



**Musomi v Comet & 4 others (Environment & Land Case 19 of 2019)
[2024] KEELC 6951 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6951 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 19 OF 2019
TW MURIGI, J
OCTOBER 16, 2024**

BETWEEN

MAUREEN NDUNGE MUSOMI PLAINTIFF

AND

ANN WAYUA COMET 1ST DEFENDANT

JANE MBITHE COMET 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

LAND REGISTRAR MAKUENI 4TH DEFENDANT

HON ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. By a Plaint dated 5th February 2019 the Plaintiff prays for judgment against the Defendants jointly and severally for:-
 1. A permanent injunction be granted in favour of the Plaintiff against the 1st, 2nd, 3rd, 4th and 5th Defendants herein jointly and severally by themselves, their agents/or servants be restrained from entering, encroaching, constructing of any structure, utilizing it, alienating, wasting, selling off, removing anything from it, interfering with and/or dealing in any way with all that parcel of land known as Land Reference No. Makueni/Mubau/57.
 2. An order of this Honourable Court reinstating and/or directing the 3rd & 4th Defendants to henceforth register and issue a certificate of title deed to all that parcel of land known as Land Reference No. Makueni/Mubau/57 into the names of the Plaintiff.
 3. An order of this Honourable court to have the estate of the deceased winded up and/or dissolved upon the 1st & 2nd Defendants having provided full books of account of the estate.



4. That the Officer Commanding Police Division (OCPD) Makueni, Wote and Officer in Charge of Police Station (OCS) Makueni Wote to ensure maximum compliance of the court order.
5. That the costs of the suit be in the cause.
2. The 1st and 2nd Defendants filed a statement of defence dated 6th September 2022 denying the Plaintiff's claim.
3. The 3rd, 4th and 5th Defendants filed a statement of defence dated 2nd May 2019 denying the Plaintiff's claim.

The Plaintiff's Case

4. The Plaintiff Maureen Ndunge testified as PW1 and called two witnesses in support of her case. She adopted her witness statement dated 5th February 2019 as her evidence in chief. She also produced the list of documents dated 14th March, 2019 in support of her case.
5. The Plaintiff testified that she is the absolute registered proprietor of L.R. No. Makueni/Mubau/57, the suit property herein. She stated that the suit property was initially registered in the name of her late father Cosmas Musomi Nzuki. That after her father's death, her mother and sister (the 1st and 2nd Defendants herein) were appointed as the legal administrators of his estate thereof.
6. She went on to state that her late father had during his lifetime charged the suit property to Kenya Commercial Bank to secure a loan but had not repaid the outstanding balance as at the time of his death. That she offered to settle the debt after the bank threatened to sell the suit property through a public auction and in return her family agreed to transfer suit property to her name. That after she repaid the outstanding loan, the legal Administrators of the estate of her late father donated to her a power of attorney on 9th February 2008, which enabled them to transfer the suit property to her name.
7. She further testified that on 27th March 2017, land officials prevented her from conducting a search on the suit property but upon lodging a complaint to the EACC, she was issued with the certificates.
8. That after perusing the documents, she discovered that her title for the suit property had been revoked in favour of third parties. It was her testimony that she was not granted a fair hearing by the Land Registrar due to the illegal acts and omissions on the part of the Defendants. She further testified that the Legal Administrators of the Estate of her late father have failed to execute their duties under Section 82 and 83 of the *Law of Succession Act*. She went on to state that the Administrators have never provided the accounts of the estate nor caused the estate to be dissolved. Concluding her evidence, she urged the court to grant the orders sought in the Plaintiff.
9. On cross examination by Mr Obere, she testified that she accepted to repay the outstanding loan because of the agreement between herself and her family and in addition to a consent issued by her brother Emanuel Mbuvi Musomi. She further testified that she developed and fenced the suit property, planted trees and renovated the old farm house. It was her testimony that the 1st and 2nd Defendants transferred to her the suit property.
10. On cross examination by Ms Kerubo, she testified that the 1st and 2nd Defendants hold the suit property in trust for the other siblings. She testified that she was registered as the proprietor of the suit property after the Administrators and her brother gave her consent to transfer the suit property to her name.
11. She further testified that the special power of attorney did not specifically state that she could transfer the suit property to her name. She confirmed that the title for the suit property was revoked by the Land Registrar in accordance with the provisions of Section 79(2) of the *Land Registration Act*.



