



**Nyangena & another v Wanjohi & 7 others (Land Case 253B of 2015)  
[2023] KEELC 99 (KLR) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 99 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
LAND CASE 253B OF 2015  
FM NJOROGE, J  
JANUARY 19, 2023**

**BETWEEN**

**JUDITH KWAMBOKA NYANGENA ..... 1<sup>ST</sup> PLAINTIFF**

**JUDITH KWAMBOKA NYANGENA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ISAAC NJUHIGU WANJOHI ..... 1<sup>ST</sup> DEFENDANT**

**ISAAC NJUHIGU WANJOHI ..... 2<sup>ND</sup> DEFENDANT**

**ZIPPORAH WANGARI WANJOHI ..... 3<sup>RD</sup> DEFENDANT**

**ZIPPORAH WANGARI WANJOHI ..... 4<sup>TH</sup> DEFENDANT**

**SARAH MUTUA ..... 5<sup>TH</sup> DEFENDANT**

**SARAH MUTUA ..... 6<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR NAKURU COUNTY ..... 7<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR NAKURU COUNTY ..... 8<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Pleadings**

**Plaint**

1. The plaintiff filed a plaint dated September 10, 2015 seeking the following orders:
  - a. A declaration that the plaintiff is the sole registered lease and proprietor of all that parcel of land known as Nakuru municipality block 23/427 and that as such a registered proprietor/



lease, she is entitled to quick and peaceful enjoyment of land to the exclusion of the defendants, their agents and servants.

- b. An order of permanent injunction be issued restraining the defendants by themselves, their agents and servants from dealing with, entering, encroaching or in any manner howsoever interfering with the plaintiff's quiet and peaceful enjoyment of all that parcel of land known as Nakuru Municipality Block 23/427.
  - c. The defendants be condemned to pay costs of this case to the plaintiff.
  - d. Any other/further orders that this court may deem fit and expedient be issued.
2. The plaintiff's claim is that she is the sole registered proprietor of all the parcel of land known as Nakuru Municipality/Block 23/427 measuring 0.0820 Ha hence the above prayers.

#### **1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants defence**

3. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed their joint statement of defence dated September 30, 2015. They averred that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were the first registered proprietors of the suit property and they have not divested themselves of their rights and interest therein; that the plaintiff's registration as proprietor over the suit property was illegal, irregular, null and void and that therefore it ought to be cancelled; that no cause of action has been disclosed against the 3<sup>rd</sup> defendant and that no demand notice was issued prior to the suit being filed.

#### **1<sup>st</sup> and 2<sup>nd</sup> defendants' counterclaim**

4. The 1<sup>st</sup> and 2<sup>nd</sup> defendants also filed a counterclaim seeking the following orders against the Chief Land Registrar and the plaintiff in the main suit as the 1<sup>st</sup> and 2<sup>nd</sup> defendants in the counterclaim respectively. In their counterclaim, they aver that they have had peaceful or quiet possession of the suit property and that whilst they were still holding the original title document thereto, the Chief Land Registrar through the Nakuru Land Registrar caused three successive transfers of the suit land, first to one Charles Kiprotich Ngeny in 2006, then to one Philip Kipkoech Biwot in the same year, and ultimately to the plaintiff in the main suit in 2014, who thereupon commenced fencing of the land and her assertion of proprietary rights. They reiterate the claim in their defence to the effect that they have ever sold the suit land, and they particularize the fraud, corruption, abuse of office and illegality on the part of the plaintiff and the Chief Land Registrar at paragraph 14 of their counterclaim.

#### **The 4<sup>th</sup> defendant's defence**

5. The 4<sup>th</sup> defendant filed his defence on October 5, 2016, denying the plaintiff's claim in the main suit. He avers that the plaintiff has not justified her claim over the suit land and that the pleading of the plaintiff is defective.

#### **The 4<sup>th</sup> defendant's defence to the counterclaim**

6. The 4<sup>th</sup> defendant also filed a defence to the counterclaim filed against him by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. He denied any wrong doing, and in particular, and states that if any transfers were effected, they were done in good faith and in accordance with his mandate. He denied the particulars of fraud, corruption, abuse of office and illegality, and averred that the remedies sought by the plaintiff in the counterclaim are not obtainable as against him.



