



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiarie v Tarus (Environment & Land Case 136 of 2019)  
[2025] KEELC 468 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 468 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 136 OF 2019  
A OMBWAYO, J  
JANUARY 30, 2025**

**BETWEEN**

**DOMINIC KIARIE ..... PLAINTIFF**

**AND**

**HENRY TARUS ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. The Plaintiff commenced this suit vide a Plaint dated 21st July, 2010 against the Defendant seeking the following orders:
  - a. A permanent injunction restraining the Defendant himself, his agents, servants or employees from interfering with, trespassing or in any way dealing with L.R No. Nakuru Municipality Block 16/186.
  - b. A declaration that L.R No. Nakuru Municipality Block 16/186 belongs to the Plaintiff's Costs of the suit and interest.
2. The Defendant entered appearance and filed his Amended Statement of Defence and Counter claim dated 1st December, 2021 where he denied the allegations in the plaint. He sought for the following orders:
  - a. A declaration that any lease, Certificate of Lease and/or any document held by the Plaintiff (now Defendant) are a forgery and or fraudulent and the same be cancelled and declared the Defendant (now Plaintiff) as the lawful and/or beneficial owner of Nakuru Municipality Block 16/186 within Nakuru District.
  - b. An order that the Plaintiff do remove himself and his agents and/or any other person that he may have placed on all that parcel of land known as Nakuru Municipality Block 16/186 within



14 days of the judgment herein and in default the Plaintiff and or such person/s be forcefully evicted and vacant possession be given to the Defendant.

- c. A permanent injunction restraining the Plaintiff either by himself, his agents, servants, employees or otherwise howsoever from entering, remaining on all that parcel of land known as Nakuru Municipality Block 16/186 or interfering with the Defendant's peaceful and quiet occupation or dealing with the said parcel of land in any manner prejudicial to the interests of the Defendant.
  - d. An order directing the District Land Registrar Nakuru to register the lease dated 23rd March, 2016 in the name of the Defendant Henry Kipchumba Tarus. e) Mesne profits
  - f. Costs of this suit and interest
  - g. Any other relief the court may deem fit to grant
3. The third party entered appearance and filed its Defence dated 31st April, 2011 where it denied the contents of the Defendant's Statement of Defence. It urged the court to dismiss the Defendant's claim.

### **Plaintiffs' Case**

4. Dominic Mwangi Kiarie testified as PW1 where his witness statement dated 31st January, 2019 as evidence in chief. He testified that he procured the land in 2007 and that the previous agreement was entered on 16th November, 2007. He produced copies of the certificate of lease dated 7th June, 2007, official search and certificate of registration dated 30th November, 2006 as PEX1-PEX10. He testified that upon completion of the transaction between Jun-July 2008, he put up a perimeter wall after which some persons attempted to stop the said construction. He further testified that he lodged a case in High Court where he got a court order. He testified that the search revealed that Lawrence Maina Mwangi was the owner of the land. He added that there was no caveat nor caution. Upon cross examination by Konosi for the Defendant, he stated that he had purchased the property from Lawrence Mwangi Maina. He further stated that the lease showed that the property had been leased to Trans-Afric Resolution Ltd. He stated that Lawrence Mwangi Maina was carrying on business as Trans-Afric Urban Housing solution of Nakuru. He stated that Lawrence Mwangi had not informed him how he acquired the property. PW1 was shown PEX 6 where he confirmed that he was not aware that there was a document that pre-dated a lease. He added that there was no letter of allotment in Lawrence's name. He stated that the lease presupposed that the lessee was a limited liability company. He went on to state that due diligence was done. He further stated that he was summoned to the DCIO in Nairobi on January, 2019 for investigation of the matter. He confirmed that there was a letter of allotment dated 5th February, 1992 in the Defendant's name (DMF1). He further confirmed that there was a cheque payable to the Commissioner of Lands dated 22nd July, 1992 for Kshs. 60,000/= (DMFI 2). He also confirmed cheques dated 6th August, 1992 for Kshs. 25,255 (DMFI 3). He added that there was a receipt for Ksh. 85,255. He stated that he bought a plot which transaction he was represented by his lawyer but that they did not get a chance to view the document. He went on to state that the letters dated 8th July, 2008 showed that the land was allocated to the Defendant (DMFI21). He stated that he was surprised that the land did not belong to the Lawrence Maina yet he went through the due process. He stated that he was the genuine owner of the land.
5. Upon cross examination by Rotich for the third party, he stated that he purchased the land on 16th November, 2007 which was at the time owned by Trans-Afric Urban Housing Solutions. He stated that he followed the required procedure through an advocate and the land was transferred to him. He further states that the certificate of lease was issued on 27th March, 2008. He went on to state that



he never sold or transferred the land to other persons. He added that he took possession of the land in 2008.

