



**Ngugi & another v Ali (Environment & Land Case E412 of 2022)
[2024] KEELC 13394 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13394 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E412 OF 2022**

**JO MBOYA, J
NOVEMBER 21, 2024**

BETWEEN

**JOHN KIARIE NJOROGE (SUING AS AN ADMINISTRATOR OF THE ESTATE
OF NJOROGE NGUGI) 1ST PLAINTIFF**

**LUCY WANJIRU NJOROGE (SUING AS AN ADMINISTRATOR OF THE
ESTATE OF NJOROGE NGUGI) 2ND PLAINTIFF**

AND

NOOR HAJI ALI DEFENDANT

JUDGMENT

Introduction and Background

1. The instant suit was commenced vide a Complaint dated 2nd December 2022, and wherein the Plaintiffs have sought for the following reliefs:
 - a. A permanent injunction to restrain the Defendant, by himself, his agent, representatives, servants and/or proxies from trespassing unto, entering, dealing and tampering with alienating, selling, disposing off and/or in any way interfering with the Plaintiffs' lawful use and ownership of the suit property L.R No.367 Plot No.433;
 - b. An order by this Honourable Court for the eviction of the Defendant his agent, representatives, servants and/or proxies from the suit property;
 - c. Costs of this suit and;
 - d. Any other relief that this Honourable Court shall deem fit and proper to grant.
2. Upon being served with the Complaint and Summons to Enter Appearance, the Defendant herein duly entered appearance and thereafter filed a Statement of Defence and Counterclaim dated 18th January



2023. For coherence, the Defendant has sought for various reliefs at the foot of the Counterclaim. The reliefs sought are as hereunder;

- i. A declaration that the Defendant herein is the lawful and sole owner of L.R No.36/1 Plot No.433;
 - ii. A permanent injunction to restrain the Plaintiffs by themselves, their agents, representatives, servants and/or proxies from trespassing, entering, dealing and tampering with, alienating, selling, seeking to dispose off and/or in any way interfering with the Defendant's lawful use, quiet possession and sole legal ownership of the suit property L.R No.36/1Plot No.433;
 - iii. An order is issued to the Land Registrar in Nairobi County (Ardhi House) to cancel any illegal entries made against title L.R No.36/1 Plot No. 433changing ownership from the Defendant and the Defendant be retained as the sole legal owner and;
 - iv. Kshs.10,000,000 as compensation for the losses incurred and occasioned by the actions of the Plaintiffs herein.
3. Suffice it to state that upon being served with the Statement of Defence and Counterclaim, the Plaintiff herein filed a Reply to Statement of Defence and Defence to Counterclaim dated 30th January 2023. Instructively, the Plaintiff denied the claims by and on behalf of the Defendant. In particular, the Plaintiffs denied that the Defendant is the lawful and registered proprietor of L.R No. 36/1 Plot No. 433 [suit property].
4. Subsequently, the parties herein filed and exchanged the requisite List and Bundle of Documents. Besides, the parties also filed their List of Witnesses and Witness Statements.
5. Thereafter the instant matter was scheduled for pre-trial directions with a view to ascertain the filing and exchange of the pleadings; list and bundle of documents and witness statement. Notably, the parties confirmed that same had duly complied. In this regard, the matter was thus confirmed ready for hearing.

Evidence By The Parties

a.plaintiffs' Case

6. The Plaintiffs' case is premised on the evidence of two witnesses namely John Kiarie Njoroge and Lucy Wanjiru Njoroge. Same testified as PW1 and PW2, respectively.
7. It was the testimony of the witness [PW1] that same is the 1st Plaintiff herein. Furthermore, the witness averred that same is also one of the co-administrators of the Estate of Njoroge Ngugi, now deceased. In this regard, the witness averred that same is conversant with the facts of the instant matter.
8. Furthermore, the witness testified that as pertains to the instant matter same [witness] has since recorded a Witness Statement dated 22nd August 2023. Thereafter, the witness sought to adopt and rely in the contents of the Witness Statement. Suffice it to point out that the Witness Statement was thereafter adopted and constituted as the evidence in chief of the witness.
9. Other than the foregoing, the witness averred that same has also filed a List and Bundle of Documents. In this regard, the witness adverted to the list and bundle of documents dated 2nd December 2022 and thereafter sought to produce the documents thereunder.
10. In the absence of any objection to the production of the documents at the foot of the list dated 2nd December 2022, same [documents] were admitted as exhibit P1 to P3, respectively. Nevertheless, the



photographs which were adverted to at the foot of the said list were however marked as PMFI 4 insofar as same [photographs] were not accompanied by an electronic certificate in terms of Section 106B of the *Evidence Act*.