12. On re-examination, she testified that she was approached to repay the loan as her late father's company had defaulted in repaying the same. She told the court that her mother was in occupation of the suit property and added that the trees that she had planted on the suit property which have since been cut down.
13. PW2 Daniel Mutua a brother to the 1st Defendant testified that the late Comet Musomi Nzuki had secured a loan of Kshs 400,000/= from Kenya Commercial Bank which he had not repaid as at the time of his death.
14. That his late father, Timothy Ndunda, prevailed upon the Plaintiff to repay the outstanding loan since the 1st Defendant was reluctant to settle the same. That the bank released the title for the suit property to the Plaintiff after she repaid the outstanding loan. He asserted that the suit property belongs to the Plaintiff.
15. PW3 Wellington Mutuku Ndunda a brother to the 1st Defendant testified that in the year 2003, Kenya Commercial Bank's intention to sell the suit property through a public auction was stopped after Plaintiff started repaying the loan advanced to her late father. That after the Plaintiff repaid the loan, the Administrators of the Estate of Comet Musomi Nzuki donated to the Plaintiff a Power of Attorney and subsequently transferred to her the suit property.
16. On cross examination, he testified that the suit property was the only inheritance available for the beneficiaries of the late Comet Musomi Nzuki.

The 1st Defendants Case

17. The 1st Defendant Ann Wayua Comet testified as DW1 and called one witness in support of her case. She adopted her witness statement dated 16/02/2023 as her evidence in chief. She informed the court that she is a Co-Administrator of the Estate of Comet Musomi Nzuki and added that the suit property is jointly registered in her name and that of Jane Mbithe in trust for the beneficiaries of the Estate of Comet Musomi.
18. It was her testimony that the certificate of confirmation of grant issued on 20th January 1995 vested her late husband's properties in her name for the benefit of his children. She admitted to having donated a special power of attorney to the Plaintiff to enable her to facilitate any transaction with regards to the suit property since they were out of the country.
19. She further admitted that Kenya Commercial Bank discharged the charge over the suit property but denied authorising the Plaintiff to transfer the suit property wholly in her name.
20. On cross examination by Mr Kipkirui, she testified that she is the owner of the suit property and would not know how the Plaintiff was registered as the owner thereof. She further testified that she was not aware whether her late husband had charged the suit property to Kenya Commercial Bank or whether the Plaintiff had repaid the outstanding loan.
21. She admitted to having donated a Special Power of Attorney to the Plaintiff but denied having signed the transfer form. She further denied the Plaintiff's allegations that she had developed the suit property.
22. On cross examination by Machoge, she stated that she donated a Power of Attorney to the Plaintiff so as to enable her to sink a borehole but not to transfer the suit property to herself.
23. On re-examination she testified that the suit property belongs to the entire family and denied having seen any title registered in the name of the Plaintiff.



24. DW2 Mueni Musomi Comet testified that she is a daughter of the late Comet Musomi Nzuki. She informed the court that the Plaintiff fraudulently transferred the suit property to her name thereby depriving them of their inheritance. She further testified that she did not authorise the Plaintiff to transfer the suit property to her name and added that the Estate does not owe her any dues. She urged the court to dismiss the suit with costs.
25. On cross examination, she testified that she was a minor in the year 1994. She testified that her late father left behind the suit property and a house which her mother sold in order to cater for their education. She confirmed that the bank wanted to sell the suit property because her late father had defaulted in repaying the loan advanced to him and added that her mother and sister repaid the same. She denied the Plaintiff's allegations that she had sunk a borehole on the suit property.
26. On re-examination she testified that she was an adult when the Plaintiff transferred the suit property to herself and added that she did not consent to transfer of the same.

The 3rd , 4th and 5th Defendants Case

27. The 3rd, 4th and 5th Defendants called one witness in support of their case.
28. DW3 Catharine Makau the Land Registrar based at Makueni Land Registry adopted the witness statement of Samuel Maina dated 23rd February 2023 as her evidence in chief. She highlighted the various entries in the green card for the suit property.
29. DW3 stated that on 7th August 1987 a charge was registered in favour of Kenya Commercial Bank to secure a sum of Kshs 400, 000/=.
30. That on 30th January 2011, the suit property was transmitted to Anne Wayua Comet to hold it in trust for her children. That on 11th January 2011 the suit property was registered in the name of the Plaintiff and a title deed was issued on 2nd February 2009. That a caution was registered in favour of Mueni Musomi on 8th April 2014 and later withdrawn on 19th October 2016. That the Plaintiff's title was revoked on 19/10/2016 in accordance with Section 79(2) of the [Land Registration Act](#) and the title reverted back to the 1st and 2nd Defendants to hold in trust for the children.
31. On cross examination, she testified that she was not aware whether any hearing took place or whether the Plaintiff was issued with any notice with regards to the hearing before the Land Registrar. She insisted that a Land Registrar has power to revoke a title.
32. After the close of hearing, both parties agreed to file and exchange their written submissions.

