



**Munge v Johnson & 3 others; National Land Commission (Interested Party) (Environmental and Land Originating Summons 258 of 2015) [2025] KEELC 3596 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3596 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 258 OF 2015**

**JO OLOLA, J**

**MAY 8, 2025**

**BETWEEN**

**VIRGINIA WANGITHI MUNGE ..... APPLICANT**

**AND**

**MARY WANJIKU JOHNSON ..... 1<sup>ST</sup> RESPONDENT**

**PETER MUNGE JOHNSON ..... 2<sup>ND</sup> RESPONDENT**

**MOSES WACHIRA JOHNSON ..... 3<sup>RD</sup> RESPONDENT**

**JMES KARANI JOHNSON ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**JUDGMENT**

**Background**

1. By an Originating Summons dated 26<sup>th</sup> October, 2015, Peter Munge Kamonde (the Applicant) sought for the following orders:
  1. That it be declared that the administration of the Estate of Johnson Murage Munga (Deceased) was subject to trust in respect of parcel of land LR. No. Nyeri/Gatarakwa/865 (the Suit Land) in favour of Mutuota Wakame Gichimba Kamonde (Deceased);
  2. That upon administration of the Estate of Johnson Murage Munga (deceased), the suit land was held in trust by the administrator of the said estate Margaret Muthoni (Deceased) for the benefit of Mutuota Wakame Gichimba Kamonde (deceased);



3. That upon the death of Margaret Muthoni (deceased) and Mutuota Wakame Gichimba Kamonde (deceased) the suit land is now held by the Settlement Fund Trustee as registered in trust for the beneficiaries of the Estate of Mutuota Wakame Gichimba Kamonde (deceased) in whole;
  4. That the registered proprietor of suit land, Settlement Fund Trustees be ordered to transfer the suit land to the beneficiaries of the Estate of Mutuota Wakame Gichimba Kamonde (deceased) upon administration of his estate and upon discharge of charge; and
    - . That costs be provided for.
2. The Originating Summons is supported by an Affidavit sworn by Peter Munge Kamonde who was the original Applicant herein. The Applicant avers that sometime in the year 1964, the suit land was offered to one Maina Karatu by the Settlement Fund Trustees (SFT). It is his case that after the said Maina Karatu accepted the offer and took possession of the land, he invited the Applicant's father to purchase the land.
  3. The Applicant avers that his father took a loan, purchased the land and then took possession thereof in the year 1969. He avers further that his father requested that his nephew one Johnson Murage Munga be entered in the members list with the SFT as he had a postal address. The Applicant further asserts that following the death of his father in 1979, he took possession of the land and repaid the remainder of the loan to the SFT.
  4. The Applicant further pleaded that upon the demise of Johnson Murage Munga, his widow Margaret Muthoni filed succession proceedings where the Applicant's father's interest was noted as a beneficiary. He states that the said Margaret was thereafter registered as chargor in trust for his late father but after her death, the Respondents who are her children have failed to co-operate in administering the estate to facilitate the administration of the trust.
  5. Moses Wachira Johnson (the 3<sup>rd</sup> Respondent) is opposed to the grant of the orders sought. In his Replying Affidavit sworn on 16<sup>th</sup> June, 2016, the 3<sup>rd</sup> Respondent avers that the suit land was transferred to the Respondents' late father, Johnson Murage Munga by the original allottee, Maina Karatu for a consideration of Kshs. 9,000/= as supported by a Letter of Consent to Transfer dated 24<sup>th</sup> September, 1971.
  6. The 3<sup>rd</sup> Respondent avers that after the demise of their father in the year 1974, their mother Margaret Muthoni (now deceased) sought and was granted a Certificate of Succession and the charge was registered in the name of their mother who settled the outstanding loan and was intending to discharge the land so as to obtain title in her name.
  7. The National Land Commission having been enjoined as an Interested Party on 7<sup>th</sup> February, 2022 did not file any pleadings in relation to the matter.
  8. At the trial herein, the Applicant was the sole witness in support of her case. The Respondents and the enjoined Interested Party did not call any witnesses at the trial.

### **Analysis and Determination**

9. I have carefully perused and considered the pleadings filed herein, the testimony of the Applicant as the sole witness as well as the evidence adduced before the court. I have similarly perused and considered the submissions and authorities placed before me by the Learned Counsel representing the Applicant herein. Neither the Respondents nor the enjoined Interested Party participated at the trial herein.



