



Mbugua & another (Suing as the legal representative of the Estate of Margaret Njoki Mwenja) v Miringu & 2 others; Njehia (Third party) (Environment and Land Case E060 of 2021) [2025] KEELC 6146 (KLR) (23 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E060 OF 2021
MAO ODENY, J
SEPTEMBER 23, 2025**

BETWEEN

HANNAH WAMBUI MBUGUA & CHRISTINE WANJIRU NJOKI (Suing AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MARGARET NJOKI MWENJA) PLAINTIFF

AND

BENSON MWAURA MIRINGU 1ST DEFENDANT

PATRICK MUNGAI 2ND DEFENDANT

LAND REGISTRAR NAKURU 3RD DEFENDANT

AND

ISAIAH MUCHINA NJEHIA THIRD PARTY

JUDGMENT

1. By a Plaint dated 22nd July, 2021, the Plaintiffs herein sued the Defendants seeking the following orders:
 - a. An order of permanent injunction restraining the 1st and 2nd Defendants by themselves, agents, servants from trespassing, entering, erecting structures, selling, transferring, alienating, disposing, tilling, cultivating, interfering and/or in any way from encroaching into the Plaintiff's parcel of land known as Miti Mingi/Mbaruk Block 1/120 (Ndege) measuring approximately 0.048 Ha.
 - b. An order directing the 3rd defendant to cancel title deed for land parcel known as Miti Mingi/Mbaruk Block 1/120 (Ndege) measuring approximately 0.048 Ha issued to and held by the 1st & 2nd defendant.



- c. Costs and interest of the suit.
- d. Any other relief this honourable court deems fit to grant.

Plaintiffs' Case

2. PW1 Hannah Wambui Mbugua adopted her witness statement dated 28th July, 2021, as part of her evidence in chief and produced a list of documents, dated 11th March, 2022, as PExh No 1 to 10.
3. It was her testimony that the suit land belongs to her late sister Margaret Njoki Mwenja who never sold the same to anybody. She further stated that she has the original title which is different from the copy on the defendant's list of documents as it does not have a third party.
4. PW1 further testified that her sister died on 13th July, 1999, hence she could not have sold the land in 2013, as she was deceased. PW1 also told the court that there is nobody in occupation of the suit land as the court had granted an injunction. PW1 prayed that the court grants orders as per the Plaintiff.
5. The Defendants never gave evidence therefore, their cases were closed.

Plaintiff's Submissions

6. Counsel for the Plaintiff filed submissions dated 11th June 2025 and identified the following issues for determination:
 - a. Whether the Plaintiffs have proved their case on a balance of probabilities?
 - b. Whether the title deed issued to the 1st and 2nd Defendants should be cancelled?
7. On the first issue, counsel submitted that the Plaintiff produced the title deed for Miti Mingi/Mbaruk Block 1/120 (Ndege) measuring approximately 0.048 Ha, and from the green card, it is clear that the deceased Margaret Njoki Mwenja was the owner of the suit parcel of land, who was registered as such on 20th September, 1994. Counsel relied on the case of *In Re Estate of Stanley Maore (Deceased)* [2009] eKLR.
8. On the second issue, counsel submitted that the sale agreement dated 5th March, 2013, was null and void as the deceased died on 13th July, 1999, and there was no way that the deceased would have signed it. Counsel urged the court to grant the orders sought.

Analysis And Determination

9. The issues for determination are as follows:
 - a. Who is the lawful owner of the suit parcel of land and whether the Plaintiffs are entitled to the orders sought.
 - b. Whether the title deed issued to the 1st and 2nd Defendants should be cancelled?
10. From the Plaintiff's evidence, which is uncontroverted, it shows that the deceased was the registered owner of the suit whose title was produced in court as evidence. There was no evidence that the deceased sold the land to anyone during her lifetime. Any agreement that was purportedly entered into by the deceased after 1999 would be null and void as the deceased died on 13th July 1999. The deceased could therefore not have sold the land in 2013 or any other date after her demise.
11. The Plaintiff further told the court that there was nobody in occupation and that when she went to deliver construction materials on the suit parcel of land, unknown persons informed her that they were



the owners of the land which prompted her to go to the land registry to inquire. PW1 informed the court that she found out that the land had been fraudulently transferred to the 1st and 2nd Defendants who filed a defence but never attended the court to defend the claim.

