



REPUBLIC OF KENYA



**Kamungu & another v Mutwamburi & 16 others (Environment & Land
Case 58 of 2020) [2024] KEELC 5835 (KLR) (5 August 2024) (Judgment)**

Neutral citation: [2024] KEELC 5835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 58 OF 2020**

**BM EBOSO, J
AUGUST 5, 2024**

BETWEEN

KIRIKA KAMUNGU 1ST PLAINTIFF

JOHN NJOROGE KIRIKA 2ND PLAINTIFF

AND

MARGARET NJERI MUTWAMBURI 1ST DEFENDANT

GABRIEL NGACHA NJUGUNA 2ND DEFENDANT

GRACE NJERI NJUGUNA 3RD DEFENDANT

GEOFFREY GICHUHI NJOGU 4TH DEFENDANT

ALICE WAITHIRA WANYOIKE 5TH DEFENDANT

PETER MURATHI KARIUKI 6TH DEFENDANT

BISHAR ALI 7TH DEFENDANT

GERALD GITEMA NJAU 8TH DEFENDANT

JAMES MUIGAI NJOROGE 9TH DEFENDANT

ROBERT MBUGUA HEHO 10TH DEFENDANT

SELINAH NJERI KAMAU 11TH DEFENDANT

JOSEPH KINGORI GATHUA 12TH DEFENDANT

MARGARET NJOKI NJOROGE 13TH DEFENDANT

SARAH NUNGARI NJUGUNA 14TH DEFENDANT

RUIRU DISTRICT LAND REGISTRAR 15TH DEFENDANT

ATTORNEY GENERAL 16TH DEFENDANT



JUDGMENT

1. The dispute in this suit revolves around the question as to who is the legitimate proprietor of a parcel of land measuring 0.500 of a hectare, located within a subdivision scheme that was previously owned by M/s Githunguri Constituency Ranching Company Ltd [referred to in this Judgment as “the company”]. The company contends that the land was surveyed as Ruiru/Ruiru East Block 1 (Githunguri)/1362, adding that the parcel is located on Registry Map Sheet No 1.
2. The 1st defendant claims to have been the legitimate owner of the suit land by virtue of being a shareholder of the company and a balloted allottee of the land. She procured title number Ruiru/Ruiru Block 1 Githunguri/1362 [without the word “East”] which she contends relates to the suit land. Her title which reads as Ruiru/Ruiru Block 1 Githunguri/1362 [without the word “East”] is expressed as located on Registry Map Sheet No 4. The extract of the register which the Land Registrar presented indicates that the word “East” was inserted in the Land Register as a subsequent ink addition to the original typed text in the Land Register.
3. The 13 subdivision registers and titles which the 1st defendant surveyed out of her title indicate that the subdivision parcels are located on Registry Map Sheet No 2.
4. The company, through the evidence of its Board Chairman, contests the 1st defendant’s title, contending that the 1st defendant has never been a member of the company, and that her title and all the 13 subdivision titles she procured were obtained fraudulently. According to the company, the legitimate owner of the land is Kirika Kamungu [the plaintiff]. I will briefly outline the parties’ respective cases, evidence and submissions before I analyse and dispose the issues that fall for determination in the suit.

Plaintiffs’ Case

5. The plaintiffs initiated the suit through a plaint dated 18/8/2020. She sought the following verbatim reliefs against the defendants.
 - a. A declaration that the 1st plaintiff is the absolute owner of all that property measuring 1 ¼ acre denoted by Ballot No. 742 being parcel no. Ruiru/Ruiru East Block 1 (Githunguri) 1362 from Githunguri Constituency Ranching Co Ltd.
 - b. That an order of cancellation of all the defendants’ titles arising out of the sub-division of Ruiru/Ruiru East Block 1 (Githunguri) 1362, to wit, titles ranging from Ruiru/Ruiru East Block 1 (Githunguri) 1362 and be issued in the names of the 1st plaintiff herein, Kirika Kamau.
 - c. That an order of demolition and eviction of all those structures erected on all that parcels arising from sub-division of the main parcel being Ruiru/Ruiru East Block 1 (Githunguri)/4023-4035.
 - d. That the OCS Ruiru Police Station and/or in charge Provincial Administration does ensure compliance of the eviction and demolition orders issued by the court.
 - e. Costs and interest of the suit.
6. The case of the plaintiffs is that the 1st plaintiff is the bonafide owner of the suit land, denoted by Share Certificate No. 1656 and Ballot No. 742, both issued by Githunguri Constituency Ranching



Company Ltd (the 17th defendant). The 1st plaintiff contends that he acquired the suit land from the 17th defendant by dint of being a member of the said company, and having paid all requisite fees and having balloted for the suit land. The plaintiffs add that the 1st defendant fraudulently caused the suit land to be registered in her name and fraudulently procured a title deed relating to the land. The 1st defendant thereafter caused the suit land to be subdivided into 13 subdivisions, namely Ruiru/Ruiru East Block 1/4023 to Ruiru/Ruiru East Block 1/4035. The 1st defendant thereafter transferred 12 of the 13 subdivisions to the 2nd to the 14th defendants. Aggrieved by the actions of the defendants, the plaintiffs filed this suit.

