



Obwoni & 2 others (Suing as Representatives of the Estate of Abiner Obwoi Gekingo (Deceased)) v Kirangu & 3 others (Environment & Land Case E054 of 2022) [2025] KEELC 1197 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1197 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E054 OF 2022
LC KOMINGOI, J
MARCH 13, 2025**

BETWEEN

**ELIZABETH KEMUNTO OBWONI 1ST PLAINTIFF
EMMAH KERUBO OBWONI 2ND PLAINTIFF
LIVINGSTONE NYARIKI OBWONI 3RD PLAINTIFF
SUING AS REPRESENTATIVES OF THE ESTATE OF ABINER OBWOI
GEKINGO (DECEASED)**

AND

**ROBERT NJAGI MUCHANGI KIRANGU 1ST DEFENDANT
COFFEE WORKERS COOPERATIVE SAVINGS AND CREDIT
SOCIETY 2ND DEFENDANT
THE LAND REGISTRAR KAJIADO DISTRICT 3RD DEFENDANT
NATIONAL LAND COMMISSION 4TH DEFENDANT**

JUDGMENT

1. By the Plaint dated 7th July 2022, the Plaintiffs who are the Personal Representatives of the Estate of the late Abiner Obwoni Gekongo state that, the land known as Kajjado/Kitengela/16011 (herein after referred to as the “suit property”) was at all times registered in their late father’s name, having been allocated to him by the 2nd Defendant. It is their case that their late father passed away on 15th October 2002 while the suit property was still registered in his name. He had neither sold nor transferred it to anyone. It was until commencement of compulsory acquisition by the 4th Defendant that the 1st Defendant claimed to have acquired it in 2011. It is their case, any acquisition of the suit property in 2011 was fraudulent.



2. The particulars of fraud against the 1st Defendant were outlined as; “Causing the suit property to be transferred to his name without the Plaintiff’s knowledge, approval and consent; forging the land transfer that was allegedly signed by the late Abiner and acquiring a new title with respect to Kajiado/Kitengela/16011 while the original title had neither been cancelled nor revoked.” As such, the deceased’s estate has suffered loss and damages from delayed compensation from the National Land Commission arising from the compulsory acquisition. The Plaintiffs have thus sought for:
 - a. An order cancelling the registration of title in favour of the 1st Defendant.
 - b. A declaration that the parcel number Kajiado/Kitengela/16011 belongs to the Estate of the deceased.
 - c. An order stopping the 1st Defendant from any further dealings with the suit property.
 - d. A declaration that the 4th Defendant proceeds with compensation process.
 - e. The 1st defendant bears costs of the suit.
3. The 1st, 2nd and 4th Defendants despite being aware of the suit, having been served and being in Court where interim orders were issued, did not file their statements of defence. They did not participate in the hearing.
4. The matter therefore proceeded for formal proof. The 3rd Defendant entered appearance and filed a statement of defence dated 15th June 2023 denying the Plaintiff’s claim but did not avail any witnesses.

Evidence of the Plaintiff

5. PW1, Neema Kerubo Obwoni, the 2nd Plaintiff, adopted her witness statement dated 7th July 2022 as her evidence in chief and produced her bundle of documents which were marked as P. Exhibit 1 to 6. She stated that the suit property belonged to her late father who purchased it from the 2nd Defendant. She further stated that he passed on, in the year 2002 while the title held by the 1st Defendant was issued in the year 2011 which was irregular. She went on to state that the 1st Defendant did not appear in Court to defend his title, he did not file any documents to show how he acquired it. He therefore acquired it fraudulently and the Plaintiffs were thus entitled to the compensation for the compulsory acquisition as it ought to have been before the 1st Defendant started claiming ownership.
6. At the close of the oral testimony the Plaintiffs tendered final written submissions.

The Plaintiffs’ submissions

7. Counsel for the Plaintiff outlined the issues for determination as summarised hereunder:
8. Whether the 1st Defendant lawfully acquired title to the land Kajiado/Kitengela/16011, counsel submitted that the registered proprietor Abiner Obwoni passed away on 15th October 2002 and the purported registration to the 1st Defendant took place in 2011 years after the demise of the initial registered proprietor, and the administrators had not been duly appointed. Therefore, this alleged transfer was invalid. Counsel added that there was no evidence showing how the suit property was acquired by the 1st Defendant.
9. On whether the 1st Defendant’s claim to the property was fraudulent and unlawful, counsel submitted that from the above, it was evident that the property was transferred and registered to the 1st defendant fraudulently contrary to Section 26(1) of the *Land Registration Act* and with reference to the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & another* [2000] eKLR.



10. The Plaintiffs were therefore entitled to the orders sought together with costs as sought in the Plaint.

Analysis and Determination

11. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:

- i. Who is the lawful owner of property Kajiado/Kitengela/16011?
- ii. Have the Plaintiffs proved the claim of fraud against the 1st Defendant?
- iii. Whether the Plaintiffs are entitled to the reliefs sought;
- iv. Who should bear costs of the suit?