11. Additionally, the witness adverted to the List and Bundle of Documents dated 22nd August 2023 and thereafter sought to tender and produce same as further exhibit before the court. There being no objection to the production to the said documents same were produced as exhibits P5 and P6, respectively.
12. Other than the foregoing, the witness adverted to the Plaint and Verifying Affidavit dated/sworn on 2nd December 2022. In this regard, the witness sought to adopt and rely on the contents of the Plaint. Furthermore, the witness also implored the court to grant the reliefs sought thereunder.
13. On cross examination, by learned counsel for the Defendant, the witness averred that the suit property was previously registered in the name of James Kamau Karogi. In addition, the witness added that the said James Kamau Karogi was thereafter sued by Njoroge Ngugi [now deceased].
14. Whilst still under cross examination, the witness testified that the suit that was filed by Njoroge Ngugi [now deceased] was heard and determined. At any rate, the witness added that judgment was entered in favour of Njoroge Ngugi.
15. It was the further testimony of the witness that Njoroge Ngugi, now deceased, died before the suit property could be transferred and registered in his name. Nevertheless, the witness averred that same [witness] proceeded to and obtained Grant of Letters of Administration.
16. Additionally, it was the evidence of the witness that same [witness] has been in occupation of the suit property. In this regard, the witness averred that same [witness] has tendered and produced before the court documents to show that same has been in occupation of the suit property.
17. On the other hand, it was the testimony of the witness that no eviction order has ever been issued against him. Besides, it was the testimony of the witness that the case against James Kamau Karogi was filed by his [witness's] father. Nevertheless, the witness added that the case was heard and concluded.
18. It was the further testimony of the witness that following the conclusion of the case that was filed against James Kamau Karogi, a decree was extracted. In this regard, the witness adverted to the decree issued on 21st October 2022.
19. Other than the foregoing, it was the testimony of the witness that same has tendered and produced evidence that the suit property is currently registered in the name of Njoroge Ngugi. Nevertheless, the witness conceded that same has not tendered a copy of the certificate of official search to that effect.
20. On re-examination, the witness averred that the suit property, belongs to the Estate of Njoroge Ngugi [now deceased]. Furthermore, the witness averred that same has produced a copy of the judgment and the decree of the court.
21. It was the further testimony of the witness that the judgment and the decree which same [witness] has produced before the court ordered that the suit property be registered in the name of Njoroge Ngugi, [now deceased].
22. The second witness who testified on behalf of the Plaintiff is Lucy Wanjiru Njoroge. Same testified as PW2.
23. It was the testimony of the witness [PW2] that same is a co-administratrix of the Estate of Njoroge Ngugi now deceased. Furthermore, the witness averred that the 1st Plaintiff herein is her brother.



24. On the other hand, it was the testimony of the witness that same [witness] has since recorded a witness statement dated 22nd August 2023. In this regard, the witness sought to adopt and rely on the contents of the Witness Statement. Instructively, the Witness Statement dated 22nd August 2023 was adopted and constituted as the evidence in chief of the witness.
25. On the other hand, the witness adverted to the List and Bundle of Documents which were produced by PW1. In particular, the witness sought to reiterate the contents of the said documents.
26. Additionally, the witness adverted to the Plaint dated 2nd December 2022 and similarly sought to reiterate the contents of the Plaint. Furthermore, the witness implored the court to grant the reliefs sought.
27. On cross examination, by learned counsel for the Defendant the witness stated that the land in question has never been registered in the name of her [witness] father. In any event, the witness added that same [witness] has not undertaken any development on the land. Besides, the witness averred that same has also not paid any rates over the plot in question.
28. Whilst under further cross examination, the witness averred that same has since availed to court a copy of the official search. In addition, the witness averred that the search demonstrates that the suit property is registered in the name of Njoroge Ngugi [now deceased].
29. Whilst under further cross examination, the witness averred that the land in question was indeed registered in the name of Njoroge Ngugi [now deceased].
30. On re-examination, the witness averred that Njoroge Ngugi [now deceased] filed a case against James Kamau Karogi. Besides, the witness averred that the case was averred and determined. Furthermore, it was the testimony of the witness that the judgment was delivered in favour of Njoroge Ngugi [now deceased].
31. With the foregoing testimony, the Plaintiff's case was closed.

b. Defendant's Case

32. The Defendant's case is anchored on the evidence of two witness namely Noor Haji Ali and Innocent Muganda, respectively. Same testified as DW1 and DW2, respectively.
33. It was the testimony of DW1 [Noor Haji Ali] that same is the Defendant herein. Furthermore, the witness averred that by virtue of being the Defendant herein same [witness] is conversant with the facts of the case.
34. On the other hand, the witness averred that same has since recorded and filed a witness statement. In this regard, the witness adverted to the Witness Statement dated 16th June 2023. Suffice it to state that the witness thereafter proceeded to and adopted the contents of the Witness Statement has his evidence in chief.
35. Additionally, the witness alluded to the List and Bundle of Documents dated 16th June 2023 and thereafter sought to tender and produce the various documents thereunder as exhibits.
36. It is instructive to state that an objection was taken to and in respect of document number 12. In particular, it was contended that document number 12 comprised of photographs which were not accompanied by the requisite electronic certificate. In this regard, document number 12 was marked for identification.



