



REPUBLIC OF KENYA



**Nyakundi & 69 others v Ndungu (Environmental and Land Originating  
Summons 3 of 2024) [2025] KEELC 3471 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3471 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 3 OF 2024**

**NA MATHEKA, J**

**APRIL 30, 2025**

**BETWEEN**

**RICHARD NYAKUNDI ..... 1<sup>ST</sup> PLAINTIFF**  
**GRACE MAKUNGU ..... 2<sup>ND</sup> PLAINTIFF**  
**NEKO HOLINESS ONYIEGO ..... 3<sup>RD</sup> PLAINTIFF**  
**MAURICE W MUNYWOKI ..... 4<sup>TH</sup> PLAINTIFF**  
**JAMES GATHU MUHINDI ..... 5<sup>TH</sup> PLAINTIFF**  
**JACOB K KANGOGO ..... 6<sup>TH</sup> PLAINTIFF**  
**ELIZABETH CHEPKORIR SIMATWA ..... 7<sup>TH</sup> PLAINTIFF**  
**CHARLES O MAYAMBA ..... 8<sup>TH</sup> PLAINTIFF**  
**ESTHER MUKAMI NJOROGE ..... 9<sup>TH</sup> PLAINTIFF**  
**JANE ROSE SAGALA ..... 10<sup>TH</sup> PLAINTIFF**  
**JOHN NJOROGE ..... 11<sup>TH</sup> PLAINTIFF**  
**REAGAN ABERE OMBORI ..... 12<sup>TH</sup> PLAINTIFF**  
**ELIZABETH MORAA MOGAKA ..... 13<sup>TH</sup> PLAINTIFF**  
**PETER BOSIRE NYAMBANE ..... 14<sup>TH</sup> PLAINTIFF**  
**ROY MAKAU PETER ..... 15<sup>TH</sup> PLAINTIFF**  
**CHARLES MUTANGE KEYA ..... 16<sup>TH</sup> PLAINTIFF**  
**PIUS WAMBUA ..... 17<sup>TH</sup> PLAINTIFF**  
**ESTHER KIMEU ..... 18<sup>TH</sup> PLAINTIFF**  
**NELIAH MOKEIRA MARANGA ..... 19<sup>TH</sup> PLAINTIFF**



JANE GESARE OSANO .....	20 <sup>TH</sup> PLAINTIFF
EDWIN KINGOINA ONCHWARI .....	21 <sup>ST</sup> PLAINTIFF
LUKE KYALA NGESA .....	22 <sup>ND</sup> PLAINTIFF
LYDIA MBOGA .....	23 <sup>RD</sup> PLAINTIFF
THOMAS NYABUTI .....	24 <sup>TH</sup> PLAINTIFF
ALEX NYATIGO .....	25 <sup>TH</sup> PLAINTIFF
PEACE MUUO MAITHYA .....	26 <sup>TH</sup> PLAINTIFF
MOSE MELCHIOR KAHU .....	27 <sup>TH</sup> PLAINTIFF
DENNIS MAGATI MANGERA .....	28 <sup>TH</sup> PLAINTIFF
PHAXIDES AKUMU OMARI .....	29 <sup>TH</sup> PLAINTIFF
ONDARA MARK SAITI .....	30 <sup>TH</sup> PLAINTIFF
JOHN OMUSANGA .....	31 <sup>ST</sup> PLAINTIFF
EMMA WAMBUI .....	32 <sup>ND</sup> PLAINTIFF
KEPHA RAGIRA ONYANCHA .....	33 <sup>RD</sup> PLAINTIFF
PERPETUA ACHOCHI .....	34 <sup>TH</sup> PLAINTIFF
ISAAC KIAGE .....	35 <sup>TH</sup> PLAINTIFF
ROSELYNE OGATO .....	36 <sup>TH</sup> PLAINTIFF
HUNDSON OTOTO ACHOKI .....	37 <sup>TH</sup> PLAINTIFF
DAVIS MATOKE .....	38 <sup>TH</sup> PLAINTIFF
JOSHUA MORARA NYANGERI .....	39 <sup>TH</sup> PLAINTIFF
SIMON AYORA .....	40 <sup>TH</sup> PLAINTIFF
ALFRED KIPRUTO CHEKUIYOT' .....	41 <sup>ST</sup> PLAINTIFF
SIMON GARI .....	42 <sup>ND</sup> PLAINTIFF
NANCY MAKAU .....	43 <sup>RD</sup> PLAINTIFF
FRANCIS NDWATI .....	44 <sup>TH</sup> PLAINTIFF
ALBERT OMARIBA .....	45 <sup>TH</sup> PLAINTIFF
ANYOKA BERNARD .....	46 <sup>TH</sup> PLAINTIFF
KESENWA MAXWELL BULIMU .....	47 <sup>TH</sup> PLAINTIFF
KINOTI JACK .....	48 <sup>TH</sup> PLAINTIFF
MIRUKA BABU DENNIS .....	49 <sup>TH</sup> PLAINTIFF
THOMAS MOCHAMA ONSANDO .....	50 <sup>TH</sup> PLAINTIFF
CLEMENT MUTIE MATHEKA .....	51 <sup>ST</sup> PLAINTIFF



