



**Meso & another (Suing as administrators of the Estate of Alfred Meso Nono - Deceased) v Okomo (Being sued as administrator of the Estate of the Late Jacob Awuor Akomo - Deceased) & 4 others (Environmental and Land Originating Summons E036 of 2021) [2025] KEELC 1457 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1457 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E036 OF 2021  
E ASATI, J  
MARCH 20, 2025  
IN THE MATTER OF THE ESTATE OF THE LATE ALFRED MESO NONO (DECEASED)**

**BETWEEN**

**MARGARET VERONICA MESO ..... 1<sup>ST</sup> PLAINTIFF  
ANDREW ISAAC MESO ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS ADMINISTRATORS OF THE ESTATE OF ALFRED MESO NONO -  
DECEASED**

**AND**

**GABRIEL ODHIAMBO OKOMO (BEING SUED AS ADMINISTRATOR  
OF THE ESTATE OF THE LATE JACOB AWUOR AKOMO -  
DECEASED) ..... 1<sup>ST</sup> DEFENDANT  
PASKAL OKWARO OMOKO ..... 2<sup>ND</sup> DEFENDANT  
CHIEF LAND REGISTRAR, KISUMU ..... 3<sup>RD</sup> DEFENDANT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT  
CYPRIAN AGUMBA ODENY ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Vide the amended Originating Summons dated 18<sup>th</sup> November, 2021, the Plaintiffs/Applicants in their capacity as the Administrators of the Estate of Alfred Meso Nono sued the Defendants/ Respondents herein for the following relief: -



- a. a declaration that Alfred Meso Nono is the sole and legal owner of the suit property being L.R. No. East Kisumu/Kanyakwar “B”/214 situate in Kisumu County within the Republic of Kenya.
- b. a declaration that Alfred Meso Nono is the registered proprietor of the suit property being L.R. No. East Kisumu/Kanyakwar “B”/214 situate in Kisumu County within the Republic of Kenya.
- c. the honourable court be pleased to order that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be served with this summons, all pleadings, order/directions herein by way of registered post to their last known address or by substituted service in a widely circulated newspaper;
- d. a permanent injunction be and is hereby issued prohibiting the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents jointly and severally, their employees, officers, agents and/or servant or anyone whatsoever claiming under them from in any way interfering with the Applicants’ quiet use, possession, ownership and interest over the property known as L.R. No. East Kisumu/Kanyakwar “B”/214 situate in Kisumu County within the Republic of Kenya;
- e. a permanent injunction and prohibition restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents whether by themselves, their servants, agents, representatives and/or employees or anyone claiming under them howsoever from transferring, charging, offering for sale or disposing of or alienating in any manner all that property known as L.R. No. East Kisumu/Kanyakwar “B”/214 situate in Kisumu County within the Republic of Kenya;
- f. a mandatory injunction compelling the 3<sup>rd</sup> Respondent at the Land Title Registry in Kisumu to cancel all subsequent Title Deeds in relation to the suit property being L.R. No. East Kisumu/Kanyakwar “B”/214 situate in Kisumu County within the Republic of Kenya in favour of any other person whomsoever other than Alfred Meso Nono;
- g. any other relief or orders that are just and equitable under the circumstances that the Honourable court may deem appropriate and fit to grant so as to protect the proprietary interest of the Applicants.

### **The Plaintiffs’ Case**

2. The Plaintiffs’ case is that the file at the Land’s Registry was irregularly endorsed with names of persons who are not the legal proprietors with regard to property known as land parcel Reference number East Kisumu/Kanyakwar “B”/214 (the suit property) which at all material times belonged to and comprised the estate of Alfred Meso Nono deceased pursuant to a title deed issued in his favour on 28<sup>th</sup> March, 1991.
3. That on 23<sup>rd</sup> July, 2021, the Plaintiffs discovered that the suit property had been unlawfully and illegally transferred and forged title deeds issued in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. That the 3<sup>rd</sup> Respondent upon conducting its due diligence found that the entries in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were done unlawfully and proceeded to expunge the entries from the green card and restrained a restriction on account that the registered proprietor Alfred Meso Nono was deceased.
4. That on 25<sup>th</sup> March, 2021, an entry was made by the 1<sup>st</sup> Respondent that the suit property should be transmitted to the beneficiaries of the estate of Jacob Awuor Okomo who are; Doris Atieno Okomo, Teresa Auma Owiti and Gabriel Odhiambo Okomo vide Succession Cause No.190 of 2019.



5. The plaintiffs further claimed that on or around 23<sup>rd</sup> August, 2021 they discovered that the 2<sup>nd</sup> Respondent had transmitted the suit property to the 5<sup>th</sup> Respondent one Cyprian Agumba Odeny and a title deed issued to him on 6<sup>th</sup> September, 2021.
6. That because of the illegal entries in the green card, the Plaintiffs are unable to transmit the suit property to the lawful beneficiaries of the estate of the deceased Alfred Meso Nono. That the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents have no legal claim to the suit property. That the unlawful registration by the Respondents is depriving the lawful and rightful owners of the suit property. They therefore sought the court's intervention.