## Evidence of the parties

### Evidence of the plaintiff

7. PW1, Judith Kwamboka Nyangena - the plaintiff, testified on October 3, 2020 and adopted her witness statement dated September 10, 2015. Her evidence is that the suit land measures a quarter of an acre; that it is located at Naka Estate in Nakuru; that he obtained the parcel through a Nakuru based estate agent, one Jackson Mwaluma of Lionsgate Estate Agents; that the agent contacted the owner said to be Philip Kipkoech Biwott from Eldoret who came with the original title to the estate agents' office where the plaintiff met him; from there they visited the lands office together though it was on a Saturday; however it was not until the next week that she instructed the estate agent to conduct a search; the agent then called her and stated that he had obtained a certificate of search (PExh 1A) showing Philip was owner and that she paid Kshs 320 for the search and got a receipt (P Exh 1B); that terms were negotiated at the agent's office; that she went with Philip to the land registry where the Land Registrar questioned him in her presence; that the land was confirmed to be his after which they returned to the agent's office and then went to an advocate's office in town where an agreement was prepared for execution before an advocate of her choice in the presence of Philip and his wife and the agent; that the purchase price was Kshs 5,500,000/=. On the day of execution of the agreement (PExh2), she paid Kshs 700,000/= in cash and deposited Kshs 2,600,000 in the sellers account in a bank in Nakuru vide a deposit slip (P Exh 6); the balance was to be paid into the seller's account within 30 days. Philip gave her a rates clearance certificate (PExh3) which showed that the land was registered in the name of Isaac N. Wanjohi and another and that they had transferred the land to Philip; the vendor also gave the plaintiff copies of his identity card and KRA Pin Certificate, his wife's identity card and his wife signed a spousal consent (PExh5). She paid the advocate Kshs 5000/= as fees vide a receipt (P Exh 7). The vendor also signed a transfer form and gave it to the plaintiff while they were still in that office. Further, the vendor also gave her a copy of the certificate of lease apparently issued to him on September 4, 06 and he surrendered the original to the land registry and he cleared the land rates; he gave her a receipt for consent fees for consent from the Commissioner of Lands (P Exh 11) as well as the consent (P Exh 12); she paid Kshs 800,000/= into the bank account of the seller (P Exh 13) and transferred the balance of Kshs 1,400,000/= to the same account from her bank account; she produced an RTGS form (P Exh 14). Stamp duty was assessed and paid on 16/7/2014 vide P Exh 15 and she was issued with a certificate of lease (P Exh 17) on 21/7/2014; she successfully fenced the plot and deposited building materials thereon without anyone raising demur. The agent also got her a certificate of search showing she was the new owner (P Exh 18B). The plot went through some physical planning processes complete with payment by the plaintiff and change of user was obtained and building plans were drawn by an architect. She fenced the plot with iron sheets and fixed a gate but the defendants interfered with them and dumped construction material on the plot one night. She reported the matter to the police. She then went to the lands office and found a restriction had been registered against the title. Then she was given a copy of a green card with information that she had not seen before. The Land Registrar, a Mr Sunguti summoned her and the 3<sup>rd</sup> defendant to a meeting on 11/8/2015. The plaintiff gave a narrative of her acquisition of the land but no solution was arrived at and so she filed the present suit.
8. On cross-examination by Mr Kisilah the plaintiff admitted that she never obtained a green card before buying the property, and that if she had gotten it before she would have known of the true history of the property; that she never asked for and Philip never gave her a copy of his alleged lease or letter of allotment; that as at 20/6/14 the rates clearance documents showed the 1<sup>st</sup> defendant to be the registered owner, but she never gave much thought to the discrepancy between the alleged title and the rates documents and so she never pursued to know who the 1<sup>st</sup> and 2<sup>nd</sup> defendants were for their names never appeared in the certificate of official search that she had obtained.