PHILIP NGUGI GITAU .....	52 <sup>ND</sup> PLAINTIFF
NYAMOKO MENTA ANDREW .....	53 <sup>RD</sup> PLAINTIFF
DAVID ONYWORI OGANDA .....	54 <sup>TH</sup> PLAINTIFF
JAMES KINYUA GIITHAE .....	55 <sup>TH</sup> PLAINTIFF
MARGARET NYAMASAYA KHAMALA .....	56 <sup>TH</sup> PLAINTIFF
TONY NGUGI .....	57 <sup>TH</sup> PLAINTIFF
MARY KAMAU .....	58 <sup>TH</sup> PLAINTIFF
PIUS NDASALILA NDUNDA .....	59 <sup>TH</sup> PLAINTIFF
DAVID WERE .....	60 <sup>TH</sup> PLAINTIFF
BENARD NJERU THATHI .....	61 <sup>ST</sup> PLAINTIFF
MICHEL MIANO .....	62 <sup>ND</sup> PLAINTIFF
ALEXANDER N OMBORI .....	63 <sup>RD</sup> PLAINTIFF
PRISCILLAH VUHYA SALIKU .....	64 <sup>TH</sup> PLAINTIFF
ATHONY MUTUA MUTHINI .....	65 <sup>TH</sup> PLAINTIFF
JOSHUA ISOE TONGI .....	66 <sup>TH</sup> PLAINTIFF
CHRISTOPHER ONTERE ONDERI .....	67 <sup>TH</sup> PLAINTIFF
KENNEDY OOKO ODHIAMBO .....	68 <sup>TH</sup> PLAINTIFF
GEORGE OMWEGA NYAMOSI .....	69 <sup>TH</sup> PLAINTIFF
SAMMY KITAU .....	70 <sup>TH</sup> PLAINTIFF

**AND**

**ANN WAIRIMU NDUNGU ..... DEFENDANT**

### **JUDGMENT**

1. The application is brought under Order 37 Rule 3 of the Civil Procedure Rules Richard Nyakundi for determination of the following questions:-
  - a. Whether the Defendant is the registered owner of Land Title Number 7340/148.
  - b. Whether in the year 2006 the Defendant sub-divided her land known as L.R No. 7340/148 situated at Mavoko in Machakos County into 133 plots.
  - c. Whether the Defendant offered the said plots for sale to the general public and the Plaintiffs purchased the same on various dates between 2006 and 2020.
  - d. Whether the Defendant was paid the sale price in full for the plots by the Plaintiffs.
  - e. Whether the Defendant issued the Plaintiffs with Certificates of Ownership.
  - f. Whether the Defendant gave possession of the plots to the Plaintiffs.



- g. Whether it was a term of the contract of sale that the Defendant will facilitate issuance of title deeds to the Plaintiffs within a reasonable time.
  - h. Whether the Defendant has failed, refused and or neglected to obtain the necessary clearances and consents and execute transfers in favour of the Plaintiffs in order for them to obtain titles.
  - i. Whether the Plaintiffs have demanded that the Defendant completes the conveyance of the plots.
  - j. Whether the Defendant should be ordered to complete the sale by obtaining the necessary clearances and consents and executing the transfers within a specified period.
  - k. Whether the land should be transferred to the nominees of the Plaintiffs on their behalf and for their benefit.
  - l. Whether the Deputy Registrar of this Honourable Court should be mandated/ordered to execute the transfer instruments in the event the Defendant declines to do so.
  - m. Whether the Chief Lands Registrar should be ordered to issue a title deed to the nominees of the Plaintiffs notwithstanding the fact that the Defendant has not surrendered the original title deed.
2. they pray for orders that;
- 1. That the Defendant ANN WAIRIMU NDUNGU be ordered to complete the contract of sale of Land Parcel Number L.R. No. 7340/148 by obtaining all the necessary clearances and executing the transfers to the Plaintiffs or their nominees within 30 days of this order.
  - 2. That in default the Deputy Registrar of this Honourable Court do execute any documents and instruments as may be necessary to effect the transfers to the Plaintiffs or their nominees.
  - 3. That the Chief Land Registrar do cancel the original title deed held by the Defendant in respect to the suit property and issue a title deed to the Plaintiffs or their nominees.
  - 4. That this Honourable Court be pleased to appoint the persons proposed by the Plaintiffs as their nominees for the aforesaid purposes.
  - 5. That the Defendant to pay the costs of this Originating Summons
3. This Originating Summons is further supported by the annexed Supporting Affidavit of Richard Nyakundi. The Defendant was served but failed to attend court and the matter proceeded ex parte. PWI testified that the Defendant is the registered owner of Land Title Number 7340/148 and produced a copy of the title PEx2. That in the year 2006 the Defendant sub-divided her land known as L.R No. 7340/148 situated at Mavoko in Machakos County into 133 plots. A copy of the subdivision was produced as PEx3. The Defendant offered the plots for sale and the plaintiffs bought them between 2005 and 2009. The Defendant issued them with plot ownership certificated which she signed PEx4. The Plaintiffs took possession and have developed their homes. The Defendant has failed, refused and or neglected to obtain the necessary clearances and consents and execute transfers in favour of the Plaintiffs in order for them to obtain titles.



4. It is not disputed that the suit land belongs to the Defendant. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24(a) of the [Land Registration Act](#) provides as follows;

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

5. Section 26 (1) of the [Land Registration Act](#) states as follows;

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

6. The Plaintiffs state that they purchased the said plots and took possession. This evidence has not been controverted. I find that the Plaintiffs are bonafide purchasers and have a legitimate expectation not only to be in possession of the plots but also to obtain the titles. I find that the Plaintiffs have proved their case on a balance of probabilities and I grant the following orders;

1. The Defendant ANN WAIRIMU NDUNGU be ordered to complete the contract of sale of Land Parcel Number L.R. No. 7340/148 by obtaining all the necessary clearances and executing the transfers to the Plaintiffs or their nominees within 60 days of this order.
2. In default the Deputy Registrar of this Honourable Court do execute any documents and instruments as may be necessary to effect the transfers to the Plaintiffs or their nominees.
3. Costs to the Plaintiffs

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**N.A. MATHEKA**

**JUDGE**

