



REPUBLIC OF KENYA



KENYA LAW
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**Awino & another v Chege & 3 others (Environment & Land Case
E010 of 2022) [2025] KEELC 1232 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1232 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E010 OF 2022**

**MN GICHERU, J
MARCH 11, 2025**

BETWEEN

GRACE EMILY AWINO 1ST PLAINTIFF

PHILLIP OBIERO OKUMU 2ND PLAINTIFF

AND

JOHN NJOROGE CHEGE 1ST DEFENDANT

GEORGE NJOROGE KARIUKI 2ND DEFENDANT

THE LAND REGISTRAR, NGONG LAND REGISTRY 3RD DEFENDANT

THE HON ATTORNEY-GENERAL 4TH DEFENDANT

JUDGMENT

1. The Plaintiffs seek the following reliefs against the four(4) Defendants both jointly and severally.
 - a. A Declaration that the sub-division of L.R. No. Ngong/Ngong/7975 and subsequent allocation and registration of the said property to the 1st and 2nd Defendants without the consent and/or authority of the Plaintiffs was illegal and fraudulent.
 - b. A permanent injunction to issue against the 1st and 2nd Defendants, their agents or assignees restraining them from dealing with the suit land, further transferring the same and trespassing thereon in any manner.
 - c. An Order do issue to the 3rd Defendant to revoke and cancel all the entries in the register of the suit land that contravene the proprietary rights and interests of the Plaintiffs.
 - d. Cancellation of all entries resulting in titles issued from the subdivision of L.R. 7975 done contrary to and against the proprietary rights and interest of the Plaintiffs.



- e. An Order restoring the Plaintiffs as the legitimate and bonafide owners of the Suit land.
- f. Costs of the suit.
- g. Such other and/or further reliefs as this Court may deem fit and just to grant.

This is as per the Plaint dated 3rd February, 2022.

2. The Plaintiffs' case is as follows. The 1st Plaintiff is the widow of the late Grevas Ogotu Okumu while the 2nd Plaintiff is his Son. The deceased passed on 3-5-1996. At the time of his death, he was the registered owner of L.R. No. Ngong/Ngong/7975, suit land. Vide a grant dated 19-11-2012 issued in Nairobi Succession Cause No. 2003 of 1996, the 1st Plaintiff was appointed as a trustee in respect of the suit land which she was to hold in trust for all other beneficiaries of the estate of the deceased. She was also to enjoy a life interest over the land.
3. In June 2015, the 1st Plaintiff instructed a law firm to register a discharge of charge which had been registered over the suit land by Barclays Bank of Kenya among other assignments. At the land registry at Ngong, many fraudulent revelations came to light. Firstly, the suit land had been subdivided into parcels numbers L.R. No. Ngong/Ngong/ 67379 and 67370. Secondly, the suit land had been transferred to the 2nd Defendant. These developments caught the Plaintiffs by surprise for the following reasons. Firstly, they were not aware of the transfer and subdivision of the suit land. Secondly at the time of the purported transfer and subdivision, the suit land had been charged to Barclays Bank of Kenya. Thirdly, the original title deed was still in the hands of the 1st Plaintiff. Fourthly, the documents required for transfer and subdivision of the land were not available. They include the applications for consent to subdivide and transfer, the consents, the transfer forms and other documents. Finally, no transfer or subdivision could have occurred when the suit land was still charged by Barclays Bank.
4. The Plaintiffs reported the matter to the Land Registrar Ngong and to the CID Office at Ngong and to the CID office at Ngong. The Land Registrar did the unexpected. Instead of revoking the titles issued to the Defendants, fraudulently, he proceeded to issue a gazette notice No. 5722 dated 7-8-2015 to the effect that the title deed to the suit land had been lost. This is contrary to the complaint made to him by the Plaintiffs. In the end neither the Land Registrar nor the CID office Ngong took the desired action of investigating the obvious fraud committed by known persons. Faced with the above frustrations, the Plaintiffs filed this suit seeking the reliefs enumerated in paragraph [1] above.
5. In support of their case, the Plaintiffs filed the following evidence.
 - i. Witness Statements of the two Plaintiffs dated 3rd February 2022.
 - ii. Certified copy of the Original title deed dated 26th September 1990.
 - iii. Copy of deceased's certificate death dated 27th June, 1996.
 - iv. Copies of Grant and Certificate of confirmation of grant dated 19th November 1996 and 19th November, 2012 respectively.
 - v. Copy of discharge of Charge.
 - vi. Copy of stamp duty assessment and pay in slip dated 22nd September 2014.
 - vii. Copy of application for registration as proprietors by transmission dated 6th January 2016.
 - viii. Copies of sketch map of the proposed subdivision and mutation form for the suit land, the latter having 27th April, 2015 as the date of registration.