6. Upon re-examination, he stated that he was the owner of the suit property having rightfully acquired the same. He stated that the allotment letter dated 5th February, 1992 had a condition of payment and that the 1st payment was made on 22nd July, 1992. He stated that the payment was made more than 30 days after allotment. He further stated that the 2nd receipt was dated 6th August, 1992. He stated that he was not aware that the plot had been allocated to someone else. He added that the letter by the Land Registrar showed that the land was registered in the name of Trans Afric which was later transferred to him. He stated that there was no caution or inhibition.
7. This marked the close of the Plaintiffs case.

### **Defendant's case**

8. Henry Kipchumba Tarus testified DW1 where his witness statement dated 1st December, 2021 was adopted as evidence in chief. He also produced his filed list of documents dated 22nd March, 2023 as DEX 1-DEX31. He produced the allotment letter as DEX1(b)
9. Upon cross examination by Njoroge, he confirmed that the allotment letter was dated 5th February, 1992 which he had collected from Arthi House, Nairobi. He stated that he paid the acceptance fees on 22nd July, 1992 and he admitted that it was long after expiry of the 30 days. He was referred to DEX1 where he stated that the lessor was the Government of Kenya while the lessee was Trans Africa Urban Housing Solutions. He stated that the caretaker was in occupation of the land. He stated that someone had deposited building materials on site between 2007 and 2008. He further stated that the Plaintiff attempted to construct on the suit land. DW1 admitted that no one had been charged with forgery. He was referred to DEX 6 which he confirmed that it was a lease. He further confirmed that the Plaintiff did not have an allotment letter.
10. Upon cross examination by Wanderi, he stated that he was allocated the suit land in 1992. He further stated that on 5th February, 1992 he was allocated an unsurveyed parcel of land after which he got a private surveyor who did the survey. He stated that he reported Lawrence Mwangi to the Director of Lands Fraud for forgery of documents. He further stated that his lease was dated 12th July, 2019. He stated that he had no claim against the Land Registrar. He added that the lease documents was extended on 12th July, 2010. He also stated that the documents were executed in the Plaintiff's interest on 7th October, 2002.
11. Upon re-examination, he was referred to the letter dated 8th July, 2008 where he stated the same confirmed that the land was allocated to him. He was referred to the letter dated 14th December, 1993 where he stated that the allocation of the land at the time had not been surveyed. He stated that the land was surveyed on 25th June, 1992. He further stated that the RIM was received on 21st July, 1992.

### **Third Party's case**

12. Collins Liyai Aliela the Land Registrar, Nakuru testified as 3PW1. He produced documents dated 4th May, 2022 as PEX 1-3PEX 17. He testified that the office did not receive any letter requesting a restriction. He testified that the Defendant's lease was rejected since another lease had been registered. He testified that he had the transfer documents to the Plaintiff including the certificate of lease.
13. Upon cross examination by Njoroge, he confirmed that there was no letter requesting the Land Registrar to take the records to Nairobi. He stated that there was no caution or restriction. He further stated that the Plaintiff is the owner of the suit land.