Case of the 1st to the 14th Defendants

7. The 1st to the 14th defendants filed a joint statement of defence dated 15/10/2020. The defence was amended on 11/8/2022. The case of the 1st to the 14th defendants is that in October 1990, the 1st defendant became a member of the 17th defendant by buying shares in the company and was issued with Share Certificate No. 82568. The actual purchase of the shares in the company was procured by the 1st defendant's late husband, Stephen Kariuki, on her behalf. Upon being issued with Share Certificate No. 82568, the 1st defendant participated in the balloting exercise and was allocated Ballot No. 1362 which she misplaced. She reported the loss at Ruiru Police Station and was issued with a police abstract on 1/9/2003. On 4/9/2003, the 1st defendant was registered as proprietor of the suit land. The registration was facilitated by the 17th defendant.
8. They contend that on 11/2/2006, the 1st defendant entered into a sale agreement with one David Chege Kariuki for the sale of the suit land. David Chege Kariuki was, however, unable to complete payment of the purchase price and he allowed the 1st defendant to sell the suit land to the 2nd to the 14th defendants. The 2nd to the 14th defendants completed paying the purchase price to the 1st defendant. The 1st defendant subsequently subdivided the land and the subdivisions parcels were transferred into the names of the 2nd to the 14th defendants. They contend that they immediately took vacant possession and developed the subdivisions.

Case of the 15th and the 16th Defendants

9. The 15th and the 16th defendants entered appearance on 5/11/2020 and filed a defence dated 5/11/2020. Their case was that the registration of the mother title and the subdivisions was based on documents presented to the Land Registrar. They contended that the Land Registrar exercised due diligence and, believing the documents to be genuine, carried out the registration. The 15th and 16th defendants denied receiving any demand nor notice of intention to sue. The 15th and 16th defendants contended that the plaintiffs were not entitled to the orders sought because of their failure to comply with Section 13A of the [Government Proceedings Act](#). The 15th and 16th further contended that should they be found liable by this Court they would seek indemnification under Order 1 Rule 24 of the [Civil Procedure Rules](#) against the 1st defendant.

Case of the 17th Defendant

10. Githunguri Constituency Ranching Company Ltd were joined to the suit as 17th defendant in July 2022. They did not file a defence in the suit. Its Board Chairman was subsequently called as a witness and testified as PW2.

Plaintiff's Evidence

11. During trial, Kirika Kamungu testified as PW1. He adopted his written witness statement dated 10/8/2020 and produced the following exhibits: (i) share certificate no. 1656 and ballot no. 742; (ii)



bundle of receipts from Githunguri Constituency Ranching Co Ltd; (iii) green card for Ruiru/Ruiru Block 1 (Githunguri) 1362; (iv) green cards for Ruiru/Ruiru East Block 1/4023 to 4032 & 4034; (v) Judgment in Thika Criminal Case No. 3319 of 2012; (vi) letter dated 16/11/2021; (vii) letter dated 20th November from Githunguri Constituency Ranching Company Ltd; (viii) List of Directors of Githunguri Constituency Ranching Company Ltd; and (ix) Board Resolution by Githunguri Constituency Ranching Company Ltd.

