



REPUBLIC OF KENYA



KENYA LAW
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**Kipserem & another v Kandie (Environment and Land Appeal
E005 of 2022) [2025] KEELC 386 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 386 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E005 OF 2022**

L WAITHAKA, J

FEBRUARY 5, 2025

BETWEEN

LUKA KIPSEREM 1ST APPLICANT

PAUL KIPTOO 2ND APPLICANT

AND

JULIUS KIPKORIR KANDIE RESPONDENT

RULING

Introduction

1. By a notice of motion application dated 28th November 2024, the appellants/applicants moved this court seeking an order directing the Land Registrar to revoke and/or cancel title to the parcel of land known as Moiben/Kimnai /258.
2. As can be discerned from the grounds on the face of the application and on the affidavit of the 2nd appellant/ applicant (Paul Kiptoo) sworn on 28th November 2024 in support of the application; that pursuant to a judgment of this court delivered on 24th April 2023 in favour of the appellants/ applicants, the appellants/applicants obtained a decree which decree they are unable to execute because the register for the suit property has not been rectified to accord with the judgment of the court, (the register for suit property, Moiben/Kimnai/258 still indicates Julius Kipkorir Kandie as the registered proprietor of the suit property) thereby preventing successful distribution of the estate of Kandie Kiptuisang comprised in the suit property.
3. Despite having been served through his advocates, the respondent never filed a response to the application.



Analysis and determination

4. I have read and considered the circumstances leading to filing of the application and the reasons given by the appellants/applicants for seeking the above mention order/relief.
5. I have also looked at the judgment of this court pursuant to which the decree sought to be executed was issued.
6. Whereas this court did not expressly pronounce itself on the issue of rectification of the register for the suit property, it nevertheless found that the respondent never gave an account for how he acquired the suit property given that it was registered in the name of Kandie Kiptuisang at the time it was transferred to him. This court also determined that the suit property is family land which was transferred to the respondent in circumstances that the respondent was unable to satisfactorily explain.
7. By dint of the provisions of Section 26(1) as read with Section 80 of the *Land Registration Act* 2012, this court has power to order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
8. Arising from the foregoing determination, for the purpose of giving effect of the decision of the court to the effect that the suit property is family land that was irregularly transferred to the respondent and for the purpose of facilitating execution of the decree of the court issued pursuant to the decision/ judgment of this court, I find and hold that the appellants/applicants have made up a case for cancellation of the title issued to Julius Kipkorir Kandie in respect of the parcel of land known as Title No. Moiben/Kimnai/258.
9. Consequently, I order and direct the Land Registrar in charge of the Land Registry where the suit property, Title No. Moiben/Kimnai/258 is registered, to rectify the register for the suit property, Title No. Moiben/Kimnai /258, by cancelling the entry registered on August 20, 1995 indicating Julius Kipkorir Kandie as the registered proprietor and reverting the registration of the property to Kandie Kiptuisang.
10. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT ITEN THIS 5TH DAY OF FEBRUARY, 2025.

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of;-

Ms. Aisha holding brief for Mr. Chanzu for the appellant

N/A for the Respondent

Court Assistant: Christine