37. Other than the foregoing, the rest of the documents were produced and tendered before the court as D1 to D11; D13 to D18, respectively.
38. Additionally, the witness referenced the Statement of Defence and Counterclaim dated 18th January 2023. In this regard, the witness sought to adopt and rely on the contents of the said Statement of Defence and Counterclaim. Furthermore, the witness thereafter implored the court to grant the reliefs sought at the foot of the Counterclaim.
39. On cross examination by learned counsel for the Plaintiff, the witness averred that same bought/purchased the suit property from one James Kamau Karogi. In any event, the witness added that same [witness] got to know James Kamau Karogi through a broker.
40. Whilst under cross examination, the witness averred that upon purchase/acquisition, the suit property was lawfully transferred to and registered in his name.
41. It was the further testimony of the witness that same [witness] was not aware of the Plaintiffs herein until the year 2022. At any rate, the witness averred that it is in the year 2022 that the Plaintiffs went to the suit property and laid a claim thereto.
42. On the other hand, the witness averred that the Plaintiffs herein also reported the matter to the Directorate of Criminal Investigations and thereafter same [witness] was summoned to the offices of DCI.
43. On further cross examination, the witness averred that same [witness] carried out and undertook due diligence over and in respect of the suit property before entering into and executed the sale agreement. In this regard, the witness averred that the suit property was at the material in time registered in the name of James Kamau Karogi.
44. On re-examination, it was the testimony of the witness that same bought/purchased the suit property in the year 2014. Furthermore, the witness averred that same entered onto and took possession of the suit property in the year 2015.
45. On further re-examination, the witness averred that same proceeded to and erected a fence round the suit property. In addition, it was the testimony of the witness that same thereafter erected a permanent structure on the suit property. for good measure, the witness added that the structure on the suit property is not complete.
46. The second witness who testified on behalf of the Defendant was one Innocent Muganda. Same testified as DW2.
47. It was the testimony of the witness [DW2] that same is an advocate of the High Court of Kenya currently practicing law under the name M/s Sagana Biriq & Muganda Advocates. Furthermore, the witness averred that same has since recorded a Witness Statement dated 16th June 2023. Additionally, the witness sought to adopt and rely on the contents of the witness statement.
48. Suffice it to state that the Witness Statement dated 16th June 2023 was thereafter adopted and constituted as the evidence in chief of the witness.
49. The witness herein was not cross examined by learned counsel for the Plaintiff. At any rate, the witness was also not re-examined.
50. With the foregoing testimony, the Defendant's case was closed.



Parties' Submissions

51. Upon the close of the hearing, the advocates for the respective parties sought to file and exchange written submissions. In this regard, the court ventured forward and thereafter circumscribed the timeline for the filing and exchange of the written submissions.
52. Thereafter, the Plaintiff filed written submissions dated 16th October 2024 whereas the Defendant filed written submissions dated 9th October 2024. Instructively, the two sets of written submissions form part of the record of the court.
53. Even though the court has neither rehashed nor reproduced verbatim the written submissions filed by and on behalf of the parties, it suffices to underscore that the court has considered and taken into account the contents and same shall be taken into account in arriving at a decision pertaining to and concerning the key issues underpinning the dispute beforehand.
54. Other than the foregoing, it is important to state that the court is indebted to the respective parties for the detailed and comprehensive submissions filed. Notably, the submissions under reference have greatly assisted the court.

Issues for Determination

55. Having reviewed the pleadings filed; the evidence tendered [both documentary and oral] and upon consideration of the submissions on behalf of the respective parties, the following issues emerge and are thus worthy of determination;
 - i. Whether the Plaintiffs herein are seized of the requisite locus standi to commence and maintain the instant suit.
 - ii. Whether the Plaintiffs' suit is statute barred or otherwise.
 - iii. Whether the Plaintiffs herein have demonstrated any lawful rights and/or interests to and in respect of the suit property or otherwise.
 - iv. Whether the Defendant is a bona fide/innocent purchaser for value or otherwise.
 - v. What reliefs, if any ought to be granted.

Analysis and Determination

ISSUE NUMBER 1 Whether the Plaintiffs herein are seized of the requisite locus standi to commence and maintain the instant suit.

56. Learned counsel for the Defendant herein has contended that the Plaintiffs before the court were never parties to the previous suit, namely ELC No. 3923 of 1990 [OS] wherein the judgment being adverted to was issued. Furthermore, it has been contended that the Plaintiffs herein neither sought for nor obtained an order to be joined in the said suit.
57. To the extent that the Plaintiffs herein were never parties in the previous suit, learned counsel for the Defendant has therefore contended that the Plaintiffs are divested of the requisite locus standi to maintain and/or sustain the instant suit.
58. On the other hand, learned counsel for the Plaintiffs has submitted that the Plaintiffs herein are the lawful and duly constituted legal administrators of the estate of the Njoroge Ngugi, now deceased. To the extent that the Plaintiffs herein are the legal administrators of the Estate of Njoroge Ngugi [now



deceased], it has been posited that the Plaintiffs are therefore seized of the requisite capacity to file and maintain the instant suit.

59. Having taken into account the rival submissions, I beg to take the following position. Firstly, there is no dispute Njoroge Ngugi [now deceased] filed Civil Proceedings ELC No. 3923 of 1990 [OS] against inter alia James Kariuki Karogi. Furthermore, it is common that the said suit was heard and concluded vide judgment rendered on 18th July 2012.
60. Additionally, it is imperative to underscore that the court found and held that Njoroge Ngugi [now deceased] had acquired lawful rights to and in respect of the suit property. In this regard, the court proceeded to and declared Njoroge Ngugi [now deceased] as the lawful owner of the suit property. Furthermore, the court also directed the registrar of titles to effect the transfer and registration of the suit property in the name of Njoroge Ngugi [now deceased].
61. Nevertheless, it is instructive to observe that Njoroge Ngugi died on 8th September 2012 shortly after the delivery of the judgment. Be that as it may, there is no gainsaying that by the time Njoroge Ngugi passed on, same had acquired lawful rights and interests to and in respect of the suit property on the basis the judgment of the court.
62. To my mind, the suit namely ELC No. 3923 of 1990 [OS] had determined and gave birth to a judgment. At any rate, the execution of the judgment did not require substitution of the deceased.
63. First forward, it is not in dispute that the Plaintiffs herein took out and/or obtained grant of letters of administration in respect of the Estate of Njoroge Ngugi [now deceased]. To this end, the Plaintiffs tendered and produced before the court a copy of the Grant of Letters issued on 26th June 2013.
64. Other than the foregoing, it is not lost on this court that the Plaintiffs herein have commenced and/or mounted the instant suit in their respective capacities as the administrators of the estate of the deceased. In this regard, it is common ground that the Plaintiffs herein are bestowed/conferred with the requisite capacity to file and maintain the suit on behalf of the estate of the deceased. [See Section 82 of the [Law of Succession Act](#)].
65. Additionally, it is also instructive to take cognizance of decision of the Court of Appeal in the case of *Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama* [2014] eKLR, where the court held and stated thus;

