



**Kamau v Mwaniki & another (Environment & Land Case 9 of 2021)
[2024] KEELC 5877 (KLR) (20 August 2024) (Judgment)**

Neutral citation: [2024] KEELC 5877 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 9 OF 2021
AK BOR, J
AUGUST 20, 2024
(FORMERLY NYERI ELC NO. 54 OF 2017)**

BETWEEN

JAMES MITHAMO KAMAU PLAINTIFF

AND

RICHARD KURIA MWANIKI 1ST DEFENDANT

REGISTRAR OF LAND, LAIKIPIA 2ND DEFENDANT

JUDGMENT

1. This dispute is over ownership of the land known as Nanyuki Municipality Block 8/905 ('the suit property'). Through the Amended Plaint filed on 22/5/2017, the Plaintiff claimed that he was registered as proprietor of the suit property vide the lease and certificate of lease issued to him 20/4/2007. He claimed that all through he had been paying land rates to the Nanyuki Municipal and the validity of his title over the suit property had never been questioned until Gideon Maina Thuku who alleged to have bought the suit property from Gidraph F. Kareri trespassed onto his land as a result of which he filed Nyeri ELC case No. 173 of 2013.
2. Sometimes in March 2017 when he went to pay land rates at the Nanyuki County offices he found that the details of ownership of the suit property had been changed from his name to that of Gidraph Mwaniki Kariri (Gidraph) and a title to that effect had been issued. When he conducted a search, it showed that the land had been transferred from Gidraph to Billy Nganga Maina. Upon further inquiry, he learnt that the suit property was being offered for sale by agents in Nanyuki and had been advertised for sale. He averred that he had been in possession of the land since April 2007 when the lease and certificate of lease over the suit property were issued to him and that he had never sold, transferred, leased or surrendered his property to any person.



3. He pleaded that the title documents in Gidraph's name were issued in September 2016 yet he had established that Gidraph died on 23/10/2008. He averred that the registration and issuance of title over the suit property to Gidraph in 2016 when he had already been registered as the owner of the suit property in 2007 and subsequent transfer of the land to the 2nd Defendant was illegal and fraudulent. He pleaded particulars of fraud against the Defendants and sought a declaration that he was the lawful proprietor of the suit property. He also sought cancellation of the title held by the 2nd Defendant over the suit property and an injunction to restrain the Defendants from interfering or dealing with the suit property.
4. In their Amended Defence and Counterclaim filed in court on 22/6/2022, the 1st and 2nd Defendants averred that they did not know if the Plaintiff had been paying rates to the Nanyuki Municipal Council and that all they were aware of was that the suit property was transferred by Gidraph to the 2nd Defendant. Further, they were aware that Gideon Maina Thuku was the father of the 2nd Defendant and that the Plaintiff had abandoned the suit filed as Nyeri ELC Case no. 1 of 2013 which the court dismissed with costs. They maintained that the changes made in the records in the County offices in May 2017 were legally done while averring that the 2nd Defendant was in occupation of the suit property.
5. In their counterclaim, the 1st and 2nd Defendants averred that the suit property was originally allotted to the late Gidraph and that he sold it to the Defendant's father, the late Gideon Chris Maina Thuku. They averred that it was transferred directly to the 2nd Defendant with a good title. They averred that the process which the Plaintiff followed in the acquisition of the certificate of lease over the suit property was fraudulent and tainted with illegality and they pleaded particulars of fraud. They sought a declaration that the 2nd Defendant was the lawful owner of the suit property and that the transfer of title to the 2nd Defendant was valid. They sought an order for cancellation of the certificate of lease issued to the Plaintiff on 20/4/2007 and dismissal of the Plaintiff's suit with costs.
6. In its Defence filed on 30/5/2018, the 3rd Defendant denied the Plaintiff's claim and averred that according to the records it held, there was no entry on the register for the suit property showing the issuance of a lease and a certificate of lease to the Plaintiff in 2007. Further, that if he had any documents in possession then they must have been frequently obtained because they were obtained before the suit land was surveyed. The 3rd Defendant further averred that the registration and issuance of title documents over the suit property to Gidraph and the transfer to the 2nd Defendant was legally done.
7. This suit was initially filed at the Environment and Land Court (ELC) in Nyeri but was transferred to Nanyuki ELC in September 2021. The hearing of the suit commenced on 23/1/2024 when the Plaintiff gave evidence. He stated that he was the registered proprietor of the suit property and produced the certificate of lease issued to him on 20/4/2007. The plot was originally sold to him by Mr. Gabriel Mbuthia in March 2007. He produced a copy of the agreement for sale dated 18/3/2007. He told the court that he had been paying land rates and had never parted with possession of the suit property. However, in March 2017 when he went to pay rates he noticed that the details for the suit property had been changed to Gidraph and when he carried out a search he discovered that the land had been transferred to the 2nd Defendant in 2017 yet Gidraph died in 2008 and the 1st Defendant was appointed administrator of his estate vide Meru Succession Cause No. 17 of 2015. He learned that the 2nd Defendant was in the process of selling the suit property to unsuspecting members of the public.
8. The Plaintiff produced copies of the lease registered on 20/4/2007, an unclear copy of the survey plan and demand notes for rates dated 8/1/2010, 21/11/2011. He also produced a copy of the Kenya Gazette dated 22/5/2015 confirming that Richard Kuria Mwaniki had been granted letters