9. In re-examination by Mr Karanja she stated that since the Land Registrar had confirmed the registered owner of the suit land was Philip, she did not need to obtain a green card.
10. PW2, Joyce Serling, advocate testified on 28/6/2021. Her evidence is that she drafted a sale agreement (PEXh 8) between the plaintiff and Philip in respect of the suit land; that both vendor and purchaser appeared before him; that both vendor and purchaser executed the agreement in her presence; Kshs 7,00,000/= was paid in cash at her office; Upon cross examination however he averred that she never did the conveyance work for the parties. She could not remember if the parties appeared before her on the same occasion for the preparation of both the agreement and the transfer or whether the parties brought the transfer or she drafted it, or whether she saw the vendor's wife. She was however shown a certificate of search. At that point the plaintiff's case was marked as closed.
11. DW1 Zipporah Wangari Wanjohi testified de bene esse on 3/3/2017 and adopted her witness statement dated 6/2/2017 as her evidence-in-chief. Her evidence is that the 1<sup>st</sup> defendant is her husband; that they live in the United States; that the 3<sup>rd</sup> defendant is her sister to whom she donated a power of attorney dated 24/8/2015 (D Exh 1); that the suit land belongs to the 1<sup>st</sup> and 2<sup>nd</sup> defendants; that they acquired it through an application for allotment made in 1991; then it was part of one big parcel under subdivision; that it was allotted to them vide a letter of allotment (D Exh 2) dated 5/8/1991; that they paid for the plot dues by way of bankers cheque (DEXh5) on 21/12/1995; that thereafter the lease agreement was forwarded by the Lands Department to the Land Registrar by way of a letter (DEXh 6) addressed to her with the copy of lease dated 9/9/1997 (DEXh7) annexed. The 3<sup>rd</sup> defendant received these on DW1's behalf because she was abroad by then and she successfully pursued a certificate of title. DW1 lacked a travel visa and so delayed return to Kenya till 2009; since the certificate of lease was issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants they have never sold the suit land or dealt with the plaintiff over the same and she does not know how she got her purported documents of title. DW1 stated that she does not know the persons named Charles Kiprotich Ngeny and Philip Kipkoech Biwott whose names appear on the green card for the land and she has never dealt with them; in any event she was not in the country in 2006 when the two persons were registered as owners.
12. Under cross-examination by Mr Karanja DW1 stated that she and her husband jointly purchased the property from Naka –Nakuru Kalenjin Enterprises Ltd- through a Mr Kesui whom they paid Kshs 20,000/=; that upon payment they were reflected in the register of Naka; that they applied to be allocated the land through Sheth and Wathigo advocates; that some of the steps in the process of acquisition of the land were undertaken by her husband; the first time she saw the certificate of title was in 2009 when she came back to Kenya as she was away when it was issued; she never conducted a search upon her return as there was no dispute; that the plaintiff had committed a fraud because DW1 still held the original title to the suit land and she has never transferred the same to anyone.
13. DW2 Sarah Wanjiru Mutua testified on 10/2/2022 and adopted her witness statement dated September 30, 2015 as part of her evidence-in-chief. Her evidence is that the 1<sup>st</sup> and 2<sup>nd</sup> defendant are husband and wife who both live in the United States while the 2<sup>nd</sup> defendant is her sister; that she was in charge of paying rates for the suit land, Nakuru Municipality Block 43/427 located in Naka Estate Nakuru; that she was also responsible for taking care of the land; that she had a power of attorney (DEXh.9) from the 1<sup>st</sup> and 2<sup>nd</sup> defendants; that she paid the land rates for the property and obtained receipts for the rates payments for between 2005 and May 2015. Demand notices for rates were made to the 1<sup>st</sup> and 2<sup>nd</sup> defendant. In May 2015 she went to pay and was informed the rates for 2015 had been paid by one Philip Koech Biwot. She did not know Philip. The County officials stated that the said Philip was the new owner of the plot. She informed the 2<sup>nd</sup> defendant of the developments. They sought the services of a lawyer. It was then discovered that, as per the green card obtained by the lawyer,



