



**Mwangi v Kiarie & 4 others (Environment and Land Appeal  
E030 of 2022) [2024] KEELC 7420 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7420 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E030 OF 2022  
LC KOMINGOI, J  
NOVEMBER 7, 2024**

**BETWEEN**

**EVANS KANJA MWANGI ..... APPELLANT**

**AND**

**ALICE MWIHAKI KIARIE ..... 1<sup>ST</sup> RESPONDENT**

**ABED KYUNGUTI MULEE ..... 2<sup>ND</sup> RESPONDENT**

**SIRAT MOHAMMED SALAT ..... 3<sup>RD</sup> RESPONDENT**

**JAFFER MUSTAFFA ..... 4<sup>TH</sup> RESPONDENT**

**HON ATTORNEY GENERAL (SUING FOR AND ON BEHALF OF THE LAND  
REGISTRAR) ..... 5<sup>TH</sup> RESPONDENT**

*(Being an Appeal against the Judgement of Hon. I. M. Kabuya (P.M)  
in Kajiado ELC Case No. 162 of 2018 delivered on 15th June 2022)*

**JUDGMENT**

1. In her Judgment dated and delivered on 15<sup>th</sup> June 2022 in Kajiado ELC Case No. 162 of 2018, the learned Hon. I. M. Kahuya held that:

... It is my conclusive finding that the title dated 5.7.12 had been obtained illegally, unprocedurally or through corrupt scheme perpetrated by the 1<sup>st</sup> defendant who worked closely with the said Charles Macharia that tagged his accomplices there being the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants...

... In conclusion the Plaintiff's suit succeeds and the prayer in the amended plaint on 1.4.14 allowed with interest from filing of this suit to the date of judgement...



2. Aggrieved by the said Judgement, the Appellant filed this Appeal seeking that the judgement be set aside together with costs on grounds that:
  1. The learned Magistrate erred in law and in fact by failing to recognise the Appellant as the bonafide purchaser for value without notice of any defect or at all to property Kajiado/Kaputiei North/7645.
  2. The learned Magistrate erred in law and in fact by disregarding the requirements under the doctrine of bona fide purchaser without notice of any defect, thus failing to afford the Appellant the requisite protection enjoyed under the said doctrine.
  3. The learned Magistrate erred in law and in fact by wishing away the holding of the Court of Appeal in Arthi Highway Developers Ltd vs West End Butchery Ltd & 6 others (2015) eKLR that a bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.
  4. The learned Magistrate erred in law and in fact by denying the Appellant the right to ownership of the suit property, even after holding that the Appellant was not a party to any illegality or fraud.
  5. The learned Magistrate erred in law and in facts by ignoring precedent hence denying the Appellant the right to ownership of the suit property.
3. This appeal was to be canvassed by way of written submissions.

#### **The Appellant's Submissions.**

4. They are dated 15<sup>th</sup> April 2024. They raise one issue for determination; Whether the Appellant is a bona fide purchaser without notice of parcel No. Kajiado/Kaputiei – North/7645.
5. Counsel submitted that the Appellant bought the suit property from Charles Macharia Mwangi, a beneficial owner for value on 15<sup>th</sup> September 2011. It was at the time registered in the name of Sirat Mohammed Salat, the 3<sup>rd</sup> Respondent. The Appellant is therefore entitled to protection under the doctrine of bonafide purchaser without notice of any defect. He has put forward the case of Arthi Highway Developers Ltd Vs. West End Butchery Ltd & 6 Others (2015) eKLR where the Court of Appeal echoed the decision in Katende Vs. Haridar & Company Limited (2008) 2 EA 173.
6. Counsel also submitted that the Appellants title is protected by Section 24 (1) (a) and 26 of the [Land Registration Act](#), 2012.  
He has put forward the case of David Peterson Kiengo & 2 Others Vs. Kariuki Thuo (2012) eKLR.
7. It is also submitted that by 9<sup>th</sup> July 2012 the Appellant had long acquired his title. He has put forward the case of Wambui Vs. Mwangi & 3 others (2021) KECA 144 (KLR). It is further submitted that the Appellant purchased the suit property in good faith without notice and further did not participate in any form of illegality. That he followed due process in acquiring the title.