### **1<sup>st</sup> Respondent's Defence**

7. In reply to the Originating Summons, the 1<sup>st</sup> Defendant filed his Replying Affidavit sworn on 8<sup>th</sup> November, 2021. His case was that the suit property belonged to his late father by the name of Jacob Okomo Awuor having been acquired from one Paskal Okwaro Omoko.
8. That his family undertook succession proceedings vide Kisumu Cmc Succ. Cause No.190 OF 2019 and the suit property was transmitted to him, his mother and his sister.
9. That the suit property has never belonged to Alfred Meso Nono and that the orders sought should not be granted.

The 2<sup>nd</sup> Respondent filed no response to the Originating Summons.

### **3<sup>rd</sup> and 4<sup>th</sup> Respondent's Defence**

10. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed Response to the Originating Summons dated 17<sup>th</sup> July, 2022.
11. Their case was that the deceased was the registered owner of the suit property until 7<sup>th</sup> July, 1999 when ownership changed to Paskal Okwaro Omoko and ownership documents issued. That since then, the land has changed hands to five (5) new owners and that the current registered owner is the 5<sup>th</sup> Respondent.
12. That the orders sought in the Originating Summons cannot issue property having changed hands in the life time of Alfred Meso Nono.
13. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents stated that they are strangers to the allegations of documents being expunged from the record. They denied any fraud or unlawful acts.

### **5<sup>th</sup> Respondent's Defence**

14. In response to the Amended Originating Summons, the 5<sup>th</sup> Respondent filed his Replying Affidavit sworn on 23<sup>rd</sup> December, 2021.
15. His case was that as at the time Plaintiffs were carrying out succession in Nairobi, in the year 2011, Alfred Meso Nono, deceased was not the registered owner of the suit property. That the suit property was at that time registered in the name of the 2<sup>nd</sup> Respondent who had had it since the year 1999. That the suit land was not part of the estate of Alfred Meso Nono. That he acquired the suit land as a bona fide purchaser for value after doing due diligence.
16. That he put up a live fence with kay-apples, planted trees and bananas on the land. That he bought the land at Kshs.1,300,000/-, obtained Land Control Board Consent for transfer of the land in his favour, that a transfer was done and he was issued with a title deed on 6<sup>th</sup> September, 2021.



17. That he has invested a lot of money in the suit property. That he is in occupation of the property and that the Plaintiffs have never even stepped on the suit property.
25. That the suit was defective as the issues raised cannot be determined by way of Originating Summons.
18. The 5<sup>th</sup> Defendant filed a counterclaim dated 8<sup>th</sup> June, 2022 vide which he sought for the following relief against the Plaintiffs and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants;
  - a. a declaration that the 5<sup>th</sup> Defendant is the bona fide and absolute registered owner of the suit land parcel number Kisumu/Kanyakwar “B”/214
  - b. an order cancelling the registration of Alfred Meso Nono deceased as registered owner of land parcel No. Kisumu/Kanyakwar “B”/214 and cancellation of the deed issued on 28<sup>th</sup> March, 1991
  - c. a declaration that an order expunging entries numbers 6, 7, 8 and 9 by the 3<sup>rd</sup> Respondent was unlawfully done and therefore is null and void
  - d. permanent order of injunction against the Applicants, their agents, servants and/or any other persons authorized by them from trespassing onto and/or interfering with the 5<sup>th</sup> Defendant’s peaceful occupation and ownership of land parcel number Kisumu/Kanyakwar “B”/214.
  - e. costs of the counter claim.
  - f. any other orders or relief that the honourable court may deem fit and just to grant.

### **The Evidence**

19. On behalf of the Plaintiffs, one witness testified. The first Plaintiff who testified as PW1 adopted the contents of her witness statement dated 23<sup>rd</sup> November, 2023 as her evidence in chief. She produced exhibits as contained in the list of documents dated 24<sup>th</sup> November, 2022 namely; authorization from the co-plaintiff and Letters of Administration, copy of Certificate of Confirmation of Grant, copy of the title deed, copy of letter dated 23<sup>rd</sup> July, 2021, copy of green card, copies of pleadings in KSM CMC Succession Cause No.190 of 2019 and Certificate of Official Search.  
On behalf of the Defendants, the 1<sup>st</sup> and 5<sup>th</sup> Defendants testified.
20. No evidence was adduced by or on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
21. DW1 (the 1<sup>st</sup> Defendant) adopted the contents of his witness statement dated 13<sup>th</sup> October, 2022 as his evidence in chief. He produced Death Certificate for Jacob Okomo, Chief’s Letter, Certificate of Official Search, Grant of Letters of Administration in respect of the estate of Jacob Okomo, copy of Kenya Gazette, certificate of confirmation of Grant in Succession Cause No.190 of 2019, copy of green card, certificate of official search dated 25<sup>th</sup> March, 2021, transfer of land dated 4<sup>th</sup> December, 1990, transfer of land dated 24<sup>th</sup> November, 1986 and adjudication record.
22. DW2 was the 5<sup>th</sup> Defendant, he adopted the contents of his witness statement dated 27<sup>th</sup> September, 2022 as his evidence in chief and produced a total of 20 exhibits as listed in the list of documents dated 8/6/2022.