that the suit land had been transferred to one Charles Kiprotich Ngeny who had then transferred the same to Philip Kipkoech Biwot and then to the plaintiff on 21/7/2014. She did not know who the plaintiff was. In 2014 the 1<sup>st</sup> and 2<sup>nd</sup> defendants were abroad and DW2 had the original certificate of lease with which she had not parted possession and she does not know how Charles and Philip ever came to be registered on the title as she has never signed any transfer. In 2006 she was the one having possession of the title document. A letter (DExh11.) was written to the Land Registrar. The Land Registrar summoned parties to appear on 23/7/2016 with their respective title documents. Another letter dated 27/7/2015 (DExh12) required attendance on 11/8/2015. She appeared with her younger sister. The plaintiff was present. They presented their documents. The title DW2 had was confirmed to be authentic. They found that meanwhile the land had been fenced off by the plaintiff; DW2 never advertised the suit land for sale and she has never seen any transfer between the 1<sup>st</sup> and 2<sup>nd</sup> defendant and Charles K. Ngeny or heard of cancellation of the 1<sup>st</sup> and 2<sup>nd</sup> defendants' title. In her opinion, the title in the plaintiff's name ought to be cancelled. Upon cross-examination by Mr. Karanja she stated that 8/9/15 is the date of Registration of her power of Attorney enabling her to deal with the property and she had none before then; that Charles was registered on 7/6/2006 and Philip on September 4,2006 and there was no registered caution or restriction. That the letter of 27/7/15 was not addressed to her and she had no power of attorney by then.

14. DW3, Raymond Gitonga, Land Registrar Nakuru testified on April 26, 2022. According to him the suit Land was first registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants on December 8, 2005 and later transferred to Charles Kiprotich Ngeny on the June 2, 2006 and later transferred to Philip Kipkoech Biwott on September 4, 2006 and then transferred to the plaintiff herein on July 24, 2014. The current owner as per the white card is Judith Kwamboka Nyangena, the plaintiff. The parcel file has transfer documents evidencing conveyance from Philip Kipkoech Biwott to Judith Kwamboka Nyangena but no documents of transfer from Isaac (1<sup>st</sup> plaintiff) and Zipporah (2<sup>nd</sup> plaintiff) to Charles Kiprotich Ngeny nor any transfer documents from Charles K Ngeny to Phillip Kipkoech Ngeny; that the surrendered titles that were cancelled when the transfers were done ought to be but were not in the parcel file which finding affects the title of Judith Kwamboka; that unless the original title is surrendered the transfer cannot be procedural. He produced the Green Card (DExh14.)
15. Upon cross-examination by Mr Mbugua DW3 stated that it must be the Lands Office that issued title to Charles K. Ngeny and Philip K Biwott and Judith; that the official search dated June 7, 2014 showed Phillip as owner and the transfer from Philip to Judith showed that the stamp duty was assessed by the lands office and its payment was done; that Judith also availed the original title in the name of Philip when she presented the transfer; that he was not stationed at the Nakuru land registry in 2014 when Judith was registering her title and only the person who was in the office then can ascertain any surrounding issues; that he would not expect Judith to go beyond the search to find out who the previous owners were and would not have known anything of the previous records; that he thinks Judith carried out due diligence and she is an innocent purchaser; that here was no restriction against transfer from Philip's name to her; that the Registrar should have ascertained the availability of the previous records before registering the transfer. That a consent letter from Commissioner for the transfer to Judith was issued on July 21, 2014 and the search of October 3, 2014 showed Judith to be the owner of the suit land; that the previous owners are not joined into this case as parties. He stated that he would presume that the Registrars who registered the transfers must have had all the documents needed in order to register Judith as proprietor.
16. Upon re-examination by Mr Kisilah: he stated that the Registrar must have had documents to facilitate the transfer, but there is no record of documents that effected transfer from Charles to Phillip; he stated that there is no other place to store such save in the parcel file. There are no documents to transfer



from the 1<sup>st</sup> and 2<sup>nd</sup> defendant to Charles and without those, no transfer should have been registered. However, he held strong to the position that the original lessees are 1<sup>st</sup> and 2<sup>nd</sup> defendant and the Green Card and white card must always reflect those as original Lessees. Among the records DW3 had there was no consent to transfer from Isaac to Charles and if the 1<sup>st</sup> and 2<sup>nd</sup> defendant have not surrendered the title, they could not have transferred the land to anyone and the subsequent titles are not valid; that though the information Judith got was that Philip was the owner, if she had searched further, she would know that some documents were missing. He stated that parties are at liberty to apply for certified copies of the documents available. With the evidence of DW3 the 4<sup>th</sup> defendant's case marked closed and the court ordered parties to file submissions.