10. The suit herein was originally instituted by one Peter Munge Kamonde. Upon his demise on 14<sup>th</sup> November, 2016, he was substituted by his legal representative Virginia Wangithi Munge. By the suit herein, the Applicant has urged the court to declare that the administration of the Estate of one Johnson Murage Munga was subject to trust in respect of the suit property known as LR. No. Nyeri/Gatarakwa/865 in favour of Mutuota Wakame Gichimba Kamonde (now deceased).
11. The Applicant further wants a declaration that upon the administration of the Estate of Johnson Murage Munga as sought in their first prayer, it be declared that the suit land was held in trust by the administrator of the said Estate, one Margaret Muthoni for the benefit of the said Mutuota Wakame Gichimba Kamonde. The Applicant further urges the court to have the land now held in the name of the Settlement Fund Trustees (SFT) to be transferred to the beneficiaries of the Estate of Mutuota Wakame Gichimba Kamonde.
12. In support of the Applicant's case, Virginia Wangithi Munge relied fully on the affidavit of the late Peter Munge Kamonde as sworn on 26<sup>th</sup> October, 2015 in support of the Originating Summons.
13. According to the deponent, sometimes in 1964, the suit property measuring some 22.5 Ha was offered to one Maina Karatu by the SFT. It was his case that after accepting the land, the said Maina Karatu invited the deponent's father the late Mutuota Wakame Kamonde to purchase the land as the locality had many wild animals which made farming difficult.
14. The deponent further avers that his father took possession of the land in 1969 where he undertook farming of wheat, barley and rearing livestock using the proceeds thereof to repay the loan instalments. It was further his position that since his father had no postal address, the father requested that the name of his nephew one Johnson Murage Munga who is the father of the Respondents herein, and who apparently had a postal address, be listed with SFT for ease of correspondence.
15. According to the deceased Applicant, upon his father's death in 1979, he took possession of the suit land on the request of his siblings and paid the remainder of the loan due to the SFT.
16. It was his case that, in the meantime, following the death of the Respondents' father, the said Johnson Murage Munga, the Respondents' mother Margaret Muthoni filed succession proceedings and she was granted a certificate of succession in which the interests of the deceased Applicant's father were registered. It is accordingly the Applicant's case that the mother of the Respondents came to be registered as the Chargor in trust for the Applicants.
17. While the Respondents did not give any oral testimony in Court, they did in a Replying Affidavit sworn by the 3<sup>rd</sup> Respondent deny the Applicant's contention. According to the Respondents, their father Johnson Murage Munga did acquire the suit property from the late Maina Karatu on 24<sup>th</sup> September, 1971 at a consideration of Kshs. 9,000/= . The Respondents denied that they hold title to the property in trust for the Applicant or any other person. It was further their case that it was their mother who had settled the loan due to the SFT.
18. It is trite law that he who alleges must prove. Section 107 (1) of the *Evidence Act* Cap 80 Laws of Kenya provides that:

“Whoever desires any court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”



19. Considering the import of that provisions in *Gatirau Peter Munya –vs- Dickson Mwenda Kithinji & 3 Others* (2014) eKLR, the Supreme Court held as follows:

“The person who makes such allegations must lead evidence to prove the fact. She or he bears the initial legal burden of proof, which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence of a fact in issue.”

20. In the matter herein, the Applicants have based their claim on the suit property on the contention that the original allottee of the suit property one Maina Karatu invited the late Mutuota Wakame Kamonde to purchase the land as it was difficult to farm due to the many wild animals in the area. It is their case that the said Mutuota Wakame Kamonde took over the suit land in 1969 where he undertook farming of wheat, barley and rearing of livestock.
21. The Applicants have not stated what magic their father used to convert the land which the original allottee could not use for farming to one which was now suitable for growing of various cash crops and rearing of livestock. Be that as it may, while the said Mutuota Wakame Kamonde is said to have been asked to purchase the land, there is no mention in the entire affidavit whether he indeed purchased the land. No sale agreement or any other evidence of purchase has been given. While the deponent asserts at paragraph 6 of the Supporting Affidavit that Mutuota Wakame took possession of the suit land in 1969, there is no mention of any consideration that passed to the original allottee of the land.
22. It was also interesting to note that the Applicant asserts that after taking possession of the property, the said Mutuota Wakame used the proceeds from the farm to settle the outstanding loan due to the SFT and that upon Mutuota Wakame’s death in the year 1979, the deceased Applicant had taken over and settled the outstanding debt. There was however absolutely no evidence of any payments made by the Applicants to the SFT.
23. Even though the Respondents did not testify at the trial, they had to their credit attached in the Affidavit in support of their contention a Letter of Consent dated 24<sup>th</sup> September, 1971 indicating that Maina Karatu had on 16<sup>th</sup> June 1971 consented to the transfer of the suit land to Johnson Murage Munga at a consideration of Kshs. 9,000/=.
24. It was not in dispute that following the death of the said Johnson Murage Munga in 1974, his widow Margaret Muthoni had applied for a Certificate of Succession listing the suit property as one of the properties of the deceased. From the material placed before the court by both sides, that application was made before the District Magistrates Court at Nyeri and a Certificate of Death No. 47234 of 21<sup>st</sup> March, 1975 was thereafter issued.
25. While the Applicant purported that the Magistrates Court had appointed the Respondent’s mother Mrs. Margaret Muthoni to hold the land as a trustee for herself and for Mr. Mutuota S/o Kame, it was clear from a perusal of the Certificate of Succession issued that that was not the decision of the court. It was apparent that after the court issued the Certificate, someone at the Settlement Fund Trustees wrote by hand on the document as follows:

“23.3.77



Successors: Mrs. Margaret Muthoni w/o. Johnson Murage (2) Mutuota Kame Kamonde.”

26. A perusal of Paragraph 14 of the Supporting Affidavit reveals that the said decision was made by the Director of Settlement at the SFT and not the District Magistrates Court at Nyeri. While the Applicants had listed the Director of Land Adjudication and Settlement, Nyeri County as the second witness in their case, no such witness was called to come and shed light on the basis of the alleged trust.
27. In the premises, I was not persuaded that the Applicants had proved their case to the required standard and that they are entitled to the orders sought.
28. In the circumstances the suit is hereby dismissed with no order as to costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 8<sup>TH</sup> DAY OF MAY, 2025**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. C.M. Kingori Advocate for the Applicants
- c. Ms. Mutian holding brief for Kariuki Advocate for the Respondents
- d. No appearance for the Interested Party

