



**Ndakele (Suing as the administrator of the Estate of daniel Mugo  
Ole Kimelok) v Kungu & 2 others (Environment and Land Appeal  
E002 of 2025) [2025] KEELC 6014 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6014 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND APPEAL E002 OF 2025  
LN GACHERU, J  
SEPTEMBER 11, 2025**

**BETWEEN**

**ERASTUS GEORGE MANYAGI NDAKELE (SUING AS THE ADMINISTRATOR  
OF THE ESTATE OF DANIEL MUGO OLE KIMELOK) ..... APPELLANT**

**AND**

**ANDREW MWAURA KUNGU ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, NAROK ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal against the Judgement of Hon H.M. Nyaberi (CM) in the Chief  
Magistrates Court at Narok in ELC CASE NO. 06 OF 2019, delivered on 4 th February 2025)*

**JUDGMENT**

1. This Appeal arise from the Judgement of Hon. H.M Nyaberi, the Chief Magistrate at Narok CMC, which was delivered on 4<sup>th</sup> Feb 2025, wherein, the trial court dismissed the Plaintiff's suit (now Appellant herein) with costs to the Defendants. In his claim, as the Plaintiff, the Appellant had sought for various prayers; being a declaration that the transfer of the suit land Cis Mara/ Lemek/591, to Andrew Mwaura Kungu, the 1<sup>st</sup> Respondent herein be declared illegal, be nullified, and the said land revert back to the original owner Daniel Mugo Ole Kimelok among other prayers.
2. After the inter-parties hearing of the main suit, the trial court found and held that the Plaintiff (Appellant's) suit was a non-starter for want of locus and proceeded to dismiss the said suit, with costs to the Defendants (Respondents)



3. The Appellant was aggrieved by the said determination of the trial court, and vide a Memorandum of Appeal dated 12<sup>th</sup> February 2025, filed the instant Appeal. The Appeal is based on the following grounds;
  1. That the learned magistrate erred in law and facts in failing to appreciate the submissions of the Appellant.
  2. That the learned Magistrate erred in law and fact in holding that the Appellant was a stranger to the estate of Tentemu Ole Kimalok, and lacked locus standi.
  3. That the learned Magistrate erred in law and in fact in holding that the Appellant had not proved the allegations of fraud to the required standard.
4. Consequently, the Appellant sought for orders that;
  - a. The Appeal be allowed and the Judgement of the trial court dated 4<sup>th</sup> February 2025, be set aside;
  - b. The Appellant be awarded costs of the Appeal;
  - c. And for further orders as the court may deem just and expedient.
5. The facts of the case according to the Appellant (as the Plaintiff before the trial court) are; the suit land herein Cis Mara/ Lemek/591, was initially owned by Tentemu Ole Kimelok, who died on 13<sup>th</sup> July 2006. He also alleged that Daniel Mugo Kimelok was the son of the late Tentemu Ole Kimelok, and after the death of his father, Daniel Mugo became the administrator of his estate, and vide a Confirmed Grant dated 22<sup>nd</sup> February, 2011 the said suit land was transmitted to the said Daniel Mugo Kimelok, which suit land was inherited from Tentemu Ole Kimelok.
6. It was his further averments that the estate of Tentemu Ole Kimelok, was distributed vide Narok Succession Cause No 11 of 2007. However, even after the Grant was confirmed, Daniel Mugo Kimelok passed on before transferring the suit land to his name, although he was in process of doing so.
7. Further, that in 2017, the Plaintiff (Appellant) conducted a search and noted that the suit land was transferred fraudulently to the 1<sup>st</sup> Defendant (Respondent), and thus the suit before the trial court.
8. The facts of the case according to the 1<sup>st</sup> Defendant (Respondent) are that; he purchased the suit land from Tentemu Ole Kimelok in the year 2006, though he did not have the sale agreement with him. He further alleged that though he did not have money to carry on the process of transfer, the vendor Tentemu Ole Kimelok signed all the transfer documents.
9. The 1<sup>st</sup> Defendant only transferred the suit land to his name in the year 2008, though the Vendor, Tentemu Ole Kimelok was deceased by then. He claimed that he is the owner of the suit land, and that the Plaintiff (Appellant) did not have locus standi to file the suit before the trial court since he obtained Grant of representation fraudulently. There was an application to revoke the said Grant before Naivasha CM Court in Succession Cause No. 271 of 2018.
10. The facts of the case according to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are that:- if there was any agreement for sale of the suit land, they were not privy to the said agreement. Further, that the suit offended the mandatory provisions of section 13A of the *Government Proceedings Act*, and therefore the suit was bad in law.