### **Submissions**

17. The 1<sup>st</sup>-3<sup>rd</sup> defendants filed submissions on June 11, 2022 while the 4<sup>th</sup> defendant filed submissions on June 17, 2022. I have considered those submissions in this judgment.

### **Determination**

18. The issues arising for determination in the present suit are as follows:
  - a. Which of the two titles over the suit land is valid?
  - b. Should the 1<sup>st</sup>-3<sup>rd</sup> defendants be enjoined from dealings with the suit land?
  - c. Who should pay the costs of the suit?
19. The evidence of DW3 the Land Registrar was crucial in establishing the state of the land register in this case. It is clear by now that there are two titles in existence: the title issued to the plaintiff and the title issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. DW3's evidence was that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were the first registered owners as lessees of the suit land, and the plaintiff's registration came a distant 4<sup>th</sup> in the land register. Both titles having emanated from the same land registry and it having been acknowledged as such by the custodian of the land register, it behoves the court to analyze the mechanics by which the plaintiff obtained her title to enable the court determine which title should be upheld.
20. Though the plaintiff attempted to discredit the 1<sup>st</sup> and 2<sup>nd</sup> defendant's title, DW3 maintained that it was unquestionably valid. This court must fault and quench the plaintiff's suspicion by stating here categorically that it is not the process of allocation of the first title to the 1<sup>st</sup> and 2<sup>nd</sup> defendants that is in issue in this case. The issue therefore remains whether the series of transfers through the entries that preceded the plaintiff's title may have effectively conveyed any rights and interests through the tenures purportedly held by several registered owners up to the plaintiff's.
21. The parcel file holds the copies of surrendered titles, transfers and other documents received by the registry when a land transfer is being lodged for registration. DW3 was categorical that original certificates of title must be surrendered when transfers are being lodged for registration and that unless the original title is surrendered the transfer cannot be procedural. He added that no documents of transfer were in the parcel file to evidence the transfer of the suit land from the 1<sup>st</sup> and 2<sup>nd</sup> defendant to Charles Kiprotich Ngeny. This obviously means that there are no documents before court that can support that registration of Charles Kiprotich Ngeny as proprietor.
22. DW3 also averred that there are no documents in the parcel file to support any transfer of the suit land from Charles K Ngeny to Phillip Kipkoech Ngeny; he stated that the surrendered titles that were supposed to be cancelled when the transfers were done ought to be but were not in the parcel file; however, DW3 conceded that the parcel file has transfer documents evidencing conveyance from Philip