14. Upon cross examination by Konosi, he stated that the lease was (PEX 2). He further stated that the execution process is done by the Director and that to register a lease for a company, he needed a certificate of incorporation, form CR 12 so as to identify the directors. He added that Trans-Afric Urban Solution of Nakuru is a company. He confirmed that he did not have the certificate of incorporation and CR 12. He stated that there was proper registration but that the documents were not there. He admitted that he did not have any explanation why the documents were missing. He confirmed that the lease did not have the name limited. He stated that a trade name could not be registered in one's name. He added that the register would be that of the trade name. He confirmed that he had seen the certificate of registration and that the lease was registered. He added that amendments were to be done by the issuing authority. He stated that the business name was registered on 13th November, 2006. He further stated that the lease dated 7th October, 2002 was registered on 7th June, 2007. He stated that the land could not be registered in a name of nonexistent entity. He stated that the validity of lease was not based on the business name since the Director as proprietor could sign a transfer. He confirmed that he had not seen a copy of certificate of registration. He added that the transferor was L.M Mwangi while the transferee was the Plaintiff. He stated that the transfer document was proper. He admitted that he did not have a copy of the certificate of registration. The witness was referred to DEX 21 where he stated that the C.F was 138465 while the D.F was the correspondence file. He confirmed that they did not have reference files and that the letter dated 8th July, 2008 requested for registration. He added that the letter dated 8th January, 2003 forwarded the lease to their office.
15. He stated that cases of double allocation were dealt with at Ardhi house. He also stated that when there is an existing registered lease, he could not register another one. He added that Double allocation applies where leases has been issued to 2 different people. He further stated that Double allocation was duplication of lease and for it to be a double allocation, both parties needed to have an allotment letter and letter of acceptance. He stated that the first in time is registered.
16. Upon re-examination by Wanjeri he stated that the letter dated 8th July, 2008 was for restriction. He further stated that practice dictates that if he gets the letter, he acts. He stated that he never received anything that necessitated him to delete an entry. That marked the close of 3rd party case. Ojwangi Omolo Patroba the Assistant Director of Land Administration testified as DW2. He testified that his duties involved being the custodian of records of allocation and leases. He testified that he would prepare leases arising out of land allocation and forward to the land Registrar for allocation requisition. He produced file No.138465 as DEX 32 which relates to the suit property. He testified that the same was in the Defendant's name. He further testified that the property was allocated by the Commissioner of lands to the Defendant on 5th February, 1992 as an unsurveyed residential plot Nakuru.
17. He testified that the Defendant accepted the offer on 23rd July, 1992 via a banker's cheque No.012360 and an allocation receipt dated 2nd September,1992 was issued. He went on to testify that on 26th November, 1992 the commissioner of lands notified the Director of surveyors that the offer had been formally accepted. He further testified that on 14th December, 1993 the Director of survey forwarded to the commissioner of lands a Registry Index Manual. He testified that the parcel number became Nakuru/Municipality Block 15/186 measuring 0.4609 Ha. The survey plan number was F.R 226/106. He testified that the Commissioner of lands prepared a lease which was executed on 26th March, 1994 but the same got misplaced. He further testified that the Ministry prepared another lease in the Defendant's name that was signed by the Commissioner of lands on 12th July, 2010. He added that for some reasons the lease was not registered and another lease was prepared dated 23rd March, 2016.
18. He testified that the lease was forwarded to the District Land Registrar on 31st March, 2016 and on 23rd August, 2016, they received a letter from the Defendant complaining there were fake documents that had been registered. He testified that the Defendant said that the same was a plot to grab his



land using fake documents. It was his testimony that the Chief Land Registrar wrote to the District Land Registrar Nakuru to forward all documents in his custody in respect of the suit land. He testified that their records showed that the suit property belonged to the Defendant and added that he had no records for Trans Africa Urban Solution Company. He also testified that the leases issued to Trans Africa Urban Solution Ltd were not prepared by the Commissioner of Lands and that it was not in their records.

19. Upon cross examination by Njoroge, he confirmed that the lease was signed by one Samuel Mwaita. He also confirmed that they did not have records to show that it was signed by Mwaita. He further confirmed that the certificate of lease issued to Trans African Urban Housing Solution was as a result of a lease. He stated that a letter was written to Nakuru requesting for an explanation but there were no responses. He stated that the first lease to the Defendant was executed on 25th March, 1994 by the then Commissioner of Lands, Wilson Gachanja. He added that the 2nd documents were executed by Zabron Mabea. He went on to state that the lease was forwarded in the Defendant's name and registered on 27th October, 2016. He stated that the lease issued to Trans Urban Solution was not authentic.
20. Upon cross examination by Wanjeri, he stated that the leases were issued by the Commissioner of Lands and that the land Registrar registered what was forwarded. He confirmed the letter dated 8th February, 2003 that forwarded a lease in favour of Trans urban Solution Ltd. He added that they could expunge fraudulent documents. He further confirmed that the Defendant's lease was not registered and that they were notified of the missing lease.
21. Upon re-examination, he stated that he had the transfer to the Plaintiff. He stated that he had the documents filed by the Land Registrar, Nakuru. He added that the letter dated 8th January, 2003 was not authentic.
22. This marked the close of the Defendant's case.