A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In *Otieno v Ougo* (supra) this Court differently constituted rendered itself thus:

“... an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

Besides, the respondent seemed to have confused the issue of locus standi and a cause of action. In *Alfred Njau & Others v City Council of Nairobi* (supra) this Court had occasion to discuss the two. They stated:

“Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...”



The court proceeded to state:

“To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

66. The instant suit has been filed and/or commenced by the Plaintiff to propagate the rights and interests of Njoroge Ngugi [now deceased]. At any rate, there is no gainsaying that before the filing of the instant suit, the Plaintiffs procured and obtained the requisite grant of letters administration.
67. In my humble view, the Plaintiffs herein are seized of the requisite locus standi to commence and maintain the instant suit whose import and tenor is to vindicate the rights of the estate of the deceased.
68. Arising from the foregoing, my answer to issue number one is to the effect that the Plaintiffs herein are seized and possessed of the requisite locus standi. To this end, the suit by and on behalf of the Plaintiffs is lawful and legally tenable.

Issue Number 2 Whether the Plaintiffs’ suit is statute barred or otherwise.

69. The Defendant herein has also contended that the Plaintiffs took too long to file and/or commence the instant suit. To this end, it has been contended that the Plaintiffs are not only guilty of inordinate delay and lethargy but that the suit is statute barred.
70. On the other hand, the Plaintiffs have contended that the judgment in respect of ELC No. 3923 of 1990 [OS] was delivered on 18th July 2012 and shortly thereafter Njoroge Ngugi [decree holder] passed on.
71. It is the further contention by the Plaintiffs that subsequently same [Plaintiffs] sought for and obtained the Grant of Letters of Administration in respect of the estate of Njoroge Ngugi [now deceased]. To this end, the Plaintiffs have contended that upon procuring the grant of letters of administration same were therefore bestowed with the capacity to file and/or commence the instant suit.
72. Additionally, it has been contended that the suit beforehand touches on and concerns recovery of land. In this regard, it has been contended that the timeline for the filing of such a suit is underpinned by the provisions of Section 7 of the *Limitation of Actions Act*, Chapter 22 Laws of Kenya.
73. Premised on the provisions of Section 7 of the *Limitation of Actions Act* [supra], learned counsel for the Plaintiffs has invited the court to find and hold that the suit was timeously filed. Notably, learned counsel for the Plaintiff has contended that the suit is not time barred.
74. It is instructive to state that the dispute beforehand touches on and concerns the suit property which was the subject of the judgment issued vide ELC No. 3923 of 1990 [OS]. Furthermore, it is evident that the judgment under reference decreed that the suit property belongs to Njoroge Ngugi [now deceased].
75. From the date when the judgment was delivered, namely 18th July 2012, Njoroge Ngugi [now deceased] was obligated to take the requisite steps towards executing the judgment. In any event, there is no gainsaying that the judgment under reference [which was a judgment in rem], was to remain in existence for a duration of 12 years.
76. The question that now arises is whether the Plaintiff’s suit which was filed on 2nd December 2022 is time barred or otherwise. To start with, there is no gainsaying that the right to recover the suit property first accrued to and in favour of Njoroge Ngugi [now deceased]. In this regard, the cause of action predicated on the judgment arose as soon as the judgment was delivered.



77. Nevertheless, it is common ground that Njoroge Ngugi died/passed on 8th September 2012. In this regard, it suffices to underscore that the rights which had hitherto vested in the deceased migrated into and bestowed upon his legal administrators.
78. Pertinently, the legal administrators of Njoroge Ngugi [now deceased] were obligated to commence any suit touching and concerning the recovery of the suit property within 12 years from the time when the cause of action [right to recover suit property] first vested in the deceased.
79. To my mind, the instant suit which was filed on 2nd December 2022 was filed within the statutory 12 years. To this end, there is no gainsaying that the suit beforehand is not statute barred.
80. Before departing from the subject issue, it is instructive to cite and reference the provisions of Section of the Limitation of Actions Act. For ease of appreciation, Section 7 of the Limitation of Actions Act [supra] is reproduced as hereunder;
7. Action ~~An~~ action may not be brought by any person to recover land after the end of twelve years to from the date on which the right of action accrued to him or, if it first accrued to some person recover through whom he claims, to that person.
81. ~~land~~ To fortify the observations in the preceding paragraphs, it is imperative to adopt and endorse the holding in the case of Moffat Muriithi Muchai (suing on behalf of the Estate of the Late Milka Njoki Muchai (Deceased)) v Wanjiru Wanjohi Gatundu & 2 others [2019] eKLR, where the court stated as hereunder;
34. Section 7 of the Limitation of Actions Act, provides that an action to recover land may not be brought after the end of twelve years from the date on which the right accrued. This means that the Plaintiff's mother having bought the suit land in the 1990's and thereby claiming ownership in the same, he could seek to recover it from the 1st Defendant, but only if he did so within twelve years from the date on which the right of action accrued to him.
35. There is no doubt that a period of about sixteen years have lapsed from the date on which the right of action accrued to the date when this suit was filed. No leave for extension of time to file the suit outside the twelve-year period has been exhibited before this court. The Plaintiff needed to commence his claim within the time prescribed under Section 7 of the Limitation of Actions Act. It follows therefore that by the time he filed this suit, the claim was statute barred.
82. Flowing from the foregoing analysis, it is my finding and holding that the Plaintiffs' suit which essentially seeks to recover the suit property is not statute barred.

