



**Moraa v Masinde (Environment & Land Case E007 of 2023)  
[2025] KEELC 4319 (KLR) (3 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4319 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E007 OF 2023**

**M SILA, J**

**JUNE 3, 2025**

**BETWEEN**

**CALLEN MORAA ..... PLAINTIFF**

**AND**

**PETRONILLA LIONA MASINDE ..... DEFENDANT**

**JUDGMENT**

1. The suit herein was commenced through a plaint filed on 20 September 2023 by the plaintiff acting in person. I will politely say that the plaint is inelegantly drafted (fact of the matter being that it is actually very poorly drafted). If you dig however, one will pick that the plaintiff avers to be the widow of one Naftal Bogesho Mogire (deceased) who died in the year 2001. She therefore contends to be a beneficiary of the land parcel Bassi/Masige/2077 which was left by the deceased. She alleges that the defendant falsely claims to be the wife to the deceased and that she transferred the suit land into her name in the year 2011. She insinuates that this was done fraudulently because the deceased died in 2001. In her plaint she seeks the following orders (copied verbatim) :
  - i. An order of injunction restraining the defendant by her agents, servants and or any other person working under her instructions from trespassing, occupying LR No. Bassi/Masige/2077 and eviction thereof.
  - ii. Revoking the title deed in possession by the defendant.
  - iii. Order to know how the deceased benefits from KPLC LTD office was given to the Defendant, who imposed as a wife to the deceased Naftal Bogesho Mogire and left the real widow Carren Moraa the plaintiff at an awkward situation.
  - iv. Costs to the suit and interest.
  - v. Any other further relief the Honourable Court may deem fit to grant.



2. The defendant appointed counsel and filed defence. She pleaded that she followed due process as set out in an intestate succession, obtained a grant of letters of administration on 30 April 2003, and obtained a confirmation of grant on 9 May 2005. She pleaded that this vested in her the rights to hold the suit land in trust for the children of the deceased JN, MN, and MM. She otherwise denied the other pleadings of the plaintiff. She averred that the plaint does not disclose a reasonable cause of action and should be struck out with costs.
3. Hearing commenced on 24 February 2025. The plaintiff testified that she was born in 1968 and got married to the deceased in 1990. That in 1997 her husband paid dowry and swore an affidavit stating that she is his wife. She stated that they got five children. He died on 12 July 2001 while working for Kenya Power & Lighting Company (KPLC). She stated that she went to KPLC to collect funds as his wife while accompanied with a brother of the deceased. In 2006, she went to the Lands office and did a search which showed that the land was in name of her husband. In 2019, she did a letter than no one should interfere with the land until succession is done. In 2023, the defendant claimed that the plaintiff is staying in her parcel of land, to which she has a title deed and she (plaintiff) should move out. The plaintiff then filed suit to understand how the defendant got title. She found that she (defendant) indicated that she did succession in the year 2003 and that in 2011 there was transfer. She claimed to have stayed on the suit land since she was married for 35 years. She averred that the defendant has never come there to claim that she is the wife of the deceased. She stated that she buried her husband outside her house. She wanted the defendant to explain which process she used to acquire the land. She thought that the defendant should bring the green card, the Land Board report, and a Kenya Gazette report. As exhibits, she produced an affidavit dated 12 November 1997; a search for Bassi/Masige/2077 dated 4 December 2006; a Chief's letter dated 30 July 2001; a letter from the D.O dated 22 February 2002; a letter from the Chief dated 10 February 2006; and a letter from the Chief dated 11 July 2024. She claimed that the defendant came to the land with some goons who destroyed her bananas, coffee, tea, napier grass, and maize and she is now staying hungry.
4. Cross-examined, she testified that she has sued the defendant because she discovered that she has a title deed to the suit land. She claimed not to have seen the defendant since she got married and had never known of her existence until she did a search in the year 2023 which showed her name as proprietor. The Chief's letters that she produced were put to her and she could see the name of the defendant in them. She nevertheless asserted that it was in 2023 that she came to learn that the defendant has title to the suit land. She stated that she did not know that the defendant had done succession until she saw the defence. She did not go to check that succession case mentioned in the defence. It was put to her that the Death Certificate she held is a fake one but she stated that it was her brother in law pursuing it.
5. The plaintiff did not have any other witness listed but after she testified she stated that she had other witnesses. In my discretion, I allowed them to testify, though I took note of the fact that they were not only not discovered, but they were in court while the plaintiff testified.
6. PW-2 introduced himself as Samwel Osoro Kepha though when asked to produce his ID it showed Kephher Moseki Osoro born 01.01.1958. He stated that he was a cousin to the deceased. His evidence in chief was that the plaintiff got married to the deceased in 2008 (yes, 2008) and had been married for 35 years. He added that the village knows her as wife to the deceased. He stated that he has not known of the defendant before. In re-examination he stated that the plaintiff got married in 1990.
7. PW – 3 was Fidelis Monda Onduso Kinyanjui, born 1968. He stated that he is a cousin to the deceased. His evidence was that in 1990, the deceased married the plaintiff. He stated that since his death in 2001, it is the plaintiff who has been staying on the land without any issue until 2023 when the defendant came claiming the land. He stated that the defendant came with goons, caused fracas, cut