11. In its Judgement dated 4<sup>th</sup> Feb 2025, the trial held that;

“The suit land was not registered in the name of the deceased Daniel Mugo Kimelok. However, it had been transferred by transmission from the estate of Tentemu Ole Kimelok, to the 1<sup>st</sup> Defendant. That at the time of institution of the suit land, the Plaintiff had not obtained a Grant of administration of the estate of Tentemu ole Kimelok. Neither had the plaintiff applied for revocation of the Grant held by the deceased Daniel Mugo Kimelok..... I am satisfied that the plaintiff has failed to demonstrate that he has a Grant of letters of administration to commence this suit to recover the suit property on behalf of the estate of Tentemu Ole Kimelok. The Grant that was issued to his late father cannot be transferred to him to form a basis to bring this suit. In this regard, the Plaintiff is a stranger to the estate of Tentemu Ole Kimelok and as such lacks locus standi”
12. The Appeal herein was canvassed by way of written submissions. The Appellant filed his written submissions dated 20<sup>th</sup> April 2025, through Ojienda & Co Advocates, and submitted on various issues. On locus standi, the Appellant submitted that the 1<sup>st</sup> Respondent raised this issue through a Preliminary Objection dated 23<sup>rd</sup> April 2019, and vide a ruling dated 14<sup>th</sup> January 2020, the said P.O was dismissed with costs. Therefore, the trial court pronounced itself on an issue that was already settled.
13. Further, it was submitted that the issue of locus standi was not raised by any of the parties herein, and for that reliance was placed in the case of Bore vs Spire Bank Ltd & Another (Civil case No 8 of 2020) {2024} KEHC 1034(KLR) 8<sup>th</sup> February 2024) (Ruling).
14. It was also submitted that the Appellant obtained Letters of Administration over the estate of his father on 7<sup>th</sup> December 2018, and the said Grant was confirmed on 12<sup>th</sup> April 2022, and thus he has locus standi to file the instant suit. Therefore, the trial court erred in finding that the Appellant had no locus standi as full Grant had not been issued.
15. Further on the lack of locus standi pursuant to section 13A of the *Government Proceedings Act*, it was submitted that the trial court misapprehended the law since that said section was declared unconstitutional, and failure to serve the notice was not fatal to the suit.
16. On the alleged failure to prove the claim of fraud, the Appellant submitted that the Green Card which was the only document produced by the 1<sup>st</sup> Respondent was suspect since Tentemu Ole Kimelok died on 13<sup>th</sup> July 2006, and the entries in the Green Card were made on 19<sup>th</sup> May 2008, two years after the demise of the alleged vendor.
17. It was further submitted that the 1<sup>st</sup> Respondent did not produce evidence of conveyance, such as the sale agreement, consent letter and prove of payment of stamp duty. Reliance was placed in the case of Munyu Maina vs Hiram Gathiha Maina (2013) KECA 94 (KLR) where the Court of Appeal held;

“When a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of titles as proof of ownership. It is this instrument of title that is in challenge and then 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”
18. The Appellant further submitted that purchase being one of the process of acquisition of land, section 3(3) of the *Law of Contract Act*, requires that all transactions relating to land must be in writing. He