- of administration intestate over the estate of Gidraph Mwaniki Kariri who died in Laikipia on 26/10/2008. He produced a copy of the search which is not legible and the lease issued to the 2nd Defendant. He also produced copies of the proceedings filed before the Nyeri ELC and a copy of the letter of allotment issued to Gidraph.
9. On cross-examination, he confirmed that the agreement which he tendered as evidence had the plot no. inserted in pen while the rest of the document was printed. The land was given to him in exchange for a car. He told the court that Mr. Mbutia gave him the allotment letter which he submitted during the transfer together with the receipt as evidence of payment of stand premium for processing of the title. When he was asked about the registration number for the motor vehicle, he explained that getting the new number would have taken time to be processed. He believed that the suit property was surveyed in 2007 because he saw the beacons even though he did not have the survey documents. The documents were taken to the lands office in Nairobi and registered on 20/4/2007.
 10. On being cross-examined by the State Counsel, he told the court he did not know if there was fraud committed by the Land Registrar and that he had not reported any fraud by the Land Registrar to the Directorate of Criminal Investigations (DCI). He later clarified that there were investigations being carried out regarding fraud after the 2nd Defendant lodged a complaint.
 11. Billy Nganga Maina, the 2nd Defendant in the suit gave evidence. He told the court that he was aware that his father Gideon Chris Maina Thuku had purchased two plots in Nanyuki being Nanyuki Municipality Block 8/904 and 905, the latter of which was transferred to him from Gidraph Mwaniki Kariri, who was his grandfather. He told the court that his father handled all the payments relating to the purchase price and the government fees. He confirmed that he signed all the documents for the transfer and obtained the new certificate and was emphatic that there was no fraud committed because this was a first registration.
 12. He produced a copy of the letter of allotment for unsurveyed commercial plot no. 4 Nanyuki Municipality dated 23/6/1993 issued to Gidraph M. Kariri, a part development plan and the sale agreement dated 6/6/1994 vide which Gidraph surrendered the letter of allotment for the sale of the land known as unsurveyed plot no. 4 to Gideon Chris Maina Thuku. He also produced a copy of the survey plan which is not very clear, letter from the Ethics and Anti-Corruption Commission (EACC) dated 28/9/2009 informing Engineer Gideon M. Thuku that the land dispute he had reported to EACC was private. He also produced a copy of the transfer of lease dated 7/2/2008 and booked for presentation as no. 134/12017, it bears a stamp of receipt by the Ministry of Lands Laikipia Lands Registry on 12/1/2017.
 13. Mr. Nganga produced a copy of the letter dated 20/7/2016 by the Director of Surveys informing the Chief Land Registrar that the registry index map (RIM) had been amended to reflect parcel no. 905 measuring 0.19 Hectares in accordance with F/R 466/140. He also produced a copy of the lease registered on 21/9/2016 in the name of Gidraph and the rent clearance certificate dated 21/8/2016 mentioning that the land was registered in Gidraph's name alongside the rates clearance certificate dated 10/1/2017. Mr. Nganga produced copies of the certificate of lease dated 12/1/2017 and the rent clearance certificate dated 10/2/2017, both issued in his name.
 14. Billy Nganga also produced a receipt dated 26/5/2016 issued by the government on payment of Kshs. 47,410/= whose breakdown include stand premium of Kshs. 40,000/=, stamp duty of Kshs. 2,560/= and survey fees of Kshs. 2,290/=. He also produced a copy of the instruction sheet given to Mwangi Ngari and associates for the survey of plots no. 3 and 4 dated 2/4/2007. He tendered in evidence an internal memo dated 9/10/2013 on the notepaper of the National Land Commission (NLC) seeking to know whether the Director of Surveys had caused the RIM for the suit property to be amended



