



REPUBLIC OF KENYA



KENYA LAW
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**Mbau v Attorney General & 2 others (Environment & Land Case
882 of 2017) [2025] KEELC 3702 (KLR) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3702 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 882 OF 2017**

LC KOMINGOI, J

MAY 5, 2025

BETWEEN

JOYCE WAMBUI MBAU PLAINTIFF

AND

HON. ATTORNEY GENERAL 1ST DEFENDANT

DISTRICT LAND REGISTRAR, KAJIADO 2ND DEFENDANT

ANDREW KUPIAIN OLE MOKO 3RD DEFENDANT

JUDGMENT

1. This suit was first filed at the ELC Machakos, then moved to Nairobi and later transferred to this Court. Sometime in 2020, the Plaintiff herein passed away and was substituted with her son Kennedy Murigi Mbau as per the Grant of Letters of Administration ad litem. The Plaintiff was however not amended to reflect the changes.
2. It is the Plaintiff's case that parcel known as Kajiado/Kitengela/2692 belonged to her late husband Francis Mbau Murigi but the 2nd and 3rd Defendants colluded to dispossess him of the parcel. She thus sought:
 - a. That a permanent injunction restraining the Defendants from transferring and or in anyway dealing with land parcel Kajiado/Kitengela/2692.
 - b. Costs of the suit.
 - c. Any other relief the Hon. Court may deem fit to grant.
3. The 1st and 2nd Defendants filed a Statement of Defence dated 13th of February 2014. They deny each and every allegation set out in the Plaintiff. There is also a witness statement sworn by Nyandoro Nyambaso, the then Land Registrar Kajiado dated 20th June 2016. In the statement, he claimed that the



suit property was first registered in the name of Andrew Kipiain Ole Moko on 17th of May 1990 and it was transferred to Francis Mbau Murigi for a consideration of Kshs. 125,000 and title issued. On 17th April 2002, the land reverted back to Andrew Kipiain Moko and title issued on 15th April 2004. On 26th April 2011 the property was transferred to Manyatta SimbaLand Limited and the same was subdivided on 23rd August 2012 with new title numbers being Kajiado/Kitengela/52510-52511. Title 52510 was then transferred from Manyatta SimbaLand Limited to Diana Waitherero Muthee, Florence Wanjiru Muthee and Josephine Nyambura Wangari. Title 52511 was transferred from Manyatta SimbaLand Limited to Kenpipe Housing Co-operative Society Limited and subdivided into parcels 61674-61801 respectively.

4. The 3rd Defendant filed his amended statement on defence and counterclaim on the 4th of March 2024. He denied the allegations in the Plaintiff and stated that the Plaintiff has drawn lacks sufficient particulars. It is also his case that the Plaintiff is frivolous, vexatious and an abuse of the Court process. The 3rd Defendant went on to state that the Plaintiff has never been in possession of the suit property and there was no evidence of the sale or transfer of the suit property to her husband. He stated that he was at all times the registered owner of property Kajiado/Kitengela/2962 and had been in its possession from 1990 when it was registered in his name and thus sought:
 - a. That the Plaintiff's suit against him be struck out and or dismissed with costs.
 - b. A declaration do issue that the 3rd Defendant is the registered owner of the suit property Kajiado/Kitengela/2692.
 - c. An order of permanent injunction do issue restraining the Plaintiff whether by herself, her family members, relatives, agents, servants, employees and or anyone acting on instruction from interfering whatsoever with the 3rd Defendant's possession, use and occupation of the suit property being Kajiado/Kitengela/2692.
 - d. Costs of the counterclaim.
 - e. Any other relief that this Hon. Court may deem fit to grant.
5. Despite service, the Defendants did not participate in the hearing of this suit.

Evidence of the Plaintiff

1. PW1, Kennedy Murigi Mbau adopted his witness statement dated 25th November 2013 as his evidence in chief and produced the documents in his bundles as exhibits in this case. He stated that the suit property belonged to his late father. He prayed that the same do revert to Francis Mbau Murigi (deceased).
2. This marked the close of the Plaintiff's case.
3. At the time of writing this judgement, the Plaintiff had not filed his final submissions.