Issue Number 3 Whether the Plaintiffs herein have demonstrated any lawful rights and/or interests to and in respect of the suit property or otherwise.

83. The Plaintiffs herein are the legal administrators of Njoroge Ngugi [now deceased]. Suffice it to point out that Njoroge Ngugi filed civil proceedings vide ELC No. 3923 of 1990 [OS] and wherein Njoroge Ngugi sought to be declared as the owner of the suit property on the basis of adverse possession.
84. It is imperative to underscore that the suit, namely ELC No. 3923 of 1990 [OS] which was filed by Njoroge Ngugi [deceased] was heard and determined vide judgment rendered on 18th July 2012. Notably, the judgment proclaimed Njoroge Ngugi [now deceased] as the lawful owner of the suit property.



85. It is important to point out and to underscore that the judgment under reference touched and concerned ownership of the suit property. Furthermore, the declarations that were issued and the consequential orders thereto touched on and concerned the suit property.
86. To the extent that the judgment rendered vide ELC No. 3923 of 1990 [OS] touched on the suit property, there is no gainsaying that the judgment in question was a judgment in rem. Instructively, a judgment in rem relates to and attaches to the land. To this end, the land affected by the judgment in rem cannot be dealt with or transacted upon without impeaching the judgment beforehand.
87. To be able to understand the import and tenor of a judgment in rem, it suffices to reference the provisions of Section 44 and 45 of the Evidence Act, Chapter 80 Laws of Kenya.
88. For coherence, the said provisions are reproduced as hereunder;

44. Judgments in rem

- (1) A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is admissible when the existence of any such legal character, or the title of any such person to any such thing, is admissible.
- (2) Such judgment, order or decree is conclusive proof—
- (a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
- (b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
- (c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;
- (d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

45. Other judgments of a public nature Judgments, orders or decrees, other than those mentioned in section 44 of this Act, are admissible if they relate to matters of a public nature relevant to the inquiry, but such judgments, orders or decrees are not conclusive proof of that which they state.

89. Other than the provisions of the Evidence Act which has been referenced in the preceding paragraph, the import and tenor of a judgment in rem was elaborated by the Court of Appeal in the case of *Telkom Kenya Limited v John Ochanda (Suing on His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited) (Civil Appeal 60 of 2013) [2014] KECA 600 (KLR) (Civ) (9 May 2014) (Judgment)*.
90. For coherence, the court stated thus;

Nor was there need or jurisdiction, within the same suit, for the learned judge to attempt to so convert the character of the judgment entered by Mwera J. who had, in what must



banish any notion that there was any error or omission in the judgment as framed, stated in an earlier ruling in the matter that he would deliver a judgment “in rem”, not “in personam”. The terminology employed was not entirely correct in terms of the exact meaning of the two types of judgment. As commonly understood, a judgment in personam is one that is entered against a specific person and is enforced against that person directly while an in rem judgment declares rights over property or status and is said to be against the whole world. It can only be surmised therefore that by employing that terminology in the context of the pleadings and the case before him, Mwera J. implied that the suit was purely a declaratory suit, limited in scope and falling short of granting specific, quantified and executable decree in favour of each respondent.

91. Furthermore, the scope and extent of a judgment in rem was highlighted in the case of *Kamunyu and Others vs. Attorney General & Others* [2007] 1 EA 116, where the court stated as hereunder;

“In a suit seeking judgement in rem, that is a judgement applicable to the whole world, an individual does not sue on behalf of the whole world, but sues for judgement which is effective against the whole world. In other words, in the present case, the appellants when successful in the suit obtain judgement, which is effective against the whole world but does not confer benefits upon the whole world.”

92. In addition, the legal implication of a judgment in rem as opposed to judgment in personam was adverted to and underscored in the case of *Japheth Nzila Muangi vs. Kenya Safari Lodges & Hotels Ltd* [2008] eKLR it was held:

“It is trite law that ordinarily a judgement binds only the parties to it. This is known as Judgement in personam. A judgement may also be conclusive not only against the parties to it but also against all the world. This is known as a judgement in rem. This is a judgement which declares, defines or otherwise determines the status of a person or of a thing i.e. the jural relation of the person or thing to the world generally.”