#### **The 1<sup>st</sup> Respondent's Submissions.**

8. They are dated 7<sup>th</sup> July 2024. They raise three issues for determination;



- a. Whether the court conducted itself properly in finding that the Appellant was not a bona fide purchaser.
  - b. Whether the court was correct in denying the Appellant a right to ownership of the property and disregarding the requirements under the doctrine of bona fide purchaser without notice?
  - c. Whether the court disregarded the precedent therein referred to by the Appellant hence denying him ownership of the property?
9. Counsel submitted that the 1<sup>st</sup> Respondent purchased the suit property in the year 2000 and has never transferred it to a third party. She only engaged the 2<sup>nd</sup> Respondent to seek a buyer and gave him a copy of the title deed.
  10. The Appellant, on the other hand claims to have purchased the suit property from Charles Mwangi, a beneficial owner but the same was registered in the name of Sirat Mohammed, the 3<sup>rd</sup> Respondent. However no duly executed transfer form by Sarit Mohammed was produced.
  11. It is further submitted that the lower court rightly found that the Appellant was not a bona fide purchaser for value without notice. He has put forward the case of Katende Vs. Haridar & Company Limited (2008) 2 EA 173.
  12. It is also submitted that at the Appellant purchased the suit property the title was not in the name of Charles Macharia. There was no sale agreement between the 3<sup>rd</sup> Respondent the said Charles Macharia. Further that the Appellant did not have the requisite documents to confirm the purchase.
  13. It is submitted that it was incumbent upon the Appellant to prove that he got a genuine title from the vendor and that he followed due process in the transfer of the suit property. Counsel has put forward the cases of Munyu Maina Vs. Hiram Gathiha Maina (2013) eKLR; Richard Odual Opole Vs. Commissioner of Lands & 2 Others (2015) eKLR ; Samuel Kamere Vs. Land Registrar, Kajiado (2015) eKLR.
  14. Counsel further submitted that the lower court rightly issued a permanent injunction against the defendants and declared the Plaintiff as the registered owner. He has put forward the case of Mohammed Vs. Duba & Another (2022) KECA 442 (KLR).
  15. It is also submitted that the Appellant ought to have done due diligence before purchasing the suit property as he would have discovered the defects in the title. He prays that the Appeal be dismissed with costs and the orders and decree issued by the trial court on 24<sup>th</sup> June 2022 in favour of the 1<sup>st</sup> Respondent be upheld.

### **Analysis and Determination**

16. I have considered the appeal, record of appeal, legal authorities and find that the issues for determination are:
  - i. Whether the Appellant is a bonafide purchaser for value of property Kajiado/Kaputiei North/7645 for value without notice of defect;
  - ii. Whether the learned Magistrate erred in finding that the Appellant was not the rightful owner of property Kajiado/Kaputiei North/7645.
  - iii. Whether this appeal is merited;



iv. Who should bear costs of the appeal?

17. This being a first appeal, this Court is guided by the principle that it is its duty to re-analyse the case and draw its own independent conclusion as was held by the Court of Appeal in *Yasmin Rashid Ganatra & Tariq Abdul Rashid (Suing as legal representatives of Rashid Juma Kassam) v Gulzar Abdul Wais* [2015] KECA 342 (KLR) that;

“In a first appeal we proceed by way of re-hearing as I have already indicated. I do however pay some deference to the trial Judge’s findings of fact and are deliberately slow to disturb them. That is not to say I am necessarily bound by such findings and we may, in appropriate cases, depart therefrom.”

18. This suit instituted through the Plaint dated 5<sup>th</sup> April 2012 and Amended on 1<sup>st</sup> August 2014 by Alice Mwhaki Kiarie the 1<sup>st</sup> Respondent herein was against five defendants among them Evans Kanja Mwangi (the Appellant herein). The 1<sup>st</sup> Respondent claimed that at all times she was the registered owner of property Kajiado/Kaputiei North/7645. In the year 2006 she entered into an oral agreement with one Abed Kyunguti Mulee (the 2<sup>nd</sup> Respondent) to find a suitable buyer for the suit property. She gave him a copy of her title deed and showed him the physical location of the suit property and had been unable to get in touch with him since then.
19. On or about 29<sup>th</sup> April 2009, she carried out a search of the suit property at the Kajiado Lands Registry only to discover that the land had been transferred and title issued to one Jaffer Mustafa 4<sup>th</sup> Respondent herein on 10<sup>th</sup> January 2007. He would then transfer it to one Sirat Mohammed Salat, the 3<sup>rd</sup> Respondent herein. She subsequently placed a caution against the land to halt further alienation and dealings. She therefore claimed that the 2<sup>nd</sup> Respondent acted fraudulently by forging and dispossessing her of her property and illegally transferring it to other persons. She also pleaded that the other Respondents acted negligently and fraudulently by failing to conduct due diligence to ascertain ownership prior to their alleged purchase of the suit property. She therefore sought for a permanent injunction against the Respondents from alienating and interfering with the property Kajiado/Kaputiei North/7645, declaration that she was its rightful owner, cancelling all entries and return it to her as well as costs of the suit.
20. The Appellant in his statement of Defence at the lower Court averred that he was the registered owner of the suit property having purchased it through a sale agreement dated 15<sup>th</sup> September 2011 from one Charles Macharia Mwangi. He thus acquired an indefeasible title to it and was protected by Section 26 of the *Land Registration Act*. The sale agreement indicated that the property was registered to one Sirat Mohammed Salat and measured approximately 0.096 hectares. Upon conducting due diligence he confirmed that the suit property was registered to Sirat Mohammed and a title deed was issued to him on 10<sup>th</sup> January 2007. Upon payment of Kshs. 4,450,000 as the purchase price, the transfer from Sirat Mohammed Salat to him was prepared and attested by an advocate by the name Annie W. Thoronjo. The transfer documents were lodged and he was issued with a title deed on 9<sup>th</sup> July 2012. He was therefore an innocent purchaser for value with a genuine title. And if the 1<sup>st</sup> Respondent had given the 2<sup>nd</sup> Respondent copy of her title in the year 2006, she ought to have placed a caution soon thereafter and not waited for 8 years to do so. He thus sought for lifting of the caution and dismissal of the suit against him.
21. At the hearing, the 1<sup>st</sup> respondent testified that she gave the 2<sup>nd</sup> Respondent a copy of her title to get her a buyer for the suit property; Kajiado/Kaputiei North/7645 sometime in 2006 and she remained with the original title. Afterwards, she tried to reach him but her phone calls went unanswered. She