- ix. Copies of letters by the land registrar and the Defendants dated 27th July 2015, 8th January 2016, 17th March 2021 and 12th January 2022 respectively.
 - x. Copy of Gazette Notice dated 7th August 2015.
 - xi. Copy of letter of acknowledgement of complaint dated 12th January 2016.
 - xii. Copy of handwritten witness statement dated 16th February 2016.
 - xiii. A copy of application for registration dated 24th March 2021.
6. The 1st and 2nd Defendants did not enter appearance or file any defence in this case. The 3rd and 4th Defendants filed a written statement of defence dated 24th May 2022 in which it is averred as follows. Firstly, the averments in the Plaint are generally denied. Secondly, the particulars of fraud and illegality as against the 3rd Defendant are denied and said to be both false and defamatory. Thirdly it is stated that the transactions in relation to the suit parcel did not involve the 3rd Defendant who merely acted on the documents presented to him by the parties and which he believed to be genuine. For the above stated reasons, they prayed that the suit against them be dismissed with costs. The 3rd and 4th Defendants did not file any witness statements or documents to support their defence.
 7. At the trial on 25-5-2023 the two Plaintiffs testified on oath. They adopted their witness statements and documents after which the 1st Plaintiff was cross-examined by the Counsel for the 3rd and 4th Defendants. Even though the 3rd and 4th Defendants were given all the time that they needed to file their evidence, they did not do so. The only evidence adduced at the trial was by the Plaintiffs.
 8. The Plaintiffs' Counsel filed written submissions dated 31-12-2024 and identified the following issues for determination.
 - a. Whether Grevas Okumu (deceased) was the registered owner of L.R. No. Ngong/Ngong/7975, suit land.
 - b. Whether the Plaintiffs are the beneficiaries of the estate of the deceased.
 - c. Whether the suit land was still charged to the Bank at the material time and if it could be transferred to third parties.
 - d. Whether the purported transfer of the suit property to the 1st and 2nd Defendants and/or any other third Parties is illegal, unprocedural and therefore null and void.
 - e. Whether the subdivision of the suit property to parties other than the Plaintiffs was illegal, unprocedural and therefore null and void.
 - f. Whether the Plaintiffs are entitled to the prayers in the Plaint.
 - g. Who should bear the costs of the suit?
 9. I have carefully considered all the evidence adduced by the Plaintiffs including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the Plaintiffs and the law cited therein. I make the following findings on the issues raised by the Plaintiffs.
 10. Regarding the 1st issue, I find that the late Grevas Ogutu Ukumu was the registered owner of the suit land. The certified copy of title deed dated 26th September 1990 in the name of the deceased is prima facie evidence to prove such registration. No evidence was adduced by any of the Defendants



to controvert this ownership. Section 26(1) of the [Land Registration Act, \(Act No. 3 of 2012\)](#) provides 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 is
the absolute and indefeasible owner...”

There is no evidence from any quarter to rebut this presumption in Section 26(1) of the [Land Registration Act](#).

11. I find that the Plaintiffs are indeed the beneficiaries of the estate of the deceased. This is in answer to the second issue. There are other beneficiaries though who include Silvester Omondi, Elizabeth Akinyi, Damaris Amondi, Kenneth Otieno and Dorothy Apondi. This is as per the certificate of confirmation of grant dated 19th November 2012.
12. I find that the suit land could not have been lawfully transferred to any person while it was charged by the Barclays Bank of Kenya Limited. The charge had to be discharged first before any purported transfer. Secondly, the transfer could only have been by the registered owner or his lawfully appointed legal representatives to his estate. Furthermore, transfer of land is very procedural and includes many players like the Land Control Board, a government valuer, payment of stamp duty and executing of a transfer form duly witnessed by a commissioner for oaths. All these instruments and documents are by law required to be maintained by the Land Registrar as per Section 9 of the [Land Registration Act](#). The 3rd Defendant was given ample opportunity of availing the above records but did not do so. This corroborates the evidence by the Plaintiffs that such records do not exist.
13. It is my finding that the purported transfer of the suit land to the 1st and 2nd Defendants is illegal, unprocedural and therefore null and void for the same reasons given in the foregoing paragraph. Under Section 6 of the [Land Control Act](#), the absence of the consent of the Land Control Board in subdivision and transfer of the suit land, makes the subdivision and transfer void for all purposes. This finding covers issue number four (4).
14. I find that the Plaintiffs are entitled to the prayers in the plaint for the reasons already given and for one more reason. The evidence adduced by the Plaintiffs is unchallenged and uncontroverted by any other evidence because the Defendants offered no evidence.
15. For the above stated reasons, I enter Judgement for the Plaintiffs against all the Defendants jointly and severally as per prayers (a), (b), (c), (d), (e) and (f) of the plaint dated 3rd February, 2022.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MARCH , 2025.

M.N. GICHERU

JUDGE.

11/03/2025

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs’ Counsel – Mr. Makori

3rd and 4th Defendants’ Counsel