93. Notably, the import of a judgment in rem was also discussed in the case of *George William Kateregga vs. Commissioner for Land Registration & Others* Kampala High Court Misc. Appl. No. 347 of 2013 in which the Court while citing the South African case of *Nicholas Francois Marteenms & Others vs. South African National Parks*, Case No. 0117, expressed itself as follows:

“Therefore, in the instant case even if the parties other than the Applicant crafted a consent judgement over the suit land which was sanctioned by the court, it necessarily became a judgement of the court. The effect was that the Applicant would be bound by it notwithstanding that he was not privy to the consent agreement or suit; which renders the judgement in that case a judgement in rem. A judgement in rem invariably denotes the status or condition of the property and operates directly on the property itself. It is judgement that affects not only the thing but all persons interested in the thing; as opposed to judgement in personam which only imposes personal liability on the defendant.”

94. From the exposition of the law, which has been highlighted vide the various decisions referenced [supra], there is no gainsaying that a judgment in rem does not only bind the parties to the suit but same suffices against the whole world. In this regard, it is immaterial that the Defendant herein was not a party to the said suit.



95. Back to the instant matter. It is imperative to underscore that the judgment rendered vide ELC No. 3923 of 1990 [OS] was in respect of the suit property. Furthermore, the judgment confirmed that the suit property belonged to Njoroge Ngugi [now deceased]. From the time of delivery of the said judgment, it suffices to posit that Njoroge Ngugi became the owner of the suit property.
96. Having acquired and/or accrued lawful rights to and in respect of the suit property, the said rights survived the death Njoroge Ngugi. For good measure, the rights in question vested and inhered in the Estate of Njoroge Ngugi now deceased.
97. Owing to the foregoing, it is my finding and holding that the Plaintiffs herein, who are the legal administrators of the Estate of the deceased have the right to lay a claim to the suit property. In any event, there is no gainsaying that the suit property belongs to and constitutes part of the Estate of Njoroge Ngugi [now deceased].

Issue Number 4 Whether the Defendant is a bona fide/innocent purchaser for value or otherwise.

98. The Defendant herein has contended that same [Defendant] was introduced to one James Kamau Karogi and thereafter entered into a lawful sale agreement with the said person culminating into the sale and transfer of the suit property. In any event, the Defendant contended that prior to entering into the sale agreement same retained and instructed his [Defendant's] Advocates to undertake due diligence.
99. It was the further testimony of the Defendant that the due diligence that was carried out and or undertaken by his advocates revealed that the suit property was lawfully registered in the name of James Kamau Karogi. In this regard, it was posited that the Defendant was thus entitled to proceed with the transaction.
100. Furthermore, it was contended that having undertaken due diligence and having confirmed that the suit property belonged to the vendor, the Defendant herein therefore acquired lawful rights to and in respect of the suit property.
101. At any rate, it has been contended that insofar as the Defendant was not privy to or knowledgeable of the rights and or interests of the Plaintiffs in the suit property and having not been privy to any defect in the title of James Karogi, the Defendant is therefore an innocent purchaser for value without notice.
102. Before addressing the question as pertains to a bona fide/innocent purchaser for value, it instructive to discern the import and meaning of who are bona fide purchaser for value is.
103. To this end, it suffices to cite and reference the decision of 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) (Constitutional and Human Rights) (21 April 2023) (Judgment), where the court stated as hereunder;
90. The Black's Law Dictionary 9th Edition defines a bona fide purchaser as:

“One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”



91. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

92. On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005* [2015] eKLR stated as follows:

“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

104. Before one, the Defendant not excepted, can propagate and rely on the doctrine of bona fide purchaser for value, it is incumbent upon the proponent to demonstrate that his/her predecessor in title had a valid and lawful title. To this end, where the title of the predecessor was illegal, unlawful and vitiated, then the subsequent person cannot propagate and rely on the doctrine of bona fide purchaser for value.

105. Instructively, the necessity to prove and/or demonstrate that the title of the predecessor was valid was highlighted and underscored by the Court of Appeal in the case of *Mwangi James Njehia v Janetta Wanjiku Mwangi & Simon Kamanu (Civil Appeal 177 of 2019)* [2021] KECA 768 (KLR) (Environment and Land) (19 March 2021) (Ruling), where the court stated as hereunder;

37. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others, Nairobi Civil Appeal No. 146 of 2014* this Court cited with approval the case of *Katende v. Haridar & Company Ltd* (2008) 2 EA 173, where the Court of Appeal in Uganda held that:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of *Hannington Njuki v William Nyanzi High Court civil suit number 434 of 1996*, must prove that:

1. he holds a certificate of title;



2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.

106. Back to the facts of the instant case, it is evident that James Karogi who sold the suit property to and in favour of the Defendant was privy to and knowledgeable of the terms of the judgment of the court entered in respect of ELC No. 3923 of 1990 [OS]. For good measure, the judgment in question extinguished the rights and interests of James Kamau Karogi over the suit property.
107. First forward, unless and until the judgment under reference is reviewed, set aside and/or quashed, James Kamau Karogi had no interest in respect of the suit property capable of being sold and conveyed to the Defendant.
108. To the extent that James Kamau Karogi [vendor] had not rights and/or interests in the suit property, it follows as a matter of course that the Defendant herein acquired no rights over and in respect of the suit property. Instructively, the doctrine of nemo-dat-quod none-habet suffices.
109. In my humble view, though the suit property was still registered in the name of James Kamau Karogi. Same [James Karogi] had no rights whatsoever. In this regard, the entry into and execution of the sale agreement with the Defendant constituted an illegality and thus the entire contract was voided.
110. In my humble view, James Kamau Karogi had no title which same could confer to and in favour of the Defendant. In this respect, I invoke and adopt the doctrine of ex-nihilo-nihil-fit [out of nothing comes nothing].
111. Additionally, it is instructive to cite and reference the holding in the case of *Caroget Investment Limited v Aster Holdings Limited, City Council of Nairobi, Commissioner of Lands, Registrar of Titles & Attorney General (Civil Appeal 82 of 2018)* [2019] KECA 79 (KLR) (Civ) (6 December 2019) (Judgment), where the court held as hereunder;