visited the Land registry on 1<sup>st</sup> October 2007 and conducted a search only to discover that the land had been transferred and registered to one Sirat Mohamed Salat. The search revealed that Sirat had acquired from Jaffer Mustapha. She reported the matter to Kitengela police station and the 3<sup>rd</sup> Respondent was summoned. He acknowledged that he never purchased the land from her and neither had Jaffer. They went to the Advocate who had drawn the alleged sale agreement but the Advocate denied either having drawn the agreement or met any of the parties. She stated that the alleged sale agreement between her and the 4<sup>th</sup> Respondent was a forgery as she never sold the suit property to the 4<sup>th</sup> Respondent or anyone else. It was her case that, the title held by the Appellant was equally invalid.

22. The Appellant testified that he purchased the land from one Charles Macharia Mwangi who was introduced by a friend. That the land was registered in the 4<sup>th</sup> Respondent's name. He stated that he did not attend the Land Control Board meeting in Kajiado. He sent someone who he could not recall. He also did not have the Land Control Board consent form, the transfer documents did not have the Lands Registry stamp or any other endorsements and he did not have evidence that stamp duty was duly paid. He also confirmed that the acreage of the property indicated on the sale agreement and the actual acreage on the ground was different. Having been issued with a title deed, he put up a structure and employed a caretaker.
23. From the court record that a site visit was to be conducted and a report pertaining the status of the land be filed in court. However, for various reasons the same was not conducted.
24. The Learned Trial Magistrate found that the suit property belonged to the 1<sup>st</sup> Respondent. The Appellant thus appealed against this decision on grounds that he was entitled to the suit property since he was a bonafide purchaser for value.
25. The first issue for determination therefore is whether the Appellant was a bona fide purchaser for value of property Kajiado/Kaputiei North/ 7645.
26. The Supreme Court of Kenya in the celebrated case of Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR) held as follows on who a bona fide purchaser for value is:

“

“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. e 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.”

27. On the above seven grounds outlined to prove the claim to be a bona fide purchaser, the Appellant claimed that he was the registered owner having purchased it for valuable consideration. This Court has reviewed the Record of Appeal, and has not seen evidence of the Appellant’s title deed, there is no evidence of payment of the purchase price although there is an agreement dated 8<sup>th</sup> June 2012 which indicates that the property was not ½ an acre as per the agreement but ¼ an acre and the seller would therefore refund the buyer Kshs. 1,500,000 of the purchase price of Kshs. 4,450,000 paid. It is also on record that the seller Charles Macharia Mwangi did not have title to the property. The Appellant confirmed that the property was registered in the name of Sirat Mohamed Salat and this was also captured in the sale agreement. The Appellant also confirmed he did not have evidence of other completion documents such as executed transfer forms, stamp duty and Land Control Board consent among others.

28. I am cognisant of the fact that the learned Magistrate in her judgement also took note of the above. Page 4 of the judgement reads: “... During Cross examination the witness stated that he bought the suit property from Charles Mwangi but that the title deed was not in his name but the 3<sup>rd</sup> Defendant. He continued to state that he did not have the consent form from the land control board. He added that the transfer of land document did not have any endorsement from the Land Registry. He further stated that he did not have the receipt for stamp duty adding that he bought ½ acre but later discovered it was ¼ acre. He continued to state that he reported the defied to the police and that he fully paid the consideration even though he did not have sufficient proof...”