- Kipkoech Biwott to Judith Kwamboka Nyangena. The links that would have perfected the chain of transfer of interest between the 1<sup>st</sup> and 2<sup>nd</sup> defendant and the plaintiff were the missing transactional documents transferring the suit land from the two defendants to Charles and those transferring it from Charles to Philip.
23. Of the set of documents regarding the alleged transfer by the 2 defendants, it can be confidently said that the reason their original certificate of title is not in the parcel file is because it was not surrendered in the first place; it was still in their possession. It was produced as DExh8. Documents evidencing transfer from Charles K Ngeny to Phillip Kipkoech Ngeny were also missing in the parcel file. However, the parcel file has transfer documents evidencing conveyance from Philip Kipkoech Biwott to Judith Kwamboka Nyangena. The Land Registrar did not indicate whether the latter batch of documents included the original title in the name of Philip Kipkoech Biwott.
  24. Copies of crucial documents including the vendor's identity card, his wife's identity card and vendor's KRA PIN certificate were produced at the hearing. There is evidence that the plaintiff's sale agreement with Philip was made by and executed before an advocate and paid for. A bank deposit slip dated June 17, 2014 was produced showing that Kshs 2,600,000/= was actually paid into Philip's account with Equity Bank. It is evident that Philip is a real and identifiable person and not an imaginary figure and I also have reason to believe that the same case applies to his wife whose identity card was exhibited in this suit. I think that the plaintiff gave evidence in her case with what I consider to be a great amount of candour; this included admissions that they visited a lands office on a Saturday in the year 2014 (while, noticeably, that was not a working day and its accepted connotation of irregularity) and her failure to obtain a copy of the green card for the suit land prior to purchase. She also admitted that the original certificate of lease was given to the land registry before the lodging of the transfer and she only got a copy thereof, and the reason for that is suspect too. Finally, it was evident that she left much of the work to persons who would update her, including on land searches and registration of the transfer, implying an excessive dose of trust that may have been abused by those persons. These persons including the land agent were not called to testify, and they may have concealed their findings about the instruments missing from the parcel file with the result that the plaintiff got only a rosy picture of the situation on the ground. Nevertheless, upon perusing her documentary evidence, I have no doubt that the transaction between the plaintiff and Philip actually took place, and that she paid valuable consideration for the suit land. However, it was DW3's evidence that unless the original title is surrendered the transfer cannot be procedural and this court concurs with that position, for how else would the transferee and the Land Registrar know that the transferor holds an original title? And how would the suit land have been proofed from future mischief or fraud if the original title was not taken away from the hands of the transferors divesting themselves of interest in the land? While there are two competing titles in existence, the validity of the plaintiff's title can not be positively declared without evidence that the sequential transfers to Charles and Philip were regular. That brings this court to the question of how Philip obtained the title from Charles, and how Charles also obtained title from the 1<sup>st</sup> and 2<sup>nd</sup> defendants. And therein lies the plaintiff's worst sin of omission regarding joinder of parties to the present suit.
  25. The main question that arises is why the plaintiff, upon discovering the first title still existed alongside hers, never joined Philip Kipkoech Biwott to the suit to establish that he had regularly been registered as proprietor. Was there something, for example, absence of transactional document for the purported transfers to Charles and to Philip, that she feared would come to light and discredit her claim to title?
  26. In the *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR, the court of appeal issued an admonition to litigants, warning against the mere dangling of the instrument of title as proof of ownership while it is that very instrument of title that is in challenge with the clear instruction that



instead, the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.

27. In this court's view, whenever two parallel titles issued by the same land registry are competing, and it is evident that the claimant seeking recognition of their title obtained it through a transfer by any person other than a defendant who denies having transferred his title to such person, the claimant seeking that their title be declared valid must join such a person to the suit for a determination as to the validity of his title too or for a refund to the claimant if such title is not proved valid. The proper rationale for this holding is that no one can transfer a better title than that which they have, in Latin, *nemo dat quod non habet*. The possible consequence of not insisting on proof that the transfer to the claimant was regular is that the land registration system may run into a serious crisis where fraudsters may exploit that loophole to escape liability for their nefarious acquisition of title; also, that approach should be discouraged as it may render the provisions of Section 26(1)(b) of the [LRA](#) to be of no value at all. This would not augur well for the registration system that Kenya adopted. Of course the plaintiff may argue that she conducted due diligence before transfer to her name and the Land Registrar (DW3) concurs with that position; however, the increment in the frequency of fraudulent titles actually issued or emanating from land registries has become a national concern, thus signaling massive abuse of the system by fraudsters, possibly with insider help; it is clear now that owing to that risk, due diligence on a transferee's part should not end with an official search, a cursory perusal of the green card or a mere casual, unrecorded conversation with an official at the land registry; it must include a demand from the transferor of the documents that he obtained title by, including a valid agreement and a transfer and an application for these documents from the registry parcel file where the need arises; further, as a sale agreement usually includes an implied warranty on validity of transferor's title it should be a reflexive reaction, in circumstances where the transferee has after the transfer come to know or have reason to believe that the transferor's title may be invalid, to also effect joinder of that transferor to the claim by a transferee to act as the tail end of due diligence so that the transferor may prove the validity of his title or in default take liability for a refund of the purchase price.
28. The plaintiff in this case cannot establish any invalidity on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendant's title as it was obtained through an allocation while hers was through a transfer. Only Charles, who they purportedly transferred to, can do that by adducing evidence of how the title was transferred to him. How then can this court, in the absence of Charles' evidence on acquisition of title from the defendants, or Philip's evidence of acquisition of title from Charles, be able to adjudge the plaintiff's title valid? The evidential gaps that would have enabled this court to do so have not been filled by the plaintiff.
29. For now, the only evidence presented renders credible the Chief Land Registrar's assertion in the counterclaim with specific regard to the last transfer, that it was registered in good faith and in accordance with the Land Registrar's mandate when the plaintiff presented bona fide transactional documents. However, the adoption of the Chief Land Registrar's presumption, without evidence, that Charles and Philip must have presented valid transfer documents and procedurally obtained their registration as owners ridiculously mocks the very express finding that the 1<sup>st</sup> and 2<sup>nd</sup> defendant still have their original title, and is tantamount to fighting Charles' and Philip's battle in their absence. In my view the Land Registrar should have just conceded that he does not know if those registrations were procedural or legal. On this court's part, there is a reasonable cause to believe that the sequential registrations of the suit land in the names of Charles and Philip were fraudulent and incapable of vesting them with any right or interests in the suit land, and consequently no rights flowed to the plaintiff's estate too.