12. The Plaintiffs had sought an order of a permanent injunction against the Defendants barring them from interfering with the suit land in any way. In the case of *Kenya Power & Lighting Co. v Sheriff Molana Habib* [2018] KLR, the court held as follows:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.....”

13. In the case of *Mulanga v Kisunza* [Environment and Land Appeal 7 of 2021] [2023] KEELC 15899 eKLR, the Court observed that:

“A permanent injunction fully determines the rights of the parties before the court and perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”

14. The Plaintiffs, being the legal representatives of the late Margaret Njoki Mwenja produced the title to the suit land, which is registered in the name of the deceased. This is prima facie evidence that they have a stake in the suit land. The Plaintiff also conducted a search, which revealed that the suit parcel had jointly been registered in the 1st and 2nd Defendant’s names.

15. The Plaintiffs averred that the 1st and 2nd Defendants in collusion with the 3rd Defendant through fraudulent means caused the suit land to be registered in their names. The Plaintiffs listed the particulars of fraud on the part of the Defendants as:

- a. Fraudulently causing to be issued a title deed to the 1st and 2nd Defendant yet the plaintiffs held the original title deed.
- b. Processing and transferring a title deed of a deceased person.
- c. Transferring the parcel of land to themselves knowing that the same belongs to the plaintiff.
- d. Colluding with the 3rd defendant to defraud the plaintiff their land.
- e. Obtaining title deed for the Plaintiff’s piece of land knowing that the land belongs to the Plaintiff.

16. Fraud has been defined in Black’s Law Dictionary 11th Edition as:

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”

17. The Court of Appeal in the case of *Vijay Morjaria vs Nansingh, Madhusingh Darbar & another* [2000] eKLR held:

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of



course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

18. PW1 in her testimony in court produced a list of documents dated 11th March 2022 as PExh No 1-10. I have perused the documents and note that a copy of the title deed in respect of the suit land (Miti Mingi/Mbaruk Block 1/120) is registered in the name of the deceased, Margaret Njoki Mwenja.)Section 24 of the [Land Registration Act](#) 2012 states that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.
19. Section 26 of the [Land Registration Act](#), 2012 provides:
 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.
20. In the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR, the court while considering the provisions of Section 26(1) of the [Land Registration Act](#) held as follows:
 - “ 13. It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme...
 18. I do not see how a person with a perfectly good title should be deprived of his title by activities of fraudsters. It is in fact time to put down our feet and affirm that no fraudster, nor any beneficiary of fraudulent activities, stands to gain for his fraud, and no title holder will ever be deprived of his good title by the tricks of con artists.”
21. The Defendant never gave evidence to defend the claim against them, therefore the matter proceed undefended. The fact that the matter was undefended does not mean that the Plaintiffs had a walk in the park. It is still incumbent upon such claimant to prove his or her case on a balance of probabilities. The Plaintiffs still bore the responsibility of proving their case on the required standard.
22. In the case of *Kenya Power & Lighting Company Limited v Nathan Karanja Gachoka & another* [2016] eKLR, the court stated:

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it as truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”



23. I find that the Plaintiffs did not lower their guard on the burden of proof even though the defendants did not attend court to give evidence.
24. The Plaintiffs had also sought the cancellation of the 1st and 2nd Defendants' title to the suit land. Section 80 of the [Land Registration Act](#) gives the court powers to order the cancellation or rectification of a title. It provides as follows:
- ‘(1) Subject to subsection (2), the court may 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.
- (2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.’
25. I have considered the pleadings, the evidence and the submissions by counsel together with the relevant authorities and find that the Plaintiffs are entitled to the orders sought. I therefore issue the following specific orders:
- a. An order of permanent injunction is hereby issued restraining the 1st and 2nd Defendants by themselves, agents, servants from trespassing, entering, erecting structures, selling, transferring, alienating, disposing, tilling, cultivating, interfering and/or in any way from encroaching into the parcel of land known as Miti Mingi/Mbaruk Block 1/120 (Ndege) measuring approximately 0.048 Ha.
- b. The 3rd defendant is hereby directed to cancel the title deed for land parcel known as Miti Mingi/Mbaruk Block 1/120 (Ndege) measuring approximately 0.048 Ha issued to and held by the 1st & 2nd defendants.
- c. Costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD DAY OF SEPTEMBER 2025.

M. A. ODENY

JUDGE