### **Submissions**

23. At the close of the evidence, pursuant to the directions taken on 29<sup>th</sup> May, 2024, parties filed written submissions on the case.



24. Written submissions dated 11<sup>th</sup> October 2024 were filed by the firm of Otunga Law LLP on behalf of the Plaintiffs. Written submissions dated 8<sup>th</sup> October 2024 were filed by Ken Omollo & Co. Advocates on behalf of the 1<sup>st</sup> Defendant. On behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants written submissions were filed by the Principal Litigation Counsel for the Hon. Attorney General on 28<sup>th</sup> May 2024 and written submissions dated 21<sup>st</sup> August 2024 were filed by P. D Onyango & Co. Advocates on behalf of the 5<sup>th</sup> Defendant.

### **Issues for Determination**

25. Having considered the pleadings, the evidence placed before court and the written submissions filed, I find that the following are the issues that emerge for determination;
- a. whether or not the correct procedure was adopted in filing the present action in court,
  - b. whether or not the suit property formed part of the estate of Alfred Meso Nono, deceased,
  - c. whether the suit land belonged to Jacob Awuor Okomo deceased, to whom the 5<sup>th</sup> defendant traces his title,
  - d. whether certain entries on the register in respect of the suit land were expunged and whether the expunging was lawful,
  - e. whether or not transfer of the suit land in favour of the 5<sup>th</sup> Defendant who is the current registered owner was lawful,
  - f. whether or not the Plaintiffs are entitled to the relief sought in the amended Originating Summons,
  - g. whether or not the 5<sup>th</sup> Respondent is entitled to the relief sought in the counterclaim,
  - h. what orders to make on costs of the suit and of the counterclaim.

### **Analysis and Determination**

26. Order 21 Rule 4 Civil Procedure Rules 2010 requires that judgments in defended suits should consist of the issues for determination, the decision on each issue and the reasons for the decision.
27. The first issue for determination is whether or not the correct procedure was adopted in bringing the present action to court.
28. The action herein was commenced by way of Originating Summons which was later amended and replaced with the amended Originating Summons dated 18<sup>th</sup> November, 2021.
29. In their defence, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants challenged the mode of commencement of the action. They pleaded in paragraph 7 of their response to Originating Summons that the issues of fact and law raised cannot be competently and justly disposed of by way of Originating Summons as they required a credibility test and interrogation of documents.
30. The 5<sup>th</sup> Defendant raised the same issue in his Replying Affidavit and raised a Preliminary Objection on the same. Vide the court ruling dated 6<sup>th</sup> May, 2022, the court determined the issue and held that although the issues raised in the case were complex and contentious and therefore ought to have been raised by way of a plaint, an Originating Summons can be converted into a plaint and the Replying Affidavit to defence and parties be allowed to give viva voce evidence. The court dismissed