- together with the response dated 17/10/2013 stating that parcel no. 905 had not been amended. He also produced a copy of the lease issued to the Plaintiff and the decree in Nyeri ELC Case No. 1 of 2017 issued on 12/1/2018 indicating that the Plaintiff's suit against Gideon Maina Thuku and Patrick Murimi Njogu had been dismissed for non-attendance with the Defendants being awarded costs.
15. On cross-examination, Mr. Nganga stated that he owned the suit property and that they were given the land by his grandfather Gidraph. He came to learn later that his father purchased the land from his grandfather. He told the court that before the land was transferred to him it was under his father's name. Richard Kuria Mwaniki was his grandfather and he died on 26/10/2008. By the time the lease was issued in 2016, his grandfather had died. He confirmed that the suit land emanated from an allotment and adverted to the letter of allotment dated 23/6/1993. He relied on the receipts to show that stand premium was paid. He told the court that the survey was done in 2007 and that his title was issued on 12/1/2017 while the case before the Nyeri ELC was pending. He was not aware that another title had been issued in the Plaintiff's name. He stated that Gidraph who was his grandfather signed the documents before he died. Later on while being cross examined, he clarified that Richard Kuria Mwaniki was his uncle and was the son of Gidraph. He explained that Gidraph signed the documents 8 months before he died.
 16. The 3rd Defendant called Pamela Muthoni Mutege, the Land Registrar of Laikipia County to give evidence on its behalf. She told the court that according to the records kept by the 3rd Defendant, the suit property was the property of the 2nd Defendant and there was no entry on the register showing that a lease and certificate of lease over the suit property were issued to the Plaintiff in April 2007 as he alleged. She maintained that the Plaintiff had never been issued title documents for the suit property and that any documents in the Plaintiff's custody relating to the suit property must have been fraudulently obtained since they were obtained before the suit property was surveyed. She added that the registration and issuance of title documents for the suit property to Gidraph Mwaniki Kariri and its subsequent transfer to the 2nd Defendant was done legally, regularly and procedurally in furtherance of the 3rd Defendants duties.
 17. On cross-examination, Ms. Mutege confirmed that according to the letter of allotment, the allottee was required to accept the offer within 30 days but was quick to clarify that the Land Registrar was not involved in the process of land allocation, which was done by the Commission of Land. She told the court that they register land after the lands department had dealt with it. She stated that the lease came from Ardhi House and was to be registered in Nanyuki as they opened the green and white cards.
 18. She confirmed that the lease documents had a place for the lessor to sign on the reverse of the document but maintained that the lease produced by the 2nd Defendant was proper. She told the court that the allocating body was Laikipia County Government but that the County did not sign the leases as these were signed by the person who prepared the lease on behalf of the Chief Land Registrar. She was not aware that the lessee was dead by 21/9/2016 when the lease was signed.
 19. She was aware that the DCI and EACC were carrying out investigations as noted on the white card. By the time she gave evidence she had not received any information from CID or EACC regarding the status of the investigations.
 20. She confirmed that the memorandum of registration of land which the Plaintiff's advocate referred her to and which the court noted was not legible was prepared in Ardhi House. She had just been shown that document by the Plaintiff's advocate. She told the court that she was seeing the Plaintiff's lease issued in 2007 for the first time and that that lease was not in their records. She did not wish to discuss the rates demand notes from the Municipal Council because she does not work there.