The Plaintiff's Submissions

33. The Plaintiff's submissions were filed on 1st December 2023.
34. On her behalf, Counsel outlined the following issues for the court's determination:-
 - a. Whether the purported revocation and cancellation of the title relating to the suit property in the name of the Plaintiff is lawful.
 - b. Whether the affidavit sworn on 3rd September 2015 by the 2nd Defendant is admissible?
 - c. Whether the Plaintiff has proved her case?
35. On the first issue, Counsel submitted that the Plaintiff is the absolute registered proprietor of the suit property. That arising from a complaint made to the 1st Defendant, the 3rd Defendant vide a letter



- dated 9th May 2016 instructed the 4th Defendant to invoke Section 14 of the *Land Registration Act* to summon the parties for a hearing.
36. Counsel submitted that the 3rd Defendant's letter dated 9th May 2016 clearly shows that the 1st and 4th Defendants were the only parties who were served with the said letter. It was submitted that the 4th Defendant did not give the Plaintiff any notice as required by the law.
 37. Counsel submitted that the 4th Defendant did not serve the Plaintiff with any notice and failed to conduct the process of investigation including notifying the affected parties, hearing the matters raised and the criteria used in arriving at the decision.
 38. Counsel further submitted that DW3, Catherine Makau confirmed to the court that no hearing before the Land Registrar took place and hence the purported cancellation of the Plaintiff's title is illegal, null and void. According to Counsel, the 4th Defendant's actions are in breach of Articles 10, 47 and 50 of the *Constitution* for the reason that the Plaintiff was not granted a fair hearing before the 4th Defendant.
 39. Counsel relied on the provisions of Section 79(2) of the *Land Registration Act* to submit that no alteration affecting the title of a proprietor may be made pursuant to the section without the proprietor's consent unless the conditions specified under the section are fulfilled and a written notice of ninety days must be given to the proprietor of the intention to make the alteration.
 40. On the second issue, Counsel submitted that although the 1st and 2nd Defendants strongly objected to the production of the replying affidavit sworn on 3rd September 2015 by the 2nd Defendant in response to Summons for revocation of grant in Nairobi High Court Succession Cause No. 1212 of 1995, they did not dispute the contents therein.
 41. Counsel contended that the 1st Defendant engineered a scheme to prevent the 2nd Defendant from attending court for the hearing because she was afraid that the truth would be revealed.
 42. Counsel relied on the provisions of Sections 34 and 35 of the *Evidence Act* to submit that the affidavit sworn by the 2nd Defendant on 3rd September 2015 is admissible as her attendance cannot not be procured without an amount of delay and expense since she has been out the country for many years.
 43. Counsel argued that the replying affidavit contained in the 1st and 2nd Defendant's list of documents narrates how the suit property was transferred to the Plaintiff through a special power of attorney dated 9th February 2008 and supported by the consent signed by Emmanuel Mbuvi Musomi.
 44. Concluding his submissions, Counsel submitted that the Plaintiff has proved her case in accordance with Sections 107 and 109 of the *Evidence Act* and urged the court to grant the orders sought in the Plaint.
 45. None of the authorities cited by Counsel were availed for the Court's perusal

The 1st and 2nd Defendants Submissions

46. The 1st and 2nd Defendants submissions were filed on 29th January 2024.
47. On their behalf, Counsel submitted that the Plaintiff was attempting to rely on the affidavit sworn by the 2nd Defendant and a 3rd party who is not a party to the suit herein.
48. It was submitted that the Defendant did not produce any document and as such any evidence relating to the documents is hearsay and inadmissible unless it passes the test of the exception to the rule against hearsay.