12. His evidence was that he was the bonafide owner of land parcel number Ruiru/ Ruiru East Block 1 (Githunguri) 1362 having paid all the requisite purchase price and fees and having been issued with receipts, share certificate and ballot by Githunguri Constituency Ranching Company Ltd. PW1 added that the 1st defendant illegally registered the suit land in her name and procured an illegal title deed in her favour. PW1 stated that, upon conducting investigations, he established that the 1st defendant had subdivided the suit land into 13 subdivisions, namely, Ruiru/Ruiru East Block 1/4023 to 4035 and sold them to the 2nd to the 14th defendants. PW1 testified that the 1st defendant was charged at the Thika Chief Magistrate Court with the offence of illegally obtaining registration of the suit land and obtaining money by false pretences in Criminal Case No. 3319 of 2012: Republic vs Margaret Njeri Mutwamburi. PW1 stated that the 1st defendant was found guilty of obtaining registration of the suit land by false pretences. He added that the 1st defendant had not appealed the decision of the Thika Chief Magistrate Court. PW1 urged the court to grant him judgment against the defendants.
13. John Maina Mburu testified as PW2. He adopted his witness statement dated 4/3/2021 as part of his sworn evidence-in-chief. He testified that he was the chairman of the 17th defendant, having been first elected on 12/9/2009. He stated that for a person to become a shareholder of the 17th defendant, he or she had to contribute funds and purchase a minimum of 100 shares in the company.
14. PW2 added that after acquiring 100 shares, a shareholder was entitled to 1 ¼ acre shamba, ¼ acre shamba, and 1/8 acre plot. In case a shareholder had less than 100 shares, he or she was entitled to benefit from a portion equivalent to his or her shares. PW1 further stated that for a shareholder to obtain a title deed he or she had to be cleared by the 17th defendant's directors who would sign and seal the transfer forms and affix their photographs onto the transfer form. PW2 stated that parcel number Ruiru/Ruiru East Block 1/[Githunguri]/1362 was a previous un-surveyed 1¼ acre land held under ballot number 742 and share certificate number 1656, allocated to the 1st plaintiff. PW2 added that the records held by the 17th defendant indicated that the suit land was allocated to the 1st plaintiff and had never been transferred to any other member or person.
15. PW2 stated that the documents produced by the 1st plaintiff and expressed as having been issued by the 17th defendant were genuine. PW2 added that he got to know the 1st defendant when she was arrested by the Police. He testified that the 1st defendant was not and had never been a member of the 17th defendant.
16. PW2 further testified that although the title held by the 1st defendant Ruiru/Ruiru/Block 1 Githunguri/1362 did not relate to the suit land, she used the title to grab the suit land. PW2 added that the title held by the 1st defendant read Ruiru/Ruiru Block 1 (Githunguri)/1362 while the correct survey number of the suit land was Ruiru/Ruiru East Block 1 (Githunguri) 1362. He added that without the word "East", then the property would not be among the parcels in the sub-division scheme owned by the 17th defendant.
17. PW2 testified that the title held by the 1st defendant indicated that the parcel was on Map Sheet Number 4, adding that the correct Map Sheet was No 1. PW2 stated that the share certificate and the clearance produced by the 1st defendant were forgeries. PW2 added that one Peter Wainaina Kamunge was the Secretary of the 17th defendant in 1990 and that he was familiar with his signature and



handwriting. He stated that the signature and handwriting contained in the share certificate produced by the 1st defendant did not belong to the said Peter Wainaina Kamunge. He added that the clearance certificate produced by the 1st defendant was fake for the following reasons: (i) the ballot number was not indicated; (ii) the area indicated in the certificate was captured twice instead of once; (iii) the Map Sheet Number indicated was not correct; (iv) the names of the directors listed on the letter-head were incorrect; and (v) the signature on the certificate did not belong to the managing director.