21. The Land Registrar could not tell when the survey was done but confirmed that the survey process came before a number was given for a plot and that it was not possible to get a title number before survey was done. She told the court that somebody from the Land Administration office in Ardhi House would be best placed to explain how the lease dated 20/4/2007 was issued to the Plaintiff. She explained that the Plaintiffs lease was executed before the land laws changed, and that it was executed prior to 2010. After 2010, the NLC was to allocate land in consultation with the County Government. The process of allocation of land and lease preparation was done elsewhere and they only registered the lease then issued the certificate of lease at the County lands registry. After 2010, NLC was to be involved.
22. After the 3rd Defendant had closed his case, the Plaintiff applied to reopen his case to produce additional documents. He produced a copy of the certificate of official search in respect of the suit property which was issued by the Nanyuki lands office on 8/1/2010 together with the receipt dated 8/1/2010 confirming that a certificate of lease had been issued to him on 20/4/2007.
23. The court directed parties to file and exchange written submissions. In his submissions, the Plaintiff analysed the evidence tendered by the parties and summarised two issues for determination which are; who between the Plaintiff and the 2nd Defendant was the lawful allottee of the suit property and who was entitled to ownership of the suit property. According to the Plaintiff, he had tendered evidence to support his acquisition of the suit property. He relied on Section 26 of the *Land Registration Act* and submitted that the 1st and 2nd Defendants had not adduced evidence to support the particulars of fraud which they pleaded in their defence regarding the allegation that his certificate of lease was issued before the suit land was surveyed. He relied on the evidence of the Land Registrar who confirmed that a parcel of land could not be allocated a title number before being surveyed to support the fact that by the time his title was issued the suit land had already been surveyed. The Plaintiff relied on the official search dated 8/1/2010 which confirmed that certificate of lease over the suit property had been registered at the Nanyuki land registry. He also relied on the fact that after the land was registered in his name he continued paying land rates to the Nanyuki Municipal council.
24. The Plaintiff referred to Section 3 of the *Law of Contract Act* which stipulates that a contract for the disposition of an interest in land must be in writing and signed by the parties. He submitted that the alleged gift or bequest by the late Gidraph to the 2nd Defendant was not in writing and was therefore void. He reiterated that Gidraph died on 26/10/2008 and could not have appeared before the Land Registrar to pay stamp duty or follow up the preparation of the lease in September 2016. Further, that a legal lease could not be issued to a dead person and that the documents issued in the name of Gidraph were fraudulent and did not confer a lawful title on the 2nd Defendant. Further, that by 2016 the transfer of the suit property which was registered in Gidraph name could only be effected by the administrator of this estate under the *Law of Succession Act* and not in any other manner.
25. The Plaintiff termed it curious as to how the late Gidraph could have signed the transfer to the 2nd Defendant in 2008 before paying stand premium and processing the title for the suit property since ideally he should have initiated the processing of the lease for the suit property first. He added that the other curious aspect was how the late Gidraph and the 2nd Defendant obtained the land reference for the suit property before payment of stand premium which was noted in the transfer documents.
26. The Plaintiff submitted that he had sued the 2nd Defendant's father, Gideon Chris Maina Thuku in Nyeri ELC 173 of 2013 and that the pleadings did not show that he was aware of the alleged transfer signed in 2008 to his son which he could have pleaded in his defence in that suit.



27. The Plaintiff went on to argue that the other question was whether if the suit property were allocated to him in 2007, would have been available for a second allocation to the 2nd Defendant? He relied on the decision *M’Mugwika M’Rugongo v Settlement Fund Trustees & Another* [2022] eKLR where the Court of Appeal found that the same land could not be allotted twice without following the procedure of repossession and forfeiture and that the first title in time prevailed. The Plaintiff urged that Gideon Chris Maina Thuku was a party to the case in Nyeri and should have sought to have his title cancelled instead of causing his ownership documents to disappear at the Nanyuki Land Registry so that he could cause a parallel title to be issued in his name.
28. The Plaintiff submitted that he was legally entitled to ownership of the suit property since he was still holding the certificate of lease issued to him in 2007 and maintained that the Defendants had not brought out any evidence impeaching the validity of his title. He maintained that since he was the first one to be allocated the suit property he was entitled to the land.
29. The 2nd Defendant also summarised the facts of the case and agreed with the Plaintiff on the issues for determination by this court. He submitted that the Plaintiff deliberately refused to state the origin of his land and restricted himself to 18/3/2007 when he exchanged the land for a car with Gabriel Mbutia even though the history of the plot dated back to 1993. That as an allottee of a government plot he was supposed to accept the offer in writing and pay the allotment fees and that such documents should have been passed to purchaser.
30. The 2nd Defendant argued that contrary to the Plaintiff’s assertion that he surrendered the letter of allotment and payment of allotment fees, there was nothing to show that the documents were surrendered and if anything, the Plaintiff could have retrieved copies of those documents from the lands office to support his claim. He submitted that the exchange agreement relied on by the Plaintiff was a fabricated document because it was dated 25/3/2007 but contained clauses which were performed in 2009. He urged that the agreement was backdated and that the plot mentioned in the agreement was not intended to be the suit property but a plot in Nairobi. The 2nd Defendant faulted the Plaintiff for not calling Gabriel Mbutia as a crucial witness in support of this claim. The 2nd Defendant maintained that to obtain a title over an unsurveyed plot, a part development plan must be drawn and approved following which the land is surveyed and the RIM drawn and approved by the Director of Surveys. He maintained that both parties had provided the same RIM but that it could not have been ready before 11/6/2007 and that for the Plaintiff to have inserted the land reference number in the exchange agreement and to have obtained a certificate of lease on 20/4/2007 was fraudulent. Further, that the documents were illegally obtained and were not registrable because the register did not exist then.
31. The 2nd Defendant submitted that the Plaintiff should have called the Land Registrar who signed his documents on 20/4/2007 to confirm that they were genuine. Regarding the payment of rates, the 2nd Defendant argued that the demand notices which the Plaintiff produced were not genuine and that they were for a plot in Nairobi town. Further, that there was no indication that the amount was paid anywhere. He went further to submit that the 2010 Constitution abolished municipal councils and so the Plaintiff could not have paid the land rates to the County Council in November 2011.
32. The 2nd Defendant submitted that his father Gideon Chris Maina Thuku engaged Mr. Mwangi Ngathu, a licensed surveyor to process the lease documents and that the surveyor did not complete the process until he sent the RIM to the Director of Surveys on 11/6/2007. He added that by 2008 the leases had been given registration numbers and that the original allottee signed the transfer documents on 7/2/2008 before he died on 26/10/2008. The 2nd Defendant maintained that the original allottee signed all the documents on 7/2/2008 including the lease and the transfer of lease. He added that the