- submitted that the 1<sup>st</sup> Respondent did not produce the sale agreement, given that the alleged vendor Tentemu Ole Kimelok died in 2006, and the transfer was done in 2008, how was the consent obtained?
19. It was also submitted that the 1<sup>st</sup> Respondent failed to produce the Consent from the Land Control Board, proof of payment of purchase price, and payment of Stamp duty. Therefore, the 1<sup>st</sup> Respondent did not discharge the burden of prove as provided by Section 107 of the *Evidence Act*.
  20. For this submissions, reliance was sought in the case of Dina Management Ltd vs County Government of Mombasa & 5 Others (Petition 8 (E010 OF 2021 (2023) KESC 30 (KLR)), where the Supreme Court upheld the decision in the case of Samuel Kamere vs Lands Registrar, Kajiado, where the court held;  

“... in order to be considered as a bonafide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out necessary due diligence to determine the lawful owner from whom they acquired a legitimate title, and thirdly that they paid valuable consideration for the purchase of the suit property...”
  21. Ultimately, the Appellant submitted that he established his case on the required standard before the trial court, and thus his Appeal is merited and should be allowed with costs to himself.
  22. On his part, the Respondent filed his written submissions dated 4<sup>th</sup> June 2025, through J.Martim & Co Advocates and submitted that he had raised four issues before the trial court being;
    - i. Whether the Grant of Letters of administration issued to the Plaintiff over the estate of Daniel Mugo Kimelok , gave the Plaintiff the necessary locus to institute these proceedings to recover land for the estate of the deceased -Daniel Mugo ole Kimelok;
    - ii. Whether there was fraud as alleged in acquisition of the title by the 1<sup>st</sup> Defendant;
    - iii. Whether the prayers sought should be granted;
    - iv. Who should pay costs of the suit?
  23. On the issue of locus, the Respondent submitted that the Grant obtained by the Appellant could not be used to recover the land that was sold to the Respondent by Tentemu Ole Kimelok, who sold the suit land to the Respondent in 2006 before his demise. He submitted that the trial court rightly held that the Grant issued to Daniel Mugo Kimelok, could not be used by the Appellant to claim the suitland, which was initially held by Tentemu Ole Kimelok. He also submitted that the trial court’s findings was sound, and should be upheld by this court.
  24. On whether the Appellant (as Plaintiff) had proved his case on the required standard of balance of probabilities, it was submitted that due to lack of locus standi, he had no capacity to bring the suit, and thus did not prove the case on the required standard.
  25. Further, since the late Daniel Mugo Kimelok was never at any time been the registered as the owner of the suit land, then the Respondent’s title could not be cancelled, and the same revert to Daniel Mugo Kimelok.
  26. This court has carefully considered the Memo of Appeal, the available evidence before the trial court as contained in the Record of Appeal and the rival written submissions and finds as follows;



27. This being a first Appeal, the court will be guided by the holding of the court in the case of *Selle & Another vs Associated Motor Boat Co. Ltd& Another* (1968) EA 123, where the Court of Appeal held;

“An Appeal to this court from a trial by the High Court is by way of re-trial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusion though it should always bear in mind it has neither seen nor heard the witness and should make due allowance in this respect. In particular, the court is not bound to follow the trial judge’s findings of fact if it appears that either he clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ....”

28. This court has a duty to re-evaluate, re-analyse, re-consider and re-assess the evidence tendered before the trial court, and then come up with its own independent conclusion, while considering that it never saw nor heard the witnesses as did the trial court.

29. This court has carefully considered the Judgment of the trial court, the available evidence and exhibits produced thereon and finds that the main issue for determination is whether the trial court erred in law and fact in finding and holding as it did, and whether the Judgment of the trial court should be overturned and/ or set aside.

30. From the Judgment of the trial court, it is evident that the Appellant’s case was dismissed on the ground that he did not have Letters of Administration over the estate of Tentemu Ole Kimelok. However, from the Amended Plaintiff filed on 8<sup>th</sup> April 2022, it is evident that the Appellant, had filed the suit, suing as the Administrator and Legal Representative of the estate of Daniel Mugo ole Kimelo, but not as an administrator of the estate of Tentemu Ole Kimelok, who was the original owner of the suit land, Cis Mara/ Nkareta/591.