Evidence of the 1st to the 14th Defendant

18. Margaret Njeri Mutwamburi testified as DW1. She adopted her witness statement dated 14/12/2020 as part of her sworn evidence-in-chief. She produced the fifty exhibits contained in the defendants' bundle of documents dated 11/12/2020.
19. Her testimony was that on 8/10/1990, she became a member of Githunguri Constituency Ranching Company Ltd after her late husband, Stephen Kariuki, bought shares in the company on her behalf. She added that she was issued with Share Certificate No. 52568. She stated that she balloted for a plot and was allocated ballot No. 1362. However, she misplaced the said ballot. Consequently, she reported the loss at Ruiru Police Station and was issued with a police abstract on 1/9/2003. DW1 stated that on 4/9/2003, she was registered as proprietor of the suit land through facilitation by Githunguri Constituency Ranching Company Limited. DW1 added that on 11/2/2006, she entered into a sale agreement with one David Chege Kariuki for sale of the suit land. However, because the said David Chege Kariuki was unable to complete payment of the purchase price, he allowed her to sell the suit land to the 2nd to the 14th defendants. DW1 added that once the 2nd to the 14th defendants completed paying the purchase price, the suit land was subdivided and registered in their names. DW1 denied committing fraud and stated that she was the rightful registered proprietor of the suit land, hence she was entitled to deal with the suit land, including selling it to the 2nd to the 14th defendants.
18. DW1 stated that in 2012, she was charged with the offence of obtaining land registration by false pretence contrary to Section 320 of the Penal Code and obtaining money by false pretence contrary to Section 313 of the Penal Code. She further stated that she was convicted on the first count and acquitted on the second count. She added that she filed Kiambu High Court Criminal Appeal No. 69 of 2018 to challenge the conviction. She stated that the appeal was still pending at the High Court. She urged the court to dismiss the suit and award costs of the suit to the defendants.
19. Gerald Gitema Njau testified as DW2. He adopted the contents of his witness statement dated 7/12/2020 as part of his sworn evidence-in-chief. He stated that he was the registered proprietor of land parcel number Ruiru/Ruiru East Block 1/4028, which was a subdivision out of the suit land.
20. DW2 stated that in 2009, the 2nd to the 14th defendants entered into an agreement with David Chege Kariuki for purchase of the suit land. He added that at the time, the said David Chege Kariuki was in the process of purchasing the suit land from the 1st defendant but he had not completed paying the purchase price. DW2 stated that the 2nd to the 14th defendants paid balance of the purchase price to the 1st defendant on diverse dates and that upon completing the payment of the purchase price, the 1st defendant subdivided the suit land into Ruiru/Ruiru East Block 1/4023 to 1/4035 and transferred the subdivisions to the 2nd to the 14th defendants. DW2 stated that before purchasing the subdivisions, they conducted due diligence which established that the 1st defendant was the registered proprietor of the suit land. DW2 stated that the 2nd to the 14th defendants had made developments on the suit land in which they resided. He urged the Court to find that the 1st defendant was the lawful owner of the suit land and that she lawfully transferred the sub-divisions to the 2nd to the 14th defendants.



Land Registrar's Evidence

21. Robert Mugendi Mbuba, the Ruiru Land Registrar, testified as DW3. He stated that his registration number as a land registrar was 327, adding that he was stationed at Ruiru Land Registry. He testified that according to the records at the Ruiru Land Registry, the suit land was registered on 4/9/2003 in the name of the Government of Kenya. He added that the suit land was then transferred to the 1st defendant on the same day and a title was issued to her. DW3 stated that on 19/8/2010, the land register was closed on subdivision, adding that 13 sub-divisions were created and title numbers 4023 to 4035 were issued. DW3 stated that the 1st defendant subsequently transferred the subdivided properties save for parcel number Ruiru/Ruiru East Block 1 (Githunguri)/4033.
22. DW3 produced the following exhibits: (i) a certified copy of the Green Card for Ruiru/Ruiru Block 1 (Githunguri) 1362 bearing the word "East" inserted in handwritten ink; (ii) certified copies of the 13 Green Cards for the subdivisions 4023 to 4035; (iii) mutation form for Ruiru/Ruiru East Block 1 (Githunguri) 1362; (iv) transfer of Ruiru/Ruiru Block 1 (Githunguri) 1362 [without the word "East"] from the Government of Kenya to Margaret Njeri Mutwamburi dated 4/9/2003; (v) Clearance Certificate reference number C45/69/CC/TD/2/8/03 dated 16/4/2003 relating to Ruiru/Ruiru Block 1 (Githunguri) 1362 [without the word "East"]; (vi) Share Certificate Number B2568 from Githunguri Constituency Ranching Limited in the name of Margaret Njeri Mutwamburi; (vii) Police Abstract reference number 1/9/03 issued to Margaret Njeri Mutwamburi; (ix) Receipt from the Department of Lands reference number 1593193 dated 30/11/2009 issued in relation to Ruiru/Ruiru Block 1 [Githunguri] 1362 [without the word "East"] attached to an application for search by Simon Maganga Mwawasi.
23. During cross-examination, DW3 stated that the documents presented by the 1st defendant to the land registry for the registration of the suit land in her name were the clearance certificate dated 16/4/2003 and the transfer dated 4/9/2003. DW3 admitted that the said transfer was neither executed by the Commissioner of Lands nor witnessed. He also admitted that the transfer was not signed by the Land Registrar and was not registered. He added that Githunguri Constituency Ranching Company Limited owned three blocks and that whenever there was a dispute relating to ownership of a property within the three blocks, the Land Registrar would refer the dispute to the company to confirm the identity of the shareholder.