- the Preliminary Objection and converted the Originating Summons into a plaint and the Replying Affidavits a defence and ordered that the matter proceeds by way of viva voce evidence.
31. The 2<sup>nd</sup> issue for determination is whether or not the suit property formed part of the estate of Alfred Meso Nono.
  32. The Plaintiffs pleaded in paragraph 4 of the Supporting Affidavit to the Originating Summons that Alfred Meso Nono, deceased, had at all material times been the registered owner and proprietor of the suit property which property comprised the estate of the deceased. PW1 testified through her witness statement that it was after they bought a green card in respect of the suit land in July 2021 that it was revealed that the suit property had been unlawfully and illegally transferred and forged title deeds issued. To support the claim that the land belonged to Alfred Meso Nono, the 1<sup>st</sup> Plaintiff produced a copy of register (green card) in respect of the suit land as exhibit.
  33. The Defendants deny that the suit property was part of Alfred Meso Nono's estate. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants averred through their replies that as at the time the Plaintiffs filed the succession cause in respect of the estate of Alfred Meso Nono, the suit property was not registered in his (Alfred Meso Nono's) name hence was not part of his estate.
  34. Perusal of the green card produced by the Plaintiffs shows that the register in respect of the suit property was opened on 23<sup>rd</sup> February, 1983 when the land was registered in the names of Joseph Okulo Gone and Teresia Akeyo Gone. It shows that on 25<sup>th</sup> November, 1986, the land was transferred to Roselina Regina Atieno Omollo for Kshs.10,000/-. The green card shows further that on 28<sup>th</sup> March, 1991, the land was transferred to Alfred Omedoh of P.O. Box 49694 Nairobi for Kshs.52,500/= and title deed issued to him on the same day. That on 7<sup>th</sup> July, 1999 the land was transferred to Pascal Okwaro Omoko of P.O. Box 75, Ahero and title deed issued to him on 9<sup>th</sup> July, 1999. The green card further shows that on 17<sup>th</sup> March, 2005, the land was transferred to Jacob Awuor Akomo of P.O. Box 2582 Kisumu and title deed issued to him on the same day. Entry No.10 on the green card is a restriction.
  35. I note that there is no entry on the green card in favour of Alfred Meso Nono, the deceased on behalf of whose estate the suit herein was brought. The name in the green card is Alfred Omedoh. No evidence was produced to the effect that Alfred Omedoh whose name appears in the green card was one and the same person as Alfred Meso Nono, the deceased in these proceedings. PW1, the widow of the deceased, stated on cross-examination that Alfred Omedoh was not her husband's name.
  36. But assuming that the two names refer to one and the same person who is the deceased herein, the Grant of Letters of Administration in respect of the estate of Alfred Meso Nono dated 30<sup>th</sup> January, 2012 produced by the plaintiffs shows that he died on 20<sup>th</sup> July, 2011 at Spring Valley estate.
  37. It is at the time of death that property of the deceased person become part of his estate. Section 3 of the [Law of Succession Act](#) defines estate as 'the free property of a deceased person.' In the case of [Re Estate of Lucy Muthoni Obat \(Deceased\) \[2021\]eKLR](#) the court defined estate of a deceased person as follows

“Secondly, under section 3 of the [Law of Succession Act](#) (Cap 160) upon death of a deceased person, his estate means his free property when he was living. His free property refers to the property that the deceased was legally competent to freely dispose it and in respect of which his interest has not been terminated by his death.”
  38. In present case, as at the time of death of the deceased, the suit property did not belong to him. It had been transferred from the name of Alfred Omedoh on 7<sup>th</sup> July, 1999 in favour of Paskal Okwaro Omoko.



39. PW1 on cross-examination by Counsel for the 1<sup>st</sup> Defendant acknowledged that it is true that as at 2014, the land was in the name of a different person. On cross-examination by Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, PW1 again acknowledged that entry No.6 on the green card showed that on 7<sup>th</sup> July 1999 the name of Paskal Okwaro was entered as registered owner. That by that time her husband was alive. She stated further that even when entry No.8 on the green card in favour of Jacob Awuor Okomo was made, the deceased was still alive.
40. There is no evidence that the transfer from Alfred Omedoh to Paskal Okwaro Omoko was not done by the said Alfred Omedoh or Alfred Meso Nono, the deceased in these proceedings. PW1 on cross-examination by Counsel for the 5<sup>th</sup> Defendant stated that she had no letter from her late husband complaining about the entries in the green card. This shows that the deceased never complained in his life time about the transactions that took place in respect of the suit land.
41. It was submitted on behalf of the Plaintiff that since the Plaintiffs assert that they have retained ownership of the property since the title was issued on 28<sup>th</sup> March, 1991, that it is important in the circumstances to go to the root of title to confirm true ownership. That between the Plaintiffs and the 5<sup>th</sup> Defendant, it is only the Plaintiffs who produced a title in their favour in regard to the subject property. There was no averment in the Witness statement of PW1 as to how the deceased Alfred Meso Nono acquired the land. No land sale agreement or any document of acquisition of the property was produced by PW1. It was only on cross-examination by Counsel for the 5<sup>th</sup> Respondent that PW1 indicated that the deceased bought the land in the year 1991 at Kisumu.
42. From the evidence placed before court, it is clear that the suit property having been transferred from Alfred Omedoh or the deceased in these proceedings long before his death (about 12 years before his death) did not form part of the estate of Alfred Omedo or the deceased herein. The next issue for determination is whether or not the suit property belonged to Jacob Awuor Okomo to whom the 5<sup>th</sup> Defendant traces his title.
43. It was the case of the 1<sup>st</sup> Defendant that he was the son and one of the Administrators of the estate of Jacob Okomo Awuor who died on 15<sup>th</sup> September, 2012 and who was the registered owner of the suit property. That upon his death, they undertook succession vide KSM CMC Succession Cause No.190 Of 2019 and after transmission of the land into his name and the names of his mother and sister, they sold the land to the 5<sup>th</sup> Defendant. DW1 produced documents in support of his assertion.
44. The Plaintiff on the other hand contended that transfer of the land from Alfred Meso Nono, deceased was unlawful and illegal.
45. No evidence of the illegality was tendered. This court has already noted that there is no evidence that the said Alfred Omedoh or Alfred Meso Nono is not the one who transferred the land from himself to the next owner who in turn transferred it to Jacob Awuor Okomo. There is no evidence that Alfred Meso Nono ever complained of the said transfer which occurred in his life time.
46. It was the evidence of PW1 that most of the time before the year 2015, Alfred Meso Nono was in Kenya while she was in the UK before he also moved to the UK. He could therefore have easily noted any illegality in respect of the transfers and taken appropriate remedial action. He did not.
47. The green card produced bears the name of Jacob Awuor Okomo as the owner of the land before the 5<sup>th</sup> Defendant became owner.