31. Further, from the available evidence, it is also evident that the late Daniel Mugo Kimelok, was the administrator of the estate of Tentemu Ole Kimelok, and vide a Confirmed Grant, the suit property Cis Mara/ Nkareta/ 591, was transmitted to the said Daniel Mugo Ole Kimelok. Whether the said property was available for distribution as free property of Tentemu Ole Kimelok, or not is another question for determination. But the said land was among the assets distributed for the estate of Tentemu Ole Kimelok.

32. However, it is evident that from the said Confirmed Grant, Daniel Mugo Ole Kimelok was supposed to inherit the suit property. The said Daniel Mugo Ole Kimelok passed on before having transferred the suit land to his name. This Confirmed Grant has not been revoked, and on the face of it, the Late Daniel Mugo Ole Kimelok, is supposed to inherit this parcel of land Cis Mara/ Nkareta/591.

33. Further, it is evident that vide a Grant issued on 24<sup>th</sup> January 2022, the Appellant herein is the Administrator of the estate of Daniel Mugo Ole Kimelok, on whose behalf the suit herein is brought about. The Appellant filed the suit before the trial court as an Administrator of the estate of Daniel Mugo Ole Kimelok, but not on behalf of the estate of Tentemu Ole Kimelok, whose estate was being administered by Daniel Mugo Ole Kimelok.

34. Having found that the Appellant filed the suit before the trial court as the Administrator of the estate of Daniel Mugo Ole Kimelok, then this court finds that the trial court erred in law and fact in finding and holding that the Appellant filed the suit on behalf of the estate of Tentemu Ole Kimelok, and that he had no locus standi to do so. The court concurs with the Appellant’s submissions that he is the



- Administrator of the estate of Daniel Mugo Kimelok, and thus had locus to sue and or be sued on behalf of that estate.
35. On whether the Appellant offended the provisions of Section 13A of the *Government Proceedings Act*, the court has noted that the trial court did not make any detrimental findings against the Appellant herein and only observed that though the Plaintiff (Appellant) did not tender any proof of such Notice issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, failure to serve such Notice was not fatal, as it only denied the Plaintiff (Appellant) costs if any. This court needs not to add any more.
36. On the issue of fraudulent acquisition of the suit land, the trial magistrate held and found that the Appellant (as the Plaintiff) failed to prove the said allegation, and did not discharge his onerous task. However, the Appellant has submitted that he did plead and prove his claim of fraud, and the trial court did err in finding that he had not proved his case on the required standard.
37. It is trite that allegations of fraud are serious and must be strictly pleaded and proved. In his Amended Plaintiff dated 18<sup>th</sup> February 2022, the Appellant had on para 10 particularised the fraud committed by the Respondent as a 1<sup>st</sup> Defendant thereon. Among the particulars of fraud are;
- i. Causing the suit land to be transferred to his name without the knowledge of the plaintiff (Appellant);
  - ii. Forging the land transfer form alleging that they were signed by the Plaintiff and misrepresentation of facts on the registration of the suit land.
38. It is not in doubt that the suit land was initially owned by Tentemu Ole Kimelok, who died on 13<sup>th</sup> July 2006, as is evident from the Death Certificate produced by the 1<sup>st</sup> Defendant (Respondent). From the Green Card produced by the Respondent before the trial court, the suit land was registered in his name on 19<sup>th</sup> May 2008. That was long after the death of the initial owner, and the Green Card does not show what was the consideration. However, the Respondent had testified that the suit property was transmitted to him after the death of Tentemu Ole Kimelok, because Tentemu Ole Kimelok had signed the transfer forms before his death. The said transfer forms were not produced as exhibits.
39. The court concurs with the submissions of the Appellant that land acquisition by purchase is one of the processes of owning land, and such purchase should be proved in writing as provided by section 3(3) of the Law of Contract. From the proceedings, the Respondent testified that he purchased the suit land from Tentemu Ole Kimelok. He further alleged that he did not produce the copy of the sale agreement because it was lost. Further, he testified that the said sale agreement was drawn by Onduso Advocate. At least he should have called the said advocate as his witness, to support the allegations that he purchased the suit property, a sale agreement was drawn, but now it was missing or misplaced.
40. Further, there is a Certificate of official search which was produced by the Appellant and the Land Registrar had flagged the Respondent registration over the suit land as one that was suspected to be fraudulent. The Respondent did not call any evidence to controvert that observation by the Land Registrar.
41. It is evident that the Respondent was registered as the owner of the suit land on 19<sup>th</sup> May 2008, and Daniel Mugo Ole Kimelok had by then been appointed as the Administrator of the estate of Tentemu Ole Kimelok. The duties of an Administrator of the estate of a deceased person are spelt out in Section 83 of the Law of Succession. Among these duties are to identify the beneficiaries of the estate of the deceased and also identify and pay all debts of the deceased or even settle any claim.
42. The Respondent did not involve the Administrator of the estate while transferring the suit land to himself. He alleged that Tentemu Ole Kimelok had signed the transfer Forms after the purchase.