### **Submissions**

23. The Plaintiff's counsel filed her submissions dated 19th November, 2023 where she submits that the Plaintiff conducted due diligence before purchasing the suit property through his advocates M/ S Muigai Commercial Agencies in 2007. She further submits that through the firm of Muthaura Mugambi Ayugi & Njonjo (MMAN) advocates which represented him in the conveyancing process. Counsel submits that the Plaintiff bought the suit property from Lawrence Maina Mwangi vide a sale agreement dated 16th November, 2007 at a consideration of Kshs. 1,900,000/=.
24. It was counsel's submission that the Plaintiff constructed a perimeter fence to secure the property only for the Defendant to attempt to stop the construction. She further submits that the Plaintiff has been in occupation of the suit land since 28th March, 2008 to date. It was her submission that the Defendant failed to prove that the Plaintiff's Certificate of lease was fraudulently obtained. She submits that the lease produced confirmed that the suit land was transferred to Transafric Urban Housing Solutions by the government of Kenya at a sum of Kshs. 124,000/=.
25. Counsel for the Plaintiff relied on the cases of Dina Management Limited V County government of Mombasa & 5 Others (E010) of 2021 [2023] KESC 30 KLR, Charles Karathe Kiarie & 2 Others V Administrators of the Estate of John Wallace Mathara (deceased) & 5 Others (2013) eKLR and Elizabeth Wambui Githinji & 29 Others V Kenya Urban Roads Authority & 4 Others (2019) eKLR. In conclusion, it was counsel's submission that the Land Adjudication Officer confirmed in his evidence that the certificate of lease had been issued to another party and that the same was not genuine but gave no reason to back his finding.



26. Counsel for the Defendant on the other hand filed his submissions dated 30th November, 2024 where he identified five issues for determination. The first issue was whether the lease held by the Plaintiff was fraudulently obtained. He relied on Section 26(1) of the [Land Registration Act](#) and the cases of David Peterson Kiengo & 2 Others V Kariuki Thuo [2012] eKLR and the Court of Appeal case of Sammy Mwangangi & 10 Others V Commissioner of Lands & 3 others (2018) eKLR. He submits that Defendant was the first allottee of the suit land, and vide his pleadings and his testimony he detailed all the procedures he went through in order to acquire the suit land. It was further his submission that the Plaintiff has not explained how he obtained the lease purportedly in his name. He added that at no point was his allotment letter or lease cancelled. He further submits that Transafric Urban Housing Solutions is not a legal entity capable of owning land. It was counsel's submission that Transafric Urban Housing Solutions fraudulently obtained title to the suit land and purportedly sold it to the Plaintiff. He cited the case of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023). He argues that neither Trans-afric Urban Housing Solutions nor the Plaintiff showed the root title and further that Trans-afric Urban Housing Solutions could not have obtained any proper title to pass to the Plaintiff since it did not go beyond the said lease to demonstrate how the same was obtained.
27. The second issue was whether the Plaintiff's suit is merited. Counsel submits that having demonstrated that the certificate of lease transferred to the Plaintiff was fraudulently obtained, no good title passed to the Plaintiff and as such the Plaintiff claim should fail. He relied Section 107(1) of the [Evidence Act](#) and the cases of Leonard Otieno V Airtel Kenya Limited [2018] eKLR and Caroline Awinja Ochieng & David Zakaria Oyolo V Jane Anne Mbithe Gitau, Petronilla Njeri Ngaara & City Council of Nairobi (Environment & Land Case 694 of 2012) [2015] KEHC 4896 (KLR) (Environment and Land) (7 May 2015) (Judgment). He submits that whereas an intending purchaser of a property ordinarily is expected to carry out due diligence to verify the details and particulars of the property the said due diligence is expected to extend as the law provides. It was counsel's submission that had the Plaintiff conducted due diligence, he could have ascertained that Transafric Urban Housing Solutions was not the owner and as such he could not pass any good title.
28. The third issue was whether the Defendant is the rightful owner of the suit land. Counsel relied on the case of Nelson Kazungu Chai & 9 Others V Pwani University College (2014) eKLR and submits that the Defendant demonstrated how he obtained title to the suit land thus the registered proprietor of the suit land.
29. The fourth issue was whether the Defendant's counterclaim is merited. It was counsel's submission that the Defendant having properly demonstrated how he obtained title to the suit land and its root and having demonstrated that the certificate of lease held by the Plaintiff was fraudulently obtained, the Defendant's counterclaim should be allowed as prayed. He cited Order 21 Rule 13 of the Civil Procedure Rules and the Court of Appeal case of Attorney General V Halal Meat Products Limited [2016] eKLR.
30. The final issue was on costs where counsel urged the court to grant the Defendant costs of the counterclaim. He relied on the case of Jasbir Singh Rai & 3 others V Tarlochan Singh Rai & 4 others [2014] eKLR
31. Counsel for the third party filed her submissions dated 26th November, 2024 where he identified two issues for determination. The first issue is who is the rightful owner of the land parcel L.R Nakuru Municipality Block 16/186. She submits that the Plaintiff is the rightful owner of the suit property. It was her submissions that for an allotment letter to be operative, the allottee needed to comply with