29. While the Appellant claims he purchased the suit property having conducted due diligence and without notice of any irregularity, it is now settled in law that how the title is acquired is as good as the process itself. The Supreme Court in the Dina Management case (supra) also cited with approval the Court of Appeal’s case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR where it was held that:

“... where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register...”

30. Going through the Record of Appeal and the documents produced at the lower Court, this court finds that the history of this title is marred with inconsistencies. Such as who the previous owner of the property was. The Appellant purchased it from Charles Macharia but it was registered in the name of Jaffer Mustapha; the acreage of the property indicated on the sale agreement was different from the actual acreage on the ground; the transfer documents and payments made were also not produced to support the Appellant’s claim. This was also pointed out by the learned Magistrate when she stated:

“... the Court has been denied the history of the suit property...”

At the time of the purchase the title deed was not in Charles Macharia’s name, neither was there an existing sale agreement between the 3<sup>rd</sup> Defendant and the said Charles Macharia. That meant that the 5<sup>th</sup> Defendant technically purchased air because there was no proof that Charles Macharia was a bonafide vendor of the suit property...



Annexed to the 5<sup>th</sup> Defendant documents were a memorandum of understanding dated 4.4.12 and debt paying agreement dated 8.6.12 and between himself and the said Charles Macharia. This was after it emerged that the suit property was ¼ acre and not the ½ acre sold as per the sale agreement dated 1.9.11. That also would in my view have raised the 5<sup>th</sup> Defendant antennae in the sense that the bonafide Vendor did not know the size of her own land. This unfortunate venture is rosined by the fact that there was no smooth refund of the 1,500,000/= as seen from the financial documents from Equity Bank abdicating insufficient funds in the

debtor's account Similarly another red flag as admitted in the 5<sup>th</sup> Defendant cross examination evidence was the fact that the transfer of land form was in no way endorsed or authorized by the Land Registrar . How then did ownership change from the 3<sup>rd</sup> Defendant to himself?... The 5<sup>th</sup> Defendant did not exercise the due diligence that is required in the purchase of land in this country considering the rot that exist in the land registries.

31. Similarly, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado* [2015] KECA 644 (KLR) held:

“...Without any documents to support the registration of the appellant as the proprietor of the suit property, the appellant failed to discharge the evidentiary burden of proof as required, and the only conclusion that we can reach on a balance of probabilities is that, since the appellant has not proved or shown the root of his purported title, he could not acquire title to the suit property, which in any event, was incapable of passing to him upon the registration of the purported transfer...

In short, the land acquisition process, as undertaken by the appellant, was unsatisfactory and grossly inadequate, to the extent that he was misled into purchasing the suit property from imposters. The impugned transfer arose as a direct consequence of the laxity in the conduct of proper investigations to ascertain the rightful owner of the suit property. Like the trial court, we are satisfied that, had the appellant carried out thorough investigations into the ownership, as he was obligated to, he would have established that the plaintiff was the rightful owner. We take the view that, the appellant's misadventure was of his own making, and he cannot now turn around and claim that he acquired proprietary rights from imposters who were incapable of passing on such rights in the first instance...

Accordingly, having failed to conduct a proper due diligence on the ownership of the suit property, or prove how he acquired his title we find that the appellant has not demonstrated that he was a bonafide purchaser.”

32. I fully associate myself with these sentiments and find that the learned Trial Magistrate did not err in finding that the Appellant failed to exercise due diligence, did not provide proper history of title and was such not a bona fide for value as claimed.
33. Additionally, the 1<sup>st</sup> Respondent contested ever selling the suit property to anyone. Therefore, the Appellant's title being impugned only means that a legal title could not have been passed to him. This was buttressed by the Supreme Court in the *Dina Management* case (supra) where it held that: “... Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...”



34. I therefore find that the learned Trial Magistrate arrived at a proper finding that the Appellant's title was not unprocedurally acquired and therefore illegal and irregular and the Appellant was not the rightful owner of property Kajiado/Kaputiei North/7645.
35. This Appeal is therefore not merited. The learned trial Magistrate's judgement dated 15<sup>th</sup> June 2022 in CM ELC Kajiado Case No. 162 of 2018 is hereby upheld.
36. The Appeal dismissed with costs to the 1<sup>st</sup> Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

Mr. Obura for the Appellant.

Mr. Munguti for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> Respondent.

N/A for the 3<sup>rd</sup> – 5<sup>th</sup> Respondents.

Court Assistant – Mutisya.