The totality of what we have said is that the 1st respondent’s title was unimpeachable while that of the appellant was tainted with fraud, illegalities and irregularities. The lightning speed with which the entire transaction was executed, from the moment the suit property was transferred to the appellant to the point it was set to sell it to White Horse Investment Limited, all within four months, smacked of fraud, bad faith and deceit. From the Council to the appellant and from the appellant to White Horse no title could be passed because ex nihilo nihil fit – out of nothing comes nothing.

112. Before departing from this issue, it is appropriate to underscore that the Defendant herein may very well not have been aware of the judgment and decree vide ELC No. 3923 of 1990 [OS]. However, lack of knowledge pertaining to the said judgment would not operate to whitewash an illegality.



113. At any rate, there is no gainsaying that the illegality which was being propagated by James Kamau Karogi, transcends the entirety of the transaction. Pertinently, the entire transaction was void and hence incapable of being sanitized.
114. Instructively, the transaction that was being entered into and executed between James Kamau Karogi and the Defendant yielded nothing. For good measure, it is apposite to cite and reference the dictum in the case of *Mcfoy v United African Company Limited* 1961 3 all ER 465 where Lord Denning whilst delivering the opinion of the Privy Council at page 1172 held that;
- 'If an act is void, then it is in law annuity. It is not bad but incurably bad. There is no need for an order of the court to set it aside.'
115. Arising from the foregoing analysis, my answer to issue number four is fourfold. Firstly, the title that was held by James Kamau Karogi [vendor] and which founded the contract with the Defendant stood extinguished on 18th July 2012.
116. Secondly, to the extent that the title of the vendor was extinguished vide the judgment in ELC No. 3923 of 1990 [OS], same [title] could therefore not be passed onto any third party, the Defendant not excepted.
117. Thirdly, the title at the foot of the transaction between James Kamau Karogi and the Defendant having ceased to exist and was thus illegal, the Defendant herein cannot raise and espouse the doctrine of bona fide purchaser for value without notice.
118. Finally, the transaction between James Kamau Karogi and the Defendant was illegal and void. In this regard, no valid claim can suffice and/or ensue from a contract that is void ab initio.

Issue Number 5 What reliefs, if any ought to be granted.

119. The Plaintiff and the Defendant have each raised diverse claims before the court. The Plaintiffs have sought for inter alia an order of eviction as against the Defendant from the suit property.
120. Other than the order for eviction, the Plaintiffs have also sought for an order of permanent injunction. Suffice it to point out that a lawful proprietor/owner of a landed property is vested with certain statutory rights and privileges. For good measure, the nature of such statutory rights is espoused vide Sections 24 and 25 of the *Land Registration Act*.
121. Pertinently, the rights of the proprietor of land include absolute and exclusive occupation, possession and use. To this end, it then means that where the rights of the land owner are being interfered with by a third party, the remedies of eviction and permanent injunction would suffice.
122. Instructively, the extent and scope of the rights of a registered owner/proprietor of land were considered and elaborated upon in the case of *Mohansons (Kenya) Limited v Registrar of Titles, Mary Murtazza Ondatto & Attorney General (Petition 103 of 2012)* [2017] KEELC 2730 (KLR) (6 June 2017) (Ruling), where the court held thus;
- (18) As held by the Court of Appeal for East Africa held in *Moya Drift Farm Ltd. v. Theuri* (1973) EA 114 a registered proprietor of land is the absolute and indefeasible owner of land and is entitled to take proceedings for trespass and eviction of a trespasser even if he did not



have possession of the property. Spry, V-P at 116, considered the effect of section 23 of the Registration of Titles Act and held –

“I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

Sir William Duffus, P. *ibid* at p.117 agreed with Spry, JA as follows:

“In any even I agree with the Vice-President that the fact that the appellant was the registered proprietor as owner in fee simple under the Registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest legal possession of the land in the appellant and that this possession would be sufficient to support the action of trespass against a trespasser wrongly on the land.”

The third member of the Court, Lutta, JA agreed with the judgment prepared by the Spry, V-P.

123. Flowing from the foregoing, I am persuaded that the Plaintiff herein has met and satisfied the requisite threshold to warrant the grant of the orders of eviction and permanent injunction. Indeed, a failure to do so would be tantamount to negating the judgment which was issued *vide* Milimani ELC No. 3923 of 1990 [OS].
124. On the other hand, the Defendant herein has sought a plethora of reliefs. Firstly, the Defendant has sought for an order that same [Defendant] is the lawful and sole owner of the suit property. However, in the course of discussing issue number [4] hereinbefore, this court has found and held that the vendor had no lawful interests capable of being conveyed in favour of the Defendant.
125. Arising from the said finding, I am afraid that the declaration sought by the Defendant is in vain.
126. Secondly, the Defendant has sought an order of permanent injunction to issue against the Plaintiffs barring and/or restraining same [Plaintiffs] from interfering with the suit property. Nevertheless, having found that the Plaintiffs have lawful rights to the suit property, the order of permanent injunction cannot therefore issue as against the Plaintiff.
127. To this end, it is imperative to take cognizance of the holding in the case of *Nguruman Limited v Jan Bonde Nielson (Environment & Land Case 120 of 2010)* [2014] KEHC 1718 (KLR) (10 October 2014) (Ruling), where the court held as hereunder;

It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.