the conditions set out within the stipulated period. She cited the cases of Mbau Saw Mills Limited V Attorney General for and behalf of the Commissioner of Lands & 2 Others [2014] eKLR and Rukaya Ali Mohammed V David Gikonyo Nambachia & Another Kisumu HCCA 9/2004. It was counsel's submission that it is not in dispute that the Defendant was first allocated the suit land vide the allotment letter dated 5th February, 1992. She went on to submit that the Defendant sent his acceptance of the offer through a letter dated 23rd July, 1992 with a down payment of Kshs. 32,750/=. She submits that the same was made after the 30 days had already lapsed thus there was no offer in place and therefore the land was available for reallocation. She relied on Section 26 of the Land Registration Act and submits that the white card confirms that the lease was transferred to the Plaintiff on 27th March, 2008 and a Certificate of Lease issued.

32. The second issue was whether the Defendant is entitled to indemnity from the third party. While submitting in the negative, counsel relied on Section 81 of the Land Registration Act and argues that the present case was not that of a double registration. She submits that the Certificate of lease was forwarded to the Commissioner of Lands to the District Land Registry for registration and thus the issue of fraud would not arise. Counsel argues that in as much as the suit land was allocated to the Defendant, he failed to comply with the requirements in the allotment letter. She submits that as per DW2's evidence, the Defendant's lease was misplaced and another lease issued and executed. She added that there was no evidence that the said lease was registered. She submits that neither the Defendant nor the office of the Director Land Administration have proven fraud on the part of the Land Registrar, Nakuru. Counsel relied on the case of Arthi Highway Developers Limited V West End Butchery Ltd & 6 Others [2015] eKLR and submits that the Defendant fell short at providing evidence supporting the allegations of fraud. She submits that the Defendant's lease was never registered.

### **Analysis and Determination**

33. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Who is the lawful owner of the suit property?
  - b. Whether the Plaintiff is entitled to the prayers sought
  - c. Whether the Defendant is entitled to the prayers sought in his counterclaim.
  - d. Who should bear the costs of the suit.

### **Who is the lawful owner of the suit property?**

34. It was the Plaintiff's case that he purchased the land on 16th November, 2007 from Lawrence Mwangi Maina who was at the time carrying on the business as Trans-Afric Urban Housing Solutions. Upon cross examination, he admitted that Lawrence Mwangi had not informed him of how he acquired the property. He added that through his advocate, he conducted due diligence and a certificate of lease was issued on 27th March, 2008. It was his case that the allotment letter dated 5th February, 1992 had a condition of payment where the 1st payment was made on 22nd July, 1992 being 30 days after the allotment.
35. The Defendant on the other hand claims that he was allocated the suit land on 5th February, 1992 being an unsurveyed parcel of land after which a private surveyor did the survey. It was the Defendant's case that the Plaintiff did not explain how he obtained the lease and that his allotment letter nor lease was never cancelled. The Defendant argues that Transafric Urban Housing Solutions is not a legal entity



capable of owning land and that it fraudulently obtained title to the suit land and purportedly sold it to the Plaintiff.

36. It was the third party's case that the Plaintiff was the owner of the suit land and that the Defendant's lease had been rejected since there was another lease that had been registered in the Plaintiff's name.

37. It is not in dispute that the Defendant was allotted the suit property vide the allotment letter dated 5th February, 1992. It is also not in dispute that it was a condition that acceptance and payment was to be received within 30 days from the date of the offer failure which the offer would lapse. It is not in dispute that the Defendant made the first payment vide a cheque of Kshs. 60,000 dated 22nd July, 1992. It is this court's view that the same was more than the 30 days period provided in the allotment letter.