Plaintiffs' Submissions

24. The plaintiffs filed written submissions dated 3/11/2023, through M/s Kanyi & Kiruchi & Company Advocates. Counsel for the plaintiffs identified the following as the four issues that fell for determination in the suit: (i) Who between the 1st plaintiff and the 1st defendant had shown/proved the root of their title; (ii) Whether the plaintiff's suit was merited; (iii) What orders should the Court issue; and (iv) What orders should issue with regard to costs of the suit.
25. On who between the 1st plaintiff and the 1st defendant had proved the root of their title, counsel for the plaintiffs relied on Section 107 of the *Evidence Act* and the decisions in the cases of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR and *Munyu Maina vs Hiram Gathiba Maina* [2013] eKLR. Counsel submitted that the 1st plaintiff was able to show the root of his title by producing payment receipts, the ballot giving rise to the land, share certificate and a copy of the company's register which showed that he was the legitimate owner of the suit land. Counsel faulted the 1st defendant for failing to adduce a single receipt to show payment for shares in the company. Counsel further faulted the 1st defendant for claiming that she held ballot number 1362 under the mistaken belief that the ballot number corresponded with the parcel number of a property allocated



to a shareholder. Counsel submitted that the company's register showed that ballot number 742 held by the 1st plaintiff gave rise to parcel number 1362 after survey.

26. Counsel submitted that the 1st defendant had never challenged her conviction relating to the offence of obtaining registration of title relating to the suit land by false pretence in Thika Chief Magistrate Court Criminal Case No. 3319 of 2012. Counsel argued that the 1st defendant acquired the registration of the suit land by false pretence and therefore had no proper title to transfer to the 2nd to 14th defendants. Counsel for the plaintiffs added that the Chairman of the Company was on record informing the Court that all the documents by the 1st defendant were fraudulently acquired hence they were not legitimate. Counsel relied on the case of *Esther Ndegi Njiru & Another vs Leonard Gate* [2014] eKLR to buttress his submission.
27. On whether the plaintiffs' case was merited, counsel submitted that the plaintiffs had tendered evidence that was more believable than that adduced by the defendants. He added that the 1st plaintiff had been able to demonstrate, through documentary evidence, the root of his title which originated from Githunguri Constituency Ranching Company Limited. He added that the chairman of the company had all the records that supported the 1st plaintiff's ownership of the suit land. Counsel argued that the plaintiffs had proved their case to the required standard.
28. On the orders that ought to be issued, counsel argued that the 2nd to the 14th defendants were not exempted from the provisions of Section 26 of the *Land Registration Act*, 2012. Counsel submitted that as long as the title to the suit land was acquired fraudulently, then the titles held by them ought to be nullified. Counsel relied on the decisions in the cases of *Daudi Kiptugen vs Commissioner of Lands Nairobi & 4 Others* [2015] eKLR and *Peter Paul Ndururi (Suing on behalf of Donor Samuel Wamutu Waiganjo) vs Kimani Njuguna & 6 Others* [2021] eKLR. Counsel added that the Court ought to invoke Section 80 of the *Land Registration Act* and nullify the 1st to the 14th defendants' titles given that the titles had been generated fraudulently. Counsel urged the Court to allow the plaintiffs' suit entirely.
29. On the issue of costs, counsel relied on the principle that costs should follow the event. Counsel added that the 1st defendant ought to be condemned to pay costs for having orchestrated the fraudulent dealings and having been convicted of the offence of obtaining registration by false pretence.

1st to 14th Defendants' Submissions

30. The 1st to the 14th defendant filed written submissions dated 13/10/2023 through M/s Wanyaga & Njaramba Advocates. They deciphered the following as the main issues that fell for determination in the suit: (a) Who is the absolute owner of the suit land between the 1st plaintiff and the 1st defendant; (b) Whether the 2nd to the 14th defendants' titles arising out of the subdivision of the suit land should be cancelled and have the defendants evicted from the suit land; (c) Who should bear costs of the suit.
31. On who was the absolute owner of the suit land as between the 1st plaintiff and the 1st defendant, counsel for the 1st to the 14th defendants submitted that both the 1st plaintiff and the 1st defendant produced share certificates issued to them by the 17th defendant. He added that the share certificate issued to the 1st plaintiff was dated October 1972 while the one issued to the 1st defendant was dated October 1990. Counsel further submitted that the 1st plaintiff did not pursue registration of the suit land and issuance of title while the 1st defendant did. Counsel contended that the 1st defendant was issued with a clearance certificate by the 17th defendant and was registered as the proprietor of the suit land. Counsel added that although PW2 denied ever issuing the clearance certificate to the 1st defendant, there had never been forgery accusations against the 1st defendant.