48. I find that Jacob Awuor Omoko deceased was owner of the suit land and that upon his demise, the land became part of his estate subject to be transacted in accordance with the provisions of the [Law of Succession Act](#).
49. The next issue is whether or not certain entries in the register in respect of the suit land were expunged and whether the expunging was lawful.
50. The Plaintiffs deposed in paragraphs 9 and 10 of the Supporting Affidavit that upon issuance of the green card by the 3<sup>rd</sup> Respondent, it was revealed that the suit property had been unlawfully and illegally transferred and forged title deed issued in the names of the persons sued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under entries number 6, 7, 8 and 9 respectively as contained in the green card. That upon the 3<sup>rd</sup> Respondent conducting its due diligence, it unearthed that the aforesaid entries were entered unlawfully and illegally and that the 3<sup>rd</sup> Defendant proceeded to lawfully expunge the said entries from the green card by endorsing and stamping the same on top of the said green card. That upon effecting the said changes, the 3<sup>rd</sup> Respondent maintained entry No.10 which placed a restriction on account that Alfred Meso Nono being the registered owner was deceased.
51. PW1 repeated these averments in her evidence as contained in witness statement dated 23<sup>rd</sup> November, 2022 which was adopted as her evidence in chief.
52. In cross-examination by Counsel for the 5<sup>th</sup> Defendant, PW1 stated that there were entries that were expunged from the register. She stated that she had no letter from the Land Registrar to the people whose names were expunged. That there was no hearing before the names were expunged. That the expunging was done pursuant to her complaint. That she did not write a letter of complaint to the Land Registrar and that the Land Registrar had powers to expunge the entries.
53. It was submitted on behalf of the Plaintiffs that it was agreed among the parties during the hearing that the green card clearly shows that entry numbers 6, 7, 8 and 9 were expunged. That it was a consensus among the parties that the restriction and the expunged entries have never been challenged, revoked or quashed prior to commencement of these proceedings. That the expunged entry numbers 6, 7, 8 and 9 on the green card, having never been challenged, remain valid and in effect to this day.
54. On this issue, the 1<sup>st</sup> Defendant on cross-examination by Counsel for the 5<sup>th</sup> Defendant stated that he had never been called to the lands office that some entries were to be expunged from the register. When shown the green card during cross-examination by Counsel for the Plaintiff, he stated that there was a line on entry No.6, 7, 8 and 9 on the green card and a handwritten remark that entry No.6, 7, 8, and 9 are expunged. He stated that they were not informed by the Land Registrar that the documents had been expunged.
55. The 5<sup>th</sup> Defendant denied vide his counterclaim that entry number 6, 7, 8 and 9 were done unlawfully or illegally and that they were expunged from the green card. He sought for a declaration that an order expunging of entries No.6, 7, 8 and 9 by the 3<sup>rd</sup> Defendant was unlawfully done and is therefore null and void.
56. It was submitted on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants that although the Plaintiffs alleged that the entries transferring the land to the 2<sup>nd</sup> Defendant were cancelled by the Land Registrar, they failed to prove it as they showed no proceedings of the said cancellation or expunging of the entries. That entries in a land register can only be cancelled by registration of another entry as stated in section 7(5-7) of the [Land Registration Act](#). That in instances of fraud, cancellation of entries of a register are conducted through rectification of register under Section 79 of the [Land Registration Act](#). That due process must be followed by giving the registered proprietor written Notice of ninety days. That such notice was not



availed in court by the Plaintiffs to support their case. Counsel concluded that the alleged cancellations of entries were therefore not done.