38. In the Court of Appeal case of Dr. Joseph N.K. Arap Ng'ok V Justice Moiyo Ole Keiyua & 4 others C.A.60/1997, the court held as follows:

“It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.”

39. Further, in the case of Mbau Saw Mills Ltd V Attorney General for and on behalf of the Commissioner of Lands & 2 others [2014] eKLR, the court found that:

“In order for an allotment letter to become operative, the allottee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period.”

40. In light of the above, it is this court's view that the Defendant having failed to meet the conditions as stipulated in the allotment letter to wit failing to pay the requisite fees within the 30 days, it meant that the suit land was free to be allotted to someone else in this case Lawrence Maina Mwangi t/a Trans-afric Urban Housing Solutions.

41. It is also not in dispute that there are two leases both in the Plaintiff and Defendant's name registered on 7th June, 2007 and 27th October, 2016 respectively.

42. In the Court of Appeal case of Wreck Motors Enterprises V The Commissioner of Lands and others the court held that:

“Where there are two competing titles the one registered earlier is the one that takes priority”

43. Further, in the case of Gitwany Investment Limited V Tajmal Limited, Geoffrey Njage, Max Towers Limited & Commissioner of Lands through Attorney General [2006] KEHC 2519 (KLR) the court held that:

“...the first in time prevails, so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issues two title in respect of the same parcel of land, then if both are apparently and on the face of them issued regularly and procedurally, without fraud save for the mistake then the first in time must prevail”

44. It was DW2's evidence that the Defendant's lease was not registered and that they were notified of the missing lease. It is noteworthy that DW2 confirmed that he had records of the transfer of the lease to the Plaintiff. It is my opinion that from the third party's evidence, it is clear that the Plaintiff's lease was the first in time and therefore the same should prevail.



45. Section 24(a) of the *Land Registration Act* provides that:
- “Subject to this Act, 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 and privileges belonging or appurtenant thereto.”
47. Section 26(1) of the *Land Registration Act* further provides that:
- “...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
  - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
48. The Supreme Court in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) cited the case of *Munyru Maina V Hiram Gathiha Maina* [2013] KECA, where the court 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 of 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.”
49. Furthermore, in the case of *Kinyanjui Kamau V George Kamau* [2015] eKLR expressed itself as follows; -
- “...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo –vs Ndolo* [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”
50. It was the Defendant’s allegation that the Plaintiff fraudulently acquired the suit property, he however failed to adduce sufficient evidence to prove the same. It is this court’s view that in cases where fraud is alleged, it is not enough to simply infer fraud from the facts, the Defendant ought to have strictly proved the alleged particulars of fraud as stated in the plaint.
51. The Land Registrar upon cross examination confirmed that there was an existing registered lease and he could not register another one. It is also noteworthy that the green card opened on 7th June, 2007 under entry. number four confirmed that the certificate of lease was issued to the Plaintiff. It is this



court's view that the burden of proof lied with the Defendant to prove that the Plaintiff fraudulently acquired the suit property which he failed to do so. It is also this court's view that by virtue of the Certificate of lease issued to the Plaintiff on 7th June, 2007 , the same is sufficient evidence that he is the registered proprietor of the suit land. This court therefore finds that the Plaintiff is the lawful owner of the suit property.

**Whether the Plaintiff is entitled to the orders sought.**

52. This court having established that the Plaintiff is the lawful owner of the suit property, he is therefore entitled to the orders sought in his plaint dated 21st July, 2010.

**Whether the Defendant is entitled to the orders sought.**

53. The Defendant having failed to prove his case on a balance of probabilities, his counterclaim is thereby dismissed with costs.

54. In the upshot, having found that the Plaintiff proved his claim to the required standard of probabilities, judgment is hereby entered in favour of the Plaintiff in the following terms:

- a. A declaration that the Plaintiff is the lawful proprietor of L.R No. Nakuru Municipality Block 16/186.
- b. An order of permanent injunction is issued restraining the Defendant by himself, his servants or lawful agents from trespassing upon, entering, remaining, dealing in or otherwise in any other manner whatsoever from interfering with L.R No. Nakuru Municipality Block 16/186.
- c. An order is hereby issued directing the Nakuru Land Registrar to recall and cancel the title held by the Defendant in respect to L.R No. Nakuru Municipality Block 16/186. d) The Defendant shall bear the costs of the suit. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

**ENVIRONMENT AND LAND COURT DATE: 2025-01-30 04:43:15**