128. Other than the foregoing, the Defendant has also sought an order to compel the land registrar to cancel [sic] the illegal entries made against the title of the suit property and which essentially changed ownership from the Defendant to the Plaintiffs.
129. I have already found and held that the Defendant herein did not acquire any lawful rights to and in respect of the suit property. in any event, it is worth recalling that I found and held that the Defendant’s certificate of title or title to the suit property was void ab initio.



130. Finally, the Defendant sought for the sum of Kes.10, 000, 000/= only for [sic] the losses incurred and occasion by the illegal and fraudulent actions by the Plaintiffs. Nevertheless, it bears repeating that the actions by and on behalf of the Plaintiffs herein are neither illegal nor unlawful.
131. On the contrary, the actions by and on behalf of the Plaintiffs are underpinned by a lawful judgment in rem. For good measure, the judgment in question vested ownership of the suit property in favour of Njoroge Ngugi [now deceased] and by extension his Estate. Simply put, the Defendant herein is not entitled to recompense in the sum of Kes.10, 000, 000/= only either as sought or at all.
132. Finally, DW2 intimated to the court that the suit property was charged to and in favour of Gulf African Bank Ltd. Suffice it to point out that the Defendant herein having accrued no legal rights to and in respect of the suit property, same [Defendant] could not pass any interests capable of being charged.
133. Put differently, Gulf African Bank Ltd did not acquire any rights to and in respect of the charge over the suit property. To This end, the charge and the further charge registered against the suit property are invalid.
134. Without belabouring the point, it suffices to reference the decision of the Court of Appeal in the case of Teleposta Pension Scheme Registered Trustees v Interountries Exporters Limited & 5 others (Civil Appeal 293 of 2016) [2024] KECA 870 (KLR) (12 July 2024), where the court stated and observed as hereunder;
110. As regards the charge of the suit property by Park Investments to the Bank, this was not denied by Park Investments. However, Park Investment had no valid title to the suit property that it could charge to the Bank. The purported exercise of the statutory powers of sale by the Bank in selling the suit property to Interountries Limited was no more than “hot air” as the Bank had no proper charge in its favour and had no statutory powers of sale to dispose of the suit property. Nor did the Bank pass any proper title to Interountries Limited.

Final Disposition

135. Flowing from the discourse [details espoused in the body of the judgment], there is no gainsaying that the Plaintiffs herein have established and proved their claim to the suit property. For good measure, the suit property was vested in the Estate of Njoroge Ngugi [now deceased] vide a lawful Judgment in rem.
136. On the contrary, the Defendant herein has failed to demonstrate and/or prove legal rights to and in respect of the suit property. Suffice it to underscore that the Defendant’s title to the suit property is vitiated. In the premises, Judgment be and is hereby entered in favour of the Plaintiffs in the following terms;
- i. A declaration be and is hereby made that the suit property namely, L.R No.367 Plot No.433 lawfully belongs to and constitutes the Estate of Njoroge Ngugi [now deceased].
 - ii. The certificate of title/title of L.R No.367 Plot No.433 held by the Defendant is illegal, unlawful and void for all intents and purposes.
 - iii. The certificate of title in respect of the suit property, namely L.R No.367 Plot No.433 and bearing the name of the Defendant be and is hereby revoked and nullified.
 - iv. The charge in favour of Gulf African Bank Limited as well as the further charge registered over L.R No.367 Plot No.433 are invalid and void. Same be and are hereby revoked.
 - v. The Defendant be and is hereby ordered to vacate and hand over vacant possession of L.R No.367 Plot No.433 to the Plaintiffs within 90 days from the date hereof.



- vi. In default to vacate and hand over vacant possession in terms of clause [v] herein above, the Plaintiff shall be at liberty to levy eviction against the Defendant. In this regard, an eviction order shall issue without further recourse to the court.
- vii. In the event that the eviction is levied and undertaken by the Plaintiffs, the costs arising therefrom shall be certified by the deputy registrar and thereafter be recovered from the Defendant as part of costs.
- viii. There be and is hereby granted an order of permanent injunction to restrain the Defendant either by himself, his servants, agents and/or employees from entering upon, re-entering, remaining on and/or otherwise interfering with the Plaintiffs' rights to and in respect of the suit property [L.R No.367 Plot No.433].
- ix. The Defendant's Counterclaim be and is hereby dismissed.
- x. The Plaintiff be and is hereby awarded costs of the suit and the Counterclaim, respectively.
- xi. Any other reliefs that are not expressly granted is hereby denied.

137. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2024.

OGUTTU MBOYA

JUDGE

In the Presence of;

Benson - Court Assistant

Mr. Rukwaro h/b for Mr. Kimani for the Plaintiffs

Mr. Muriithi and Mr. Abdulahi for the Defendant

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