57. On behalf of the 5<sup>th</sup> Defendant, it was submitted that although the Plaintiffs claimed that entries numbers 6, 7, 8 and 9 had been expunged, they did not call the Land Registrar as a witness to confirm that the entries were indeed unlawfully done. That what was indicated on the green card was that the entries were expunged since the owner was deceased. That there was no notice issued to the owners before expunging. That the power to expunge entries on the land register records can only be done pursuant to a court order and after hearing of the affected party.
58. Counsel referred the court to the provisions of Section 60 & 61 of the Registration Titles Act. Counsel also referred to the case of Sabina Nyambura Githina & Another -vs- Land Registrar Thika Land Registry & 3 Others; Real Capital Ltd (Interested Party) [2021]eKLR where it was held, inter alia, that the registered owner of the suit property was entitled to a fair administrative action and rules of natural justice before cancellation of his title.
59. I have considered the pleadings the evidence and the submissions on whether or not the entries were expunged and whether the expunging was lawful.
60. Indeed, the green card produced as exhibit by PW1 shows/bears a line crossing through entry numbers 6, 7, 8 and 9 on the green card.
61. Entry number 6 is the transfer of the suit land from Alfred Omedoh to Paskal Okwaro Omoko on 7<sup>th</sup> July, 1999. Entry number 7 indicates that title deed was issued to Pascal Okwaro Omoko on 9<sup>th</sup> July, 1999.
62. Entry number 8 is the transfer of the suit property from Pascal Okwaro Omoko in favour of Jacob Awuor Akomo on 17<sup>th</sup> March, 2005 and entry number 9 indicates that title deed was issued on 17<sup>th</sup> March, 2005. All these entries are crossed by the said line.
63. Further, at the top part of the front page of the green card, there is a hand-written remark that “entries 6, 7, 8 and 9 expunged – owner deceased”.
64. The 1<sup>st</sup> Plaintiff testified that this was done at her instance as she complained of the entries which, according to her, were unlawful and illegal. There is no evidence of the said complaint, there is no evidence of the procedure followed to arrive at the decision that the entries were to be expunged and there is no evidence of the particulars of illegalities complained of that led to the expunging.
65. Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submitted on the procedure to be followed when entries or records in respect of land are to be cancelled and/or expunged. She concluded that the procedure was not followed and that the expunging and/or cancellation was therefore not done.
66. Title to land is protected by *the constitution* and the law generally. Though the law in section 79 of the *Land Registration Act* empowers the Land Registrar to rectify the register in respect land or any instrument presented for the registration, the Land Registrar’s powers are limited by the same law. The Land registrar cannot unilaterally expunge documents or entries from the register under the guise of exercising the power donated by the law. Section 79 defines the extent of the powers of the Land Registrar when rectifying register. It also provides for the procedure to be followed when exercising the power to rectify the register.
67. There is no evidence that any procedure was followed for crossing entry number 6, 7, 8 and 9 on the register in respect of the suit land and for making the remarks on the green card that entries 6, 7, 8 and 9 were expunged, owner – deceased.



68. There is no evidence that the Land Registrar or PW1 had a court order that sanctioned the expunging. There is no evidence that the registered owner by then one Jacob Awuor Okomo was given notice or a chance to be heard.
69. I find that the purported expunging of entry number 6, 7, 8 and 9 of the register was unlawful and therefore null and void.
70. The next issue for determination is whether or not transfer of the suit property in favour of 5<sup>th</sup> Defendant who is the current registered owner was lawful.
71. The Plaintiff pleaded in paragraph 14 of the Affidavit in Support of the Originating Summons that on or around 23<sup>rd</sup> August, 2021, the Applicant discovered that the 2<sup>nd</sup> Respondent had transferred the disputed suit property to the 5<sup>th</sup> Respondent being Cyprian Agumba Odeny and a title deed issue on 6<sup>th</sup> September, 2021. In paragraph 16 of the same Affidavit, the Plaintiffs deposed that the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents have no lawful or legal claim to the suit property as the Respondents wrongfully endorsed their names and the names of the beneficiaries of the 1<sup>st</sup> and subsequently the 5<sup>th</sup> Respondent on the register.
72. PW1 repeated these averments in paragraphs 12 and 15 of her witness statement. On cross-examination by Counsel for the 5<sup>th</sup> Defendant, PW1 stated that she did not know when the 5<sup>th</sup> Defendant bought the land, that entry No.12 on the register showed that as at the year 2021 the land was in the name of Mr. Odeny and that the land was transferred to Mr. Odeny from Gabriel, the 1<sup>st</sup> Defendant and Doris.
73. It was submitted on behalf of the Plaintiffs that at the point of the 1<sup>st</sup> Defendant transferring the subject property to the 5<sup>th</sup> Defendant on 6<sup>th</sup> September, 2021, the expungement of entry number 6, 7, 8 and 9 on the green card and the registration of the restriction at entry No.10 were valid and subsisting. That, thus the subsequent transfer that purported to transfer the proprietary rights to subject property from the Plaintiff is rendered null and void.
74. Counsel relied on the case of *Macfoy -vs- United Africa Ltd* [1961]3ALL E.R 1169 where it was held inter alia that if an act is void, then it is in law a nullity. Counsel relied further on the Supreme Court decision in *Dima Management Limited -vs- County Government of Mombasa & 5 Others* [2023] (KLR) which Counsel submitted, emphasized the importance of addressing and rectifying illegal actions that affect property rights.
75. The 1<sup>st</sup> Defendant testified as to how he together with his mother and sister obtained title to the suit property and transferred the land to the 5<sup>th</sup> Defendant upon sale. He produced documents in respect of the succession cause vide which the land was transmitted from Jacob Awuor Akomo into his name and subsequent transfer to the 5<sup>th</sup> Defendant. This was confirmed by the certificate of confirmation of grant shows that the suit property was transmitted to the 1<sup>st</sup> defendant and 2 other people. The certificate of confirmation has not been revoked and/or annulled.
76. The 5<sup>th</sup> Defendant pleaded and testified as to how he acquired title to the suit property. He stated in his witness statement dated 27<sup>th</sup> September, 2022, which was adopted as his evidence in chief, that in the year 2021, Gabriel Odhiambo Okomo reached out to him and informed him that they were selling the suit property as a family and that they had undertaken succession.
77. That he conducted search on 25<sup>th</sup> March, 2021 and found the suit property was registered in the names of Doris Atieno Okomo, Teresa Auma and Gabriel Odhiambo Okomo. That they entered into a land sale agreement on 9<sup>th</sup> April, 2021 vide which he bought the land at Kshs.1,300,000/-.