down avocado trees and bananas, and planted maize on existing maize that had already been planted. Cross-examined, he testified that the father of the deceased and his father are brothers. Their larger family is called the Mwamanyoni family. He testified that there was no meeting of the Mwamanyoni family on 20 July 2001 after the death of Naftali. He was not aware that the defendant was discussed in that meeting. He knew Peter Ombiro, Naftali Mariango, Nyakeriga Samuel, all as his cousins. He also knew Kennedy Ombiro and David Ombiro, as sons to Ombiro his cousin. He however did not know a Samuel Omboga. It was put to him that there was a meeting where those mentioned were present yet he and PW-2 do not appear to have been present. He stated that he does not know of such meeting and has never heard of it. He denied that they were ganging up against the defendant because she was not of their tribe.

8. PW –4 was one Linet Nyakerario Bogesho born in 1995. She testified that she was born on the suit land and that the plaintiff is her mother. She testified that when her father died, no other woman came to say that she is his wife. She denied that there was a meeting as claimed. She stated that she has never seen the defendant and would have known of her as she was going to school nearby. She testified that they are the ones who have been living on the suit land and are not aware of any succession done. She wondered why they were not included in the succession cause since they are children of the deceased.
9. With the above evidence the plaintiff closed her case.
10. The defendant testified as the sole witness in defence. She testified that she is wife to the deceased. That after his death, the elders, together with the Chief, sat with the family of Kwamanyoni. They decided that the land be placed in her name as wife of the deceased. She asserted that she is wife of the deceased and they have three children. She did not involve the plaintiff in the succession cause as she does not know her. Cross-examined, she testified that she is the one who buried the deceased outside her house. She testified that the plaintiff was only her worker and she was being allowed to farm the land for her produce and upkeep. She otherwise stated that she lives and works in Nairobi.
11. With the above evidence, the defendant closed her case. I invited parties to file submissions and I have taken note of the submissions filed.
12. The plaintiff claims to be the husband of the deceased who was proprietor of the land parcel Bassi/Masige/2077. She contends that she is entitled to the suit land by virtue thereof. She of course asserts that the defendant is a stranger to the deceased and has no entitlement to the suit land. In this suit the plaintiff wants the registration of the defendant as proprietor of the suit land revoked. Her case is more or less hinged on the claim that she is the rightful wife of the deceased who died while registered as the owner of the suit land. She mentions that she is at a loss as to how the defendant obtained registration of the suit land in her name as she is a stranger.
13. The defendant produced various documents to demonstrate how she obtained title to the suit land. Principally, she produced a Certificate of Confirmation of Grant dated 9 May 2005 issued by the High Court, Nairobi, in Succession Case No. 338 of 2003, Estate of Naftali Bogesho Mogire (deceased). Pursuant thereto she got registered as proprietor on 30 August 2011.
14. It is not within my purview to interrogate whether or not the plaintiff is wife to the deceased or a beneficiary of her estate. That is a matter that has already been decided in the Succession Case alluded to above. A Succession Court has already made the decision as to who the successors and beneficiaries of the estate of the deceased are, and the plaintiff does not feature anywhere. I do not have the jurisdiction to reverse that finding of the succession court nor even question it. If the plaintiff is not happy with that decision of the Succession Court, her remedy lies elsewhere, but certainly not through these proceedings



15. The plaintiff cannot claim that she is ignorant of the manner in which the defendant obtained registration of the title in her name as it is all disclosed in the defence and in the exhibits that the defendant produced. Given that the defendant obtained registration pursuant to succession proceedings, I cannot hold that the title that she holds was fraudulently procured, as contended by the plaintiff, and neither can I revoke it. Neither can I issue an order of injunction to restrain the defendant from that parcel of land. The same was bequeathed to her and is now registered in her name. It follows that prayers (i) and (ii) fail and are dismissed. Prayer (iii) is not within the jurisdiction of this court, i.e. the order to know how the defendant procured benefits of the deceased from KPLC. That has nothing to do with a dispute over title or occupation of land which is this court's jurisdiction. I am unable to grant it for want of jurisdiction.
16. It is apparent from the above that the plaintiff's suit must fail. I am not too sure whom the plaintiff has been consulting for legal advice but she has certainly been consulting the wrong people, who appear to have misled and misadvised her. Her case has no legs to stand on and it is hereby dismissed with costs.
17. Judgment accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF JUNE 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Plaintiff acting in person – present

Ms. Msando h/b for Mr. Kanyonge for the defendant

Court Assistant – Michael Oyuko.