- lease was legally transferred to him and he had a superior title to the suit property. He emphasized that the Plaintiff documents were not properly obtained and that the agreement of exchange was made in 2009 but backdated to 18/3/2007. He submitted that in April 2007 the suit property had not been registered and was not in existence until 2009 after the Director of Surveys approved it in November 2007.
33. The 2nd Defendant relied on *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR and *Rebecca Chepkemboi Soy v Geoffrey Tunai & 3 Others* [2020] eKLR in support of his claim and submitted that the Plaintiff procured the certificate of lease over the suit property before the lease came into existence. The 2nd Defendant argued that the Plaintiff had failed to establish the root of his title unlike his case where the original allottee passed on a letter of allotment and the pdp to him through his father and that he executed the documents before his death.
 34. The 3rd Defendant submitted that Sections 24, 25 and 26 of the Lands Act dealt with the sanctity of title and the rights of the land proprietor as well as grounds on which a title could be challenged. The 3rd Defendant submitted that the burden of proof lay with the Plaintiff and that he failed to discharge that burden as required by Section 107 of the *Evidence Act* and Section 26 (1) of the *Land Registration Act*. The 3rd Defendant submitted that in its view there was ample evidence showing conclusively that the 2nd Defendant was the registered proprietor of the suit property and that the Plaintiff had not tendered evidence of any fraudulent or illegal actions by the 3rd Defendant in any disposition over the suit property.
 35. The 3rd Defendant emphasized that courts have time and again held that allegations of fraud must have only be pleaded but proved and relied on *Vijay Morjaria v Nanshingh Madhusingh Darbar & another* [2000] eKLR. Further, that where one intended to impeach a title on the basis that it was procured by fraud or misrepresentation, then he needed to prove that the title holder was party to the fraud or misrepresentation. The 3rd Defendant submitted that the Plaintiff did not adduce evidence of fraud against it.
 36. The 3rd Defendant went further to submit that it had no knowledge of the alleged fraud regarding the transfer of the suit property and that its actions in registering the suit property in the names of the 1st and 2nd Defendants could not reasonably amount to taking part in the alleged fraudulent actions. It maintained that its actions were done pursuant to its statutory duties and that it did not perpetuate any fraud. The 3rd Defendant urged the court to dismiss the Plaintiff's claim and award it costs.
 37. The issue for determination is who between the Plaintiff and the 2nd Defendant has a superior title to the suit property. The Plaintiff and 2nd Defendants both hold titles over the suit property. The Plaintiff traces his title to a sale agreement that he entered into in 2007 vide which he exchanged the land with Gabriel Mbutia for a motor vehicle. He claimed that he surrendered the letter of allocation and evidence of payment of the stand premium when the title was processed in his name. He produced a copy of the certificate of lease issued in his name on 20/4/2007 by the Laikipia District Registry. He also produced a copy of the memorandum of registration of lands which the Land Registrar told the court she was seeing it for the first time. He also produced a lease which was executed by the Commissioner of Lands on 8/2/2007 and registered on 20/4/2007. He also produced a survey plan which though not very legible shows that the survey of the land which created parcel number 905 was approved in 2007. The survey plan which the 2nd Defendant produced is a bit clearer and shows that the survey of the suit property was approved in 2007.
 38. There are inconsistencies in the evidence of the 2nd Defendant regarding when the suit property was surveyed and the manner in which the land was transferred to his name. The 2nd Defendant's claim is