32. Counsel argued that DW3 testified that the 1st defendant presented all the requisite documents needed to effect registration of the suit land in her favour. Counsel for the 2nd – 14th defendants submitted that the 1st defendant was unable to explain how she acquired the suit land during the criminal trial because her husband was the one who purportedly purchased the shares in the 17th defendant on her behalf.
33. On whether the 2nd to the 14th defendants' titles arising out of the subdivision of the suit land should be cancelled and the defendants be evicted from the suit land, counsel submitted that the 2nd to the 14th defendants conducted due diligence, including obtention of an official search, and established that the 1st defendant was the registered proprietor of the suit land. Counsel argued that the 2nd to 14th defendants were innocent purchasers for value without notice. Counsel added that the transaction between the 1st defendant and the 2nd to the 14th defendants was not marred with fraud. Counsel contended that the 1st defendant had a valid title deed and there was nothing to suggest that the 2nd to the 14th defendants knew about the double allocation of the suit land by the 17th defendant. Counsel relied on the decisions in the cases of *Elizabeth Wambui Gitbinji & 29 Others vs Kenya Urban Roads Authority* [2019] eKLR and *Jackson Kipngetich Komen v K-Rep Bank Limited & 2 Others* [2018] eKLR.
34. Counsel submitted that the Court should find in favour of the 1st to the 14th defendants and direct the 17th defendants to compensate the 1st plaintiff. Counsel contended that punishing the 1st to the 14th defendants who are innocent of any mistake or fraud, would be unjust. Counsel submitted that the 1st plaintiff did not take possession of the suit land until sometime in 2011, when he visited the suit land through the 17th defendant's official to claim interest therein. Counsel argued that the 1st plaintiff was indolent and slept on his rights, hence equity should not come to his aid. Counsel relied on the decision in the case of *Ibrahim Mungara Mwangi vs Francis Ndegwa Mwangi* [2014] eKLR.
35. On costs of the suit, counsel relied on the principle that costs follow the event and submitted that, given that the 1st to the 14th defendants had demonstrated that they were entitled to the suit land, costs of the suit should be awarded to them.

15th and 16th Defendants' Submissions

36. The 15th and 16th defendants filed written submissions dated 15/11/2023 through Mwiwaki Ndundu Advocate, a Senior State Counsel in the Office of the Attorney General. Counsel identified the following as the two issues that fell for determination in the suit: (i) Who between the plaintiff and the 1st defendant was the bonafide owner of the suit property; and (ii) Whether the 2nd to 14th defendants had valid titles to the suit land.
37. On who the bonafide owner of the suit property was, counsel submitted that the 1st plaintiff substantiated her claim of ownership of the suit property by producing a share certificate, a ballot card and receipts for payments made to the 17th defendant in relation to the suit land. Counsel added that the plaintiffs' evidence was corroborated by the Chairman of the 17th defendant who testified on their behalf to the effect that the 1st plaintiff was the genuine owner of the suit property and that Ballot no. 742 held by the plaintiff resulted into the suit property.
38. Counsel further submitted that although the 1st defendant claimed to hold ballot no. 1362, the records of the 17th defendant did not support her evidence, given that the ballot number and the parcel number were different. Counsel relied on the decision in the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2006] eKLR where the court held that when faced with a case of two or more titles over the same land, then the court has to make an investigation in order to determine which of the two titles should be upheld.



39. Counsel contended that it was not in doubt that the suit property was initially private land that was owned, sub-divided and sold to members of the 17th defendant, hence documentation had to be availed at the Land Registry to support registration and issuance of title. Counsel further submitted that the registration of the 1st defendant as the proprietor and the subsequent subdivisions were based on the documents presented to the 15th defendant's offices. Counsel added that the 15th defendant exercised due diligence and, believing that the presented documents were genuine, effected the registration.
40. Counsel added that the fact that the 1st defendant was charged and convicted of the offence of obtaining registration by false pretences in Thika CMCC Criminal Case No. 3319 of 2012 further proved that the 1st defendant obtained registrations of the suit land through dubious means and thus was not the bonafide owner. Counsel added that the conviction together with the evidence adduced by PW2 were sufficient grounds for impeachment of the 1st defendant's title under Section 26 (1) (a) of the [Land Registration Act](#) because she was found to have contributed to the misrepresentation and fraud in the registration.
41. On whether the 2nd to 14th defendants had valid titles to the suit land, counsel submitted that since the 1st defendant's registration was obtained through misrepresentation of facts to the 15th defendant, her registration was void ab initio. Counsel added that the sub-division of the suit property as well as the transfer of the sub-divisions to the current registered owners were also null and void. Counsel contended that the 1st defendant did not pass any registrable right to the suit property to the 2nd to 14th defendants, hence they did not obtain valid titles to the suit property.
42. Counsel argued that the principle of "Nemo Dat quid Non Habet" applied to the purported transfer of the suit property to the 2nd defendant. Counsel further submitted that a person cannot give a better title than what he/she has. Counsel contended that whereas it is notable from the evidence that the 2nd to the 14th defendants were innocent purchasers for value and that no evidence was led by the plaintiffs to prove that they fraudulently procured the registrations in their favour, their titles can still be impeached under Section 26 (1) (b) of the [Land Registration Act](#). Counsel relied on the case of [Elijah Makeri v Stephen Muigai Njuguna & Another](#) [2013] eKLR.
43. In conclusion, counsel submitted that going by the evidence adduced during trial, the 1st plaintiff is the bonafide owner of the suit land and is entitled to all the rights and privileges relating to the suit property. Counsel added that the 1st defendant fraudulently and illegally registered herself as the owner of the suit property and transferred the same to the other defendants knowingly with the intention to defraud them.