However, the Respondent could not remember the purchase price, did not produce the sale agreement, Land Control Board Consent nor evidence of payment of Stamp duty.

43. Without production of the above crucial documents, the root of the Respondent's title was suspect, and he could not wave the Green Card as prove of his ownership of the suit land. See the case of Munyu Maina vs Hiram Gathiha Maina (supra).
44. Further, this court will be guided by the holdings of the Supreme Court in the case of Dina Management Ltd vs County Government of Mombasa 5 others (supra) where the said Court upheld the findings of the court in the case of Samuel Kamere vs Lands Registrar, Kajiado (supra). The Supreme Court affirmed that where the root of the title is challenged, then the holder of such Certificate of title cannot be said to be the absolute and indefeasible owner of such land. Such a title holder had a duty to call sufficient evidence to confirm how he acquired the said title.
45. The Respondent was duty bound to prove that he had actually purchased the suit land from Tentemu Ole Kimelok, for a consideration, and that could have been proved by production of the sale agreement, Land Control Board Consent and transfer documents. The registration in his name was done in 2008, which was long after the death of Tentemu Ole Kimelok, and he did not involve Daniel Mugo Ole Kimelok, who was the Administrator of the estate of Tentemu Ole Kimelok vide Letters of Administration issued in 2007.
46. By having the suit land registered in his name without involving the Administrator of the estate of Tentemu Ole Kimelok, and without Letters of Administration, the Respondent intermeddled in the estate of a deceased person, which is contrary to Section 45 of the Law of Succession.
47. Therefore, from the available evidence, it is clear that the Appellant did call sufficient evidence to prove that the Respondent got registered as the proprietor of the suit land without proof of purchase; without involving the Administrator of the estate, and that action was fraudulent. The trial court erred in holding that the Appellant did not call sufficient evidence to prove fraud on the part of the Respondent.
48. For the above reasons, the court finds merit in the instant Appeal and allows it. Further the court proceeds to set aside the Judgment of the trial court dated 4<sup>th</sup> Feb 2025. However, this court cannot find and hold that the suit land should now be registered in the name of the Daniel Mugo Ole Kimelok since the said Daniel Mugo Ole Kimelok (now deceased), and did not complete the process of distribution of the estate of Tentemu Ole Kimelok to his name.
49. The court directs that the title deed registered and issued in favour of the Respondent on 19<sup>th</sup> May 2008, be cancelled, and the said title deed revert to the name of the Tentemu Ole Kimelok (now deceased). The said parcel of land should be distributed and transmitted in accordance with the Law of Succession, and if the Respondent has any claim against the said estate of Tentemu Ole Kimelock, he should file the necessary proceedings.
50. Accordingly, the Appeal dated 12<sup>th</sup> February 2025 is allowed in terms of prayers No. a and b of the Memo of Appeal, with a further order that the title deed held by the Respondent be cancelled and the suit land to revert to the estate of Tentemu Ole Kimelok, and be distributed in accordance with the [Law of Succession Act](#).

Appeal allowed accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**L. GACHERU**



**JUDGE**

Delivered online in the presence of: -

Elija Meyoki, Court Assistant.

N/A for the Appellant

N/A for the Respondent

11/09/2025.

**L. GACHERU**

**JUDGE**