- that his grandfather called Gidraph was allocated plot number Uns. Commercial Plot No. 4 Nanyuki Municipality vide the letter of allotment dated 23/6/1993. The letter of allotment required Gidraph to accept the offer and pay stand premium of Kshs. 40,000/= among other charges within 30 days. According to the receipt produced by the 2nd Defendant, the stand premium was paid on 26/5/2016. What this proves is that Gidraph did not accept the offer for the allotment of the plot within 30 days of 23/6/1993 yet he was required to signify his acceptance by paying the sum indicated on the letter of allotment within 30 days.
39. The 2nd Defendant claimed that Gidraph sold the plot he was allotted to Gideon Chris Maina Thuku for Kshs. 340,000/= on 6/6/1994 and that he surrendered the letter of allotment to the purchaser. If Gidraph sold the plot allocated to him vide the letter of allotment dated 23/6/1993 to Gideon Chris Maina Thuku for Kshs. 340,000/= on 6/6/1994 then by 2008 he did not have any interest in that land and could not have transferred it to the 2nd Defendant in 2008 or 2016 for the matter. It is difficult to comprehend how the lease could have been registered in Gidraph's name on 21/9/2016 yet he died on 23/10/2008. More so if he had sold the plot to Gideon Maina Thuku on 6/6/1994.
 40. The 2nd Defendant produced a copy of the transfer of lease for the suit property indicated to have been executed by Gidraph on 7/2/2007. The transfer gives the land reference number as Nanyuki Municipality Block 8/905. He also produced a copy of the lease registered on 21/9/2016 in Gidraph's name which leads one to conclude that if the plot allocated to Gidraph had not been surveyed until 2016 when the lease was registered in Gidraph's name then he possibly could not have executed the transfer of lease for this parcel of land on 7/2/2008 or before he died on 26/10/2008.
 41. The letter by the Director of Surveys dated 20/7/2016 informed the Chief Land Registrar that RIM had been amended to reflect parcel no. 905 measuring 0.19 Hectares in accordance with F/R 466/140. Ideally, that is the time when the RIM would have been amended to reflect parcel numbers 904 to 906 which were created out of the same subdivision. The court finds that the suit land was surveyed and given its parcel number in 2007.
 42. The 2nd Defendant challenged Plaintiff's evidence that he paid rates to the Municipal Council in November 2011 on the ground that the 2010 Constitution abolished municipal councils. He did not go further to establish when it is that the County Government of Laikipia put in place systems for the payment of rates after the creation of the County Government of Laikipia and stopped using the old system of rates collection.
 43. The official search dated 13/7/2011 which the Plaintiff tendered in evidence confirms that the Plaintiff's lease over the suit property had been registered at the Nanyuki land registry on 20/4/2007 and a certificate of lease issued to him on that day. The search was not controverted by the Defendants, not even by the Land Registrar.
 44. The Land Registrar told the court that according to the records kept by the 3rd Defendant, there was no entry on the register showing that a lease and certificate of lease over the suit property were issued to the Plaintiff in April 2007. The only plausible explanation for this is that the lease and other records supporting the registration of the Plaintiff as proprietor of the suit property must have been deliberately removed from the lands office.
 45. The evidence led by the Land Registrar on the registration of land after the lease had been prepared in Ardhi House resonates with the documents and evidence produced by the Plaintiff. The Plaintiff's title was first in time and prevails over that of the 2nd Defendant in line with the finding in *Gitwany Investments Limited v Tajmal Limited & 3 Others* [2006] eKLR.



46. The Plaintiff has proved his case on a balance of probabilities. The court grants prayers (a) and (b) of the Amended Plaint dated 19/5/2017. The 2nd Defendant's Counterclaim dated 16/6/2022 is dismissed. The Plaintiff is awarded the costs of the suit and the counterclaim.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF AUGUST 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Peter Gichuhi for the Plaintiff

Mr. Kebuka Wachira for the 2nd Defendant

Ms. Wairimu Karanja for the 3rd Defendant

Court Assistant: Diana Kemboi

