondents

Mr. Melita - Court Assistant

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MOGENI J

JUDGE