30. Even in circumstances where a plaintiff as in the present case has established that she was not party to any fraud, the application of the provisions of Section 25 (1) and Section 26(1)(a) of the [Land Registration Act](#) would not save her title, for the subsequent provisions of Section 26(1)(b) mandate this court to invalidate any title that has been obtained illegally, unprocedurally or through a corrupt scheme.
31. The logical sequel to the finding that the purported transfers to Charles and Philip must have been obtained illegally, unprocedurally or through a corrupt scheme stand in the way of any declaration that the plaintiff holds valid title to the suit land, and her prayer for such declaration as well as for an injunction against the defendants must therefore fail.
32. In the final analysis I find that the plaintiff has failed to prove her claim in the plaint dated September 10, 2015 to the standard required by law. On the other hand, I find that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have established on a balance of probabilities that they have never disposed of the land to Charles K Ngeny; therefore, no valid title could have been transmitted from them to Charles K Ngeny, then to Philip K Ngeny and finally to the plaintiff. Outright deceit, opacity, forgery, abstraction or concealment of records and plaintiff's lack of total due diligence are the raw materials from which the plaintiff's threadbare title has been knit and she can not be allowed to strut around with it as it abases the very meaning of "good title" under the existing law. That is the kind of title that this court is obliged to cancel under the provisions of Section 26(1)(b) of the [LRA](#) for being an illegitimate offspring borne out of a polyandrous marriage between illegality, unprocedural registration and corrupt scheming, and consequently which can not inherit the dignity of legal recognition under Section 25 of the [LRA](#).
33. The plaintiff's title being invalid for those reasons must be cancelled as prayed in the counterclaim. I find that prayers nos (a) – (e) as well as prayer (g) in the counterclaim dated September 30, 2015 ought to be granted.
34. In conclusion I issue the following orders:
  - a. The plaintiff's claim in the plaint dated September 10, 2015 is hereby dismissed;
  - b. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant's counterclaim dated September 30, 2015 is partially allowed in the following terms:
    - i. A declaration is hereby issued declaring that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are still the legitimate registered proprietors of Nakuru Municipality/Block 23/427;
    - ii. The purported title issued on July 21, 2014 in the name of Judith Kwamboka Nyangena which she holds in respect of Nakuru Municipality/Block 23/427 is declared void and is hereby cancelled;
    - iii. The Chief Land Registrar and the Land Registrar Nakuru shall rectify the land register to delete all registration entries made in favour of Charles Kiprotich Ngeny and Philip Kiprotich Ngeny and Judith Kwamboka Nyangena and to reflect Isaac Njuhigu Wanjohi and Zipporah Wangari Wanjohi as the current registered proprietors of Nakuru Municipality/Block 23/427;
    - iv. An order of permanent injunction is hereby issued restraining the plaintiff or any person claiming under her from in any manner whatsoever interfering with the plaintiff's title or quiet possession or enjoyment of the suit land;
    - v. The plaintiff shall remove herself and all of her belongings from the Nakuru Municipality/Block 23/427 forthwith in default of which she shall be forcibly evicted;



vi. The plaintiff shall bear the costs of this suit and counterclaim.

35 It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 19<sup>TH</sup>  
DAY OF JANUARY, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