78. That he obtained Consent of the Land Control Board for transfer, that transfer was done and he obtained valid title which he holds. Among the documents he produced as exhibit were copy of adjudication record for the suit property which shows that the adjudication process registered the suit property in the names of Joseph Okulo Gone and Teresia Akeyo Gone, a Transfer of Land form dated 24<sup>th</sup> November, 1986 transferring the land from Joseph Okulo Gone and Teresia Akeyo Gone to Paskal Okwaro Omoro. It shows that the transfer was duly registered on 25<sup>th</sup> November, 1986, a Transfer of Land form for transfer of the land from Paskal Okwaro Omoro to Jacob Okomo Awuor which was registered in the Land Registry on 28<sup>th</sup> March, 1991.
79. The next document was a Certificate of Official search dated 26<sup>th</sup> June, 2014 which showed that as at 17<sup>th</sup> March, 2005, the suit property was registered in the name of Jacob Awuor Okomo. The 5<sup>th</sup> Defendant also produced a copy of Grant of Letters of Administration dated 10<sup>th</sup> June, 2019 and Certificate of Confirmation of Grant in respect of the estate of Jacob Awuor Akomo granted to the 1<sup>st</sup> Defendant.
80. The next document produced by the 5<sup>th</sup> Defendant was the Certificate of Official Search dated 25<sup>th</sup> March, 2021 which shows that as at 25<sup>th</sup> March, 2021, the suit property was registered in the names of the 1<sup>st</sup> Defendant, Doris Atieno Okomo and Teresa Auma Owiti. He also produced Land Sale Agreement dated 9<sup>th</sup> April, 2021 and acknowledgement for payment dated 2<sup>nd</sup> August, 2021. He also produced application for consent of Land Control Board and Letter of Consent of the Land Control Board for transfer of the suit property from Doris Atieno Okomo, Teresa Auma Owiti and Gabriel Odhiambo Okomo to the 5<sup>th</sup> Defendant. He produced documents for payment of stamp duty, application for registration and title deed dated 6<sup>th</sup> September, 2021 among other documents.
81. It was submitted on behalf of the 5<sup>th</sup> Defendant that the documents produced by the 1<sup>st</sup> and 5<sup>th</sup> Respondents which were also relied upon by the 4<sup>th</sup> Respondent and were not challenged by the Applicants clearly give the history of the suit land parcel and explains the root of the 5<sup>th</sup> Defendant's title as required by law. That the suit property belongs to the 5<sup>th</sup> Defendant who bought it procedurally and legally from the registered owners.
82. I have considered the material placed before court in respect of the legality of the title held by the 5<sup>th</sup> Defendant. Although the Plaintiffs claimed that the title was obtained unlawfully and illegally, no evidence of illegality was tendered.
83. The Plaintiffs base their claim on the fact that the entries No.6, 7, 8 and 9 had been expunged and therefore no lawful or legal entry could be made subsequently in favour of the Defendants. The court has already found that the purported expunging of the entries was null and void for non-compliance with the law. Hence the purported expunging was of no consequences and could not affect the title of Jacob Awuor Okomo who was the registered owner as at the time. Further, the purporting expunging did not confer any rights over the suit land upon the estate of the deceased.
84. The 5<sup>th</sup> Respondent traces his title to the title of Jacob Awuor Okomo whose personal representative and beneficiaries sold the land to him.
85. The green card shows that the restriction was registered on the grounds that owner was deceased. It is not clear from the green card which owner this was referring to. The last registered owner by then was Jacob Owuor Okomo. If indeed the restriction was placed at the instance of the plaintiffs to protect the interests of Alfred Meso Nono, then the same just like the expunging of the entries, was of no consequence. Entry No. 11 was not displayed or included on the green card. The next entry on the