12. It is the Plaintiffs case that the suit property belonged to their father, the late Abiner Obwoni Gekongo, who acquired it from the 2nd Defendant, Coffee Workers Cooperative Savings and Credit Society Limited in the year 2002. A Green card was produced which indeed shows that the 2nd Defendant was registered as the owner on 29th August 2002 and the Late Abiner registered as owner on 18th September 2002. Abiner unfortunately passed away on 15th October 2002 as per the death certificate produced as exhibit.

13. The Green card produced as exhibit shows that on 13th May 2011, the suit property was registered in the name of Robert Njagi Muchangi Kirangu (the 1st defendant herein) and a title issued on 26th May 2011. The question is how was this transfer and registration effected?

14. A certificate of title is not an automatic guarantee to ownership of property. The person claiming ownership has to show the history of how the said title was acquired. In this case, it is not in dispute that Abiner Obwoni Gekongo, passed away in 2002. However, the land register show that in 2011, a title was issued to one ,Robert Njagi Muchangi Kirangu, for the same parcel of land belonging to the late Abiner Obwoni. It has not been demonstrated to this court how this happened. It is also worth noting that by this year, 2011, the Plaintiffs herein had not been granted Letters of Administration Intestate in respect of the estate of the late Abiner Obwoni Gekongo. The plaintiffs became Administrators on 29th October 2019 as shown in the grant of letters of administration ad litem. They therefore had no power to transact before then. How the 1st Defendant became the registered owner of the suit property remains a mystery.

15. The importance of going to the root of a title cannot be underscored as held by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR) where it was stated;

“... We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and 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...”

16. As stated earlier, the 1st Defendant did not attempt to provide this Court with evidence of the purported transfer and registration of the suit property in his favour. It is on record that the 1st Defendant appeared in Court twice, once on his own, and the second time with his Advocate, but he neither filed a Defence nor appeared in Court during the hearing despite being served.



17. I therefore find that the suit property; known as Kajiado/Kitengela/16011 duly belongs to the late Abiner Obwoni Gekongo. It follows as per Section 80 of the *Land Registration Act* the Land Registrar is hereby ordered to cancel and revoke the title in the name Robert Njagi Muchangi Kirangu.
18. The Plaintiffs have demonstrated that they were entitled to compensation following the compulsory acquisition of the suit property, by the 4th Defendant. But this was halted following the two competing titles. I therefore find that the Plaintiffs are entitled to the said compensation by the National Land Commission as earlier decided.
19. The Court also in its discretion finds that following this irregular registration of the title by the 1st Defendant, the plaintiffs suffered loss and damage. I award them general damages of Kshs. 300,000/= with interest from the date of this Judgement until payment in full.
20. This takes us to the next issue for determination on whether fraud was proven. Fraud is a serious allegation which in civil cases should not only be alleged and particularised but should also be strictly proven at a higher standard than on a balance of probabilities. This was the Court of Appeal's holding in *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR where the court stated;

“... See *Ndolo v Ndolo* (2008) 1 KLR (G&F) 742 wherein the Court stated that:

“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”
21. While, the Court has pronounced itself that there is no evidence of how the suit property was transferred and registered in the 1st Defendant's name. The only logical conclusion is that the same was fraudulently registered in the 1st Defendant's name in collusion with officers at the Land Registry.
22. It is unfortunate that Courts continue to deal with such scenarios where it cannot be explained how one title can be held by two people. The 3rd Defendant being the custodian of such records, neglected to participate in these proceedings to set the record straight. How did the 1st Defendant acquire title to a dead man's property and the green card amended to reflect such atrocity? It is inconceivable and the Court cannot refrain but voice its utter disappointment. The question therefore, is where is the rot? Because unless this is addressed, this game of musical chairs between citizens and some land registries will never stop.
23. Accordingly Judgement is entered for the Plaintiff as against the Defendants as follows;
 - i. That a declaration is hereby issued that the late Abiner Obwoni Gekongo, is the registered proprietor of property Kajiado/Kitengela/16011.
 - ii. That the Land Registrar is hereby ordered to cancel and revoke the title for the property known as Kajiado/Kitengela/16011, registered in the name Robert Njagi Muchangi Kirangu so that it reverts to Abiner Obwoni Gekongo.
 - iii. That a permanent injunction is issued restraining the 1st Defendant from interfering with the Plaintiffs' use and possession of Kajiado/Kitengela/16011.
 - iv. That the 4th Defendant is hereby directed to pay compensation to the Plaintiffs forthwith.
 - v. That the 1st Defendant do pay the Plaintiffs General Damages of Kshs.300,000/=



vi. That Costs of this suit to be borne by the 1st Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 13TH DAY OF MARCH 2025.

L.KOMINGOI

JUDGE.

In The Presence of:

Ms. Kimani for Mr. Nyabena for the Plaintiff.

N/A for the Defendant.

Court Assistant – Mutisya.