Analysis and Determination

4. I have considered the pleadings, evidence on record and the relevant provisions of law. I find that the issues for determination are:
 - i. Whether the Plaintiff has proved her case on the required threshold that the late Francis Mbau Murigi was the registered owner of property Kajiado/Kitengela/2692;



- ii. Whether the 3rd Defendant had proved his case and was entitled to the prayers sought in the Counter Claim;
 - iii. What reliefs should issue;
 - iv. Who should bear costs of the suit?
5. Where title to property is under challenge, Courts have been tasked to go to the history of the title to determine its legitimacy. The Court of Appeal in *Munyu Maina v Hiram Gathiba Maina* [2013] KECA 94 (KLR) held:

“... 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...”

- 6. From the evidence on record, the partly burnt title deed dated 17th May 1990 for parcel Kajiado/Ololoitikoshi/Kitengela/2692 measuring 20.24 hectares is in the name Francis Mbau Murigi. It is the Plaintiff’s case that the suit property has never been sold or transferred to anyone else.
- 7. It is on record that on 15th June 1990 the land was transferred from Andrew Kipiain Ole Moko (the 3rd Defendant) to Francis Mbau Murigi for Kshs. 125,000. Prior to this transfer, there was an application for consent to the Land Control Board for subdivision of parcel Kajiado/Ololoitikoshi/Kitengela/1903 measuring 130 acres into two parcels measuring 50 and 80 acres respectively. While date on the application for consent is not legible, the application number is 483/89. This shows that the consent for subdivision was applied for in 1989. The applicant was the 3rd Defendant -Andrew Kipiain Ole Moko.
- 8. On 8th August 1989 the consent was granted by Purka Land Control Board. There is a receipt dated 10th August 1989 which confirms payment of Kshs. 2,000.
- 9. On 17th May 1990 the mother title was subdivided to parcels 2691 measuring 32.38 hectares and parcel 2692 measuring 20.24 hectares (the suit property). It is on record that payments for registration were made. The receipt dated 17th May 1990 shows that payment of Kshs. 100 was made to Kajiado Lands Registry for registration of parcel 2692 by Andrew Kipiain. And the receipt dated 5th July 1990 is for payment of Kshs. 5,150 by Francis Mbau as stamp duty and registration of parcel 2692.
- 10. On 6th November 2013 the Plaintiff registered a caution against the property.
- 11. The 3rd Defendant in his counterclaim contested having sold or transferred his property. However, he did not lead evidence to prove his claim.
- 12. From the uncontested documents on record, the late Francis Mbau Murigi was the duly registered owner of property Kajiado/Ololoitikoshi/Kitengela/2692 and there was no evidence of sale or transfer to any other person. Therefore, this Court finds that the Plaintiff proved his case on the required threshold as per Section 107, 108 and 109 of the *Evidence Act* which provide:

107.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
13. Section 26 of the [Land Registration Act](#) provides that:
- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.
14. There being no evidence of fraud or misrepresentation in how the late Francis Mbau Murigi acquired title to the suit property, I hereby declare that he is the indefeasible owner of the suit property. Having determined that he is the legal owner of the suit property, this Court is empowered under Section 80(1) of the [Land Registration Act](#) to order the 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.
15. I am of the view that any subsequent transfers or subdivisions effected in respect of the suit property were unlawful and illegal and should be cancelled forthwith.
16. Accordingly, Judgment is entered for the Plaintiff as against the Defendant as follows:
- a. That a declaration is thereby issued that the late Francis Mbau is the registered owner of the suit property; Kajiado/Kitengela/2692.
- b. That an order of permanent injunction is hereby issued restraining the 3rd Defendant whether by himself, his family members, relatives, agents, servants, employees and or anyone acting on his instructions from interfering whatsoever with the Plaintiff's possession, use and occupation of the suit property; Kajiado/Kitengela/2692.
- c. That the 3rd Defendant's Counterclaim was not proved and is hereby dismissed.
- d. That the Land Registrar Kajiado, is hereby ordered to cancel, rectify and amend all entries in the register and subsequent subdivisions of property Kajiado/Olootikoshi Kitengela/2692 to reflect the Bonafide owner Francis Mbau Murigi.
- e. That the Plaintiff shall have costs of the suit to be borne by the 3rd Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY 2025.

L.KOMINGOI
JUDGE



IN THE PRESENCE OF:

For the Plaintiff

For the 1st and 2nd Defendants

For the 3rd Defendants

Court Assistant: Mutisya