Analysis and Determination

44. I have considered the pleadings, evidence and submissions tendered in this suit. I have also considered the legal frameworks and the jurisprudence relevant to the issues that fall for determination in the suit. Taking into account the pleadings, evidence and submissions that were tendered in this suit, the following are the key issues that fall for determination in the suit: (i) What is the correct survey number of the suitland? (ii) Whether title number Ruiru/Ruiru Block 1 (Githunguri) 1362 [without the word "East"] which the 1st defendant procured in relation to the suit land was legitimate? (iii) Whether the 1st defendant acquired a valid title to the suit land; (iv) Whether the 1st defendant passed valid subdivision titles to the 2nd to the 14th defendants; (v) Whether the plaintiff is the legitimate owner of the suit land; (vi) What order should be made in relation to the costs of this suit.
45. The first issue relates to the correct survey number of the suit land. The suit land falls within a subdivision scheme that was owned by Githunguri Constituency Ranching Company Ltd. The 1st



- defendant is waving a title deed indicating that the suit land was surveyed and registered as Ruiru/Ruiru Block 1 (Githunguri)/1362 [without the word “East”], meaning that the suit land is located within Ruiru Block 1 (Githunguri). Indeed, the transfer dated 4/9/2003 and the clearance certificate dated 16/4/2003 which the 1st defendant used to procure the impugned registration bear Ruiru/ Ruiru Block 1 (Githunguri) /1362 as the survey number of the suit land. What the 1st defendant failed to explain are the circumstances under which the subsequent 13 subdivisions bear “Ruiru East Block 1 (Githunguri)” [with the word “East”] as the block number within which the suit land is located.
46. The Chairman of Githunguri Constituency Ranching Company Ltd, John Maina Mburu, testified as PW2. His evidence was that the 1st defendant had never been a shareholder of the company. He stated that although the title deed which the 1st defendant held did not relate to the suit land, she used it to grab the suit land. His evidence was that whereas the 1st defendant held title deed number Ruiru/ Ruiru Block 1/1362 which did not relate to any land in the Company’s Subdivision Scheme, she used it to grab land parcel number Ruiru/ Ruiru East Block 1/(Githunguri)/1362 which falls within the Company’s Subdivision Scheme. PW2 added that whereas the title held by the 1st defendant indicated that the suit land was to be found on Registry Map Sheet No 4, the suit land is located on Registry Map Sheet No 1. PW added that the company owned three blocks, namely: (i) Ruiru West Block 1; (ii) Ruiru East Block 1; and (iii) Ruiru/ Kiu Block 2.
47. Strangely, whereas the mother title which the 1st defendant held was expressed as relating to land within a block that was identified as “Ruiru Block 1 (Githunguri)”, all the 13 subdivision titles that she purported to survey out of the said land bear a new block number, namely “Ruiru East Block 1 (Githunguri)”. It is also not lost to the court that in an unexplained attempt to alter the original land register which did have the word “East”, the said word has been inserted in ink without any countersigning and without any indication as to the date when the hand written word “East” was inserted. The purported transfer and clearance certificate which were the foundational documents that generated the impugned land register and title do not, however, bear the word “East”.
48. From the above evidence, it is clear that the suit land falls within a block surveyed as Ruiru East Block 1 (Githunguri) which belonged to M/s Githunguri Constituency Ranching Company Ltd. It is also clear that the correct survey number for the suit land is Ruiru/Ruiru East Block 1 (Githunguri)/1362 and the said land belonged to M/s Githunguri Constituency Ranching Company Ltd. Put differently, title number Ruiru/ Ruiru Block 1 (Githunguri)/1362 which the 1st defendant held did not relate to the suit land and could not give rise to the subdivision titles that the 2nd to the 14th defendants hold.
49. The second issue is whether title number Ruiru/ Ruiru Block 1 (Githunguri)/1362 which the 1st defendant procured in relation to the suit land was legitimate. The court’s finding on the first issue is that title number Ruiru/ Ruiru Block 1 (Githunguri) /1362 which the 1st defendant used to assert her ownership of the suit land did not relate to the suit land. Secondly, PW2 testified that the suit land belonged to the company. It was the evidence of PW2 that the 1st defendant had never been a shareholder of the company and had never been allocated the suit land. The 1st defendant contended that, through her husband, she acquired shares in the company and by virtue of those shares, she was allotted the land. No receipt relating to purchase of shares in her name or in the name of her husband was tendered. She alleged that she lost her ballot card, hence she could not produce any. That is not all.
50. The Land Registrar produced documents which the 1st defendant used to procure her registration and her title. Among them were an undated, unexecuted, unwitnessed, uncertified and unregistered transfer. A purported transfer with the above glaring features could not generate a valid title. In addition, both the purported transfer and the purported clearance certificate relate to Ruiru/Ruiru Block 1 (Githunguri)/1362 - an unknown land that does not fall within the subdivision scheme that was owned by the company.