- register (entry number 12) is in respect of the administrators of the estate of Jacob Awuor Okomo, deceased.
86. I find that transfer and registration of the suit land in favour of the 5<sup>th</sup> Defendant was lawful.
87. The next issue for determination is whether or not the Plaintiff are entitled to the relief sought in the amended Originating Summons
88. The first and second prayers sought in the amended Originating Summons are for declarations that Alfred Meso Nono is the sole and legal owner of the suit property. On the evidence placed before court and the findings of the court herein namely;
- i. that no evidence was tendered that Alfred Omedoh whose name appears in the register of the suit land and Alfred Meso Nono the deceased in these proceedings is one and the same person;
  - j. that if the two names refer to one and the same person the suit land ceased to belong to him in his live time and was in the names of other parties for a period of about 12 years before he died;
  - k. That the suit property was not part of the estate of Alfred Meso Nono;
89. the court finds no basis upon which it can declare that Alfred Meso Nono is the sole and legal owner of the suit land.
90. The other relief sought is for orders permanent injunction restraining the Respondents from interfering with the suit property and mandatory injunction. Having found that the suit property belongs lawfully to the 5<sup>th</sup> Defendant, there is no basis to grant permanent injunction as prayed. The 1<sup>st</sup> Plaintiff testified that the land had been fenced and developed with premises which are occupied.
91. The 5<sup>th</sup> Defendant confirmed that he fenced the land, built a permanent house which is now occupied.
92. I find that on the basis of the evidence placed before court, the Plaintiffs are not entitled to the prayers sought.
93. The next issue for determination is whether or not the 5<sup>th</sup> Defendant is entitled to the relief sought in the counterclaim.
94. The prayers sought in the counterclaim are for a declaration that the 5<sup>th</sup> Defendant is the bona fide registered owner of the suit property.
95. On the basis of the findings that the 5<sup>th</sup> Defendant had proven that transfer of the suit property to his name was lawful and that he had explained the root of his title sufficiently, I find that the 5<sup>th</sup> Defendant is entitled to this prayer.
96. The next relief sought in the counterclaim is for an order cancelling registration of Alfred Meso Nono as registered owner of the suit land.
97. The history of the suit land as displayed in the green card does not shows that Alfred Meso Nono has ever been registered owner of the land. Alfred Omedoh who was owner of the land ceased to be such owner when the land was transferred to Paskal Okwaro. Hence issuing an order for cancellation as prayed will be in vain.
98. The next relief sought is for a declaration that the expunging of entry number 6, 7, 8 and 9 by the 3<sup>rd</sup> Defendant was unlawful and therefore null and void. On the basis of the court's finding herein on the issue of expunging of the entries, I find that the 5<sup>th</sup> Defendant is entitled to this relief.



99. The other relief sought is a permanent injunction. In the circumstances of the case that the plaintiff also lay claim to the suit property, the 5<sup>th</sup> Defendant whom the court has found to be the lawful owner thereof, is entitled to this relief.
100. The last issue for determination is what order to make on costs of the suit and of the counterclaim.
101. Section 27 (1) of the *Civil Procedure Act* gives the court discretion to award costs and to determine by whom and out of what property and to what extent such costs are to be paid. The proviso to section 27 (1) provides that costs of any action, cause or other matter or issue shall follow the event unless the court shall for good reason otherwise order. No reason has been placed before court to exercise its discretion to order otherwise.

### **Conclusion**

102. The upshot of the above analysis is that the Plaintiffs have failed to prove their case on a balance of probabilities.
103. On the other hand, the 5<sup>th</sup> Defendant has proved his counterclaim on a balance of probabilities. The plaintiffs' suit is therefore hereby dismissed and judgement is hereby entered in favour of the 5<sup>th</sup> Defendant for: -
- i. a declaration that the 5<sup>th</sup> Defendant is the bona fide and absolute registered owner of the suit land parcel number Kisumu/Kanyakwar "B"/214.
  - ii. a declaration that an order expunging of entries numbers 6, 7, 8 and 9 in the register of land parcel number Kisumu/Kanyakwar/214 by the 3<sup>rd</sup> Respondent was unlawfully done and therefore is null and void.
  - iii. an order permanent injunction against the Applicants, their agents, servants and/or any other persons authorized by them from trespassing onto and/or interfering with the 5<sup>th</sup> Defendant's peaceful occupation and ownership of land parcel number Kisumu/Kanyakwar "B"/214.
  - iv. Cost of the suit and of the counterclaim are awarded to the 5<sup>th</sup> Defendant.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 20<sup>TH</sup> DAY OF MARCH, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Muchiri h/b for Miano for the Plaintiffs/Applicants

Ken Omollo for the 1<sup>st</sup> Defendant/Respondent.

D Onyango for the 5<sup>th</sup> Defendant/Respondent.

Lelei for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.