51. Lastly, on the issue of the legitimacy of the title that was held by the 1st defendant, evidence was tendered indicating that the 1st defendant was accused in Thika Chief Magistrate Court Criminal Case No 3319 of 2012 of fraudulently procuring the opening of the impugned land register and issuance of the impugned title. She was convicted of the offence and sentenced. The findings of the criminal court have not been overturned.
52. The totality of the above evidence is that title number Ruiru/ Ruiru Block 1(Githunguri)/1362 which the 1st defendant procured and used to assert ownership over the suit land and which she subsequently used to purport to subdivide the suit land into Ruiru/ Ruiru East Block 1 (Githunguri)/ 4023 to 4035 was a fraudulent document that could not give rise to valid subdivision titles.
53. The finding of the court on issue numbers (i) and (ii) fully dispose issue numbers (iii) and (iv). Put differently, for the reasons outlined in the preceding discussions, it is the finding of the court that the 1st defendant did not acquire a valid title to the suit land. It is the further finding of the court that the 1st defendant did not have valid titles to pass to the 2nd to the 14th defendants because what she held were fraudulent documents disguised as subdivision titles relating to the suit land.
54. Taking into account the evidence analyzed above, it is the finding of this court that the 1st plaintiff is the legitimate owner of the suit land.
55. On costs, the 1st defendant was the author of the fraud that led to the creation of the illegal land register and the generation of the illegal and fraudulent title that she subsequently purported to subdivide. Her conduct has exposed the plaintiffs and the other defendants to unnecessary costs. Consequently, the 1st defendant will bear costs of the suit.

Disposal Orders

56. In light of the above findings, this court is satisfied that the 1st plaintiff has proved his case against the defendants and hereby enters Judgement in her favour in the following terms:
 - a. It is hereby declared that the 1st plaintiff is the legitimate owner of land parcel number Ruiru/ Ruiru East Block 1 (Githunguri) /1362 located within the subdivision scheme known as Ruiru East Block 1 (Githunguri) which belonged to M/s Githunguri Constituency Ranching Company Ltd.
 - b. An order is hereby issued nullifying / cancelling in entirety the purported land register expressed as opened in the name of the Government of Kenya on 4/9/2003 relating to Ruiru/ Ruiru Block 1 (Githunguri)/1362 and bearing a subsequent undated ink endorsement of the word “East”, together with the purported subsequent title issued to Margaret Njeri Mutwamburi on 4/9/2003 and all the subsequent purported 13 subdivision land registers and titles, namely Ruiru/ Ruiru East Block 1 (Githunguri) /4023 to 4035.
 - c. The defendants shall vacate the suit land within 90 days from today. In default, eviction shall ensue and the OCS in Charge of the Area Police Station shall ensure law and order during the eviction.
 - d. The 1st defendant shall bear costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 5TH DAY OF AUGUST 2024

B M EBOSO
JUDGE



In the presence of:

Ms Muhoro for the 1st to the 14th Defendants

Ms Ndundu of the 15th and 16th Defendants

Court Assistant: Hinga