49. Concluding his submissions, Counsel submitted that the instant suit is based on hearsay evidence and urged the court to dismiss the same with costs.
50. To buttress her submissions, Counsel relied on the case of *Sofie Feis Caroline Lwangu v Benson Wafula Ndote* (2021) eKLR

The 3rd , 4th and 5th Defendants' Submissions

51. The 3rd, 4th and 5th Defendants' submissions were filed on 18th January 2024.
52. On their behalf, Learned State Counsel submitted that the only issue for determination is whether the Plaintiff has proved fraud on the part of the 3rd – 5th Defendants. It was submitted that the Plaintiff misrepresented the 4th Defendant to transfer the suit property on the basis of documents purported to be genuine. Learned State Counsel submitted that the 1st and 2nd Defendants demonstrated that they were holding the suit property in trust for the beneficiaries of the Estate of Comet Musomi Nzuki. Learned State Counsel further submitted that the 4th Defendant invoked his mandate under Section 79(2) of the *Land Registration Act* to rectify the register because the Plaintiff did not provide any consent or authority authorizing her to transfer the suit property to herself.
53. It was further submitted that the Plaintiff did not adduce any evidence to prove fraud on the part of the 3rd -5th Defendants or demonstrate that the 4th Defendant acted fraudulently when he invoked his mandate under Section 79(2) and 26 of the *Land Registration Act*.
54. Concluding his submissions, Learned State Counsel urged the court to dismiss the suit with costs.
55. To buttress her submissions, Learned State Counsel relied on the following authorities:-
 1. *Gichinga Kibutha v Caroline Nduku* [2018] eKLR.
 2. *Kimantbi Kilonzo vs Susan Wangari Kiiru* [2019] eKLR

Analysis And Determination

56. Having considered the pleadings, the evidence on record and the respective submissions, the only issue that arises for determination is whether the Plaintiff is entitled to orders sought in the plaint.
57. It is not in dispute that :-
 1. The 1st Defendant is the mother to the Plaintiff and the 2nd Defendant.
 2. The late Comet Musomi Nzuki died on 7th May 1994
 3. The 1st and 2nd Defendants are the legal administrators of the Estate of Comet Musomi Nzuki,
 4. The suit property was charged with Kenya Commercial Bank to secure a loan of Kshs. 400,000/= on 07/03/1987 and later discharged on 22/01/2009.
 5. The 1st and 2nd Defendants donated a specific power of attorney to the plaintiff 9th February 2008.

Whether The Plaintiff Is Entitled To The Orders Sought

58. The Plaintiff is seeking for a permanent injunction restraining the Defendants from entering, encroaching, constructing any structure, utilising, alienating, wasting, selling or dealing in any way with the suit property



59. The Plaintiff's claim over the suit property is anchored on the agreement between herself and her family. It is the Plaintiff's case that she accepted to repay the outstanding loan on condition that her family would transfer the suit property to her name.
60. Section 3(3) of the Law of Contract provides as follows:-
- No suit shall be brought upon a contract for the disposition of an interest in land unless—
- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:
61. This provision is echoed in Section 38 of the Land Act, 2012 which stipulates that no interest in land can pass unless there is a valid contract of sale. It provides as follows: -
- (1) Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land unless—
 - (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.
62. In Peter Mbiru Michuki v Samuel Mugo Michuki [2014] eKLR, the Court of Appeal aptly held as follows: -
- “Section 3(3) of the Law of Contract Act provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is writing, executed by the parties and attested.
63. It is clear from the above provisions that all transactions touching on land must be in writing. In the matter at hand, the Plaintiff did not produce any agreement to show that her family accepted to transfer to her the suit property upon repaying the outstanding loan.
64. The Plaintiff testified that after she repaid the loan advanced to her late father, the legal administrators donated to her a power of attorney and subsequently transferred the suit property to her name. In addition, she stated that her brother Emmanuel Mbuvi Musomi gave his consent for the suit property to be transferred to her name.
65. In this regard, she produced the discharge of charge dated 22/02/2009(PEX6) and transfer form dated 19/11/201(PEX10) in support of her evidence. According to the transfer form, the Legal Representatives transferred the suit property for a consideration of Kenya shillings 500,000/-. The Plaintiff testified that the transfer form was executed pursuant to the specific power of attorney to facilitate the issuance of the title deed in her favour. She further testified that her brother Emmanuel Mbuvi gave his consent for transfer the suit property to her name. The Plaintiff produced the consent issued on 20/3/2009 (PEX8).



66. The 1st Defendant on the other hand admitted to having donated a Specific Power of Attorney to the Plaintiff but denied authorizing the Plaintiff to transfer the suit property to her name. She stated that they donated the power of attorney to Plaintiff to enable her to facilitate any transaction with regards to the suit property as they were out of the country.
67. The Specific Power of Attorney dated 9th February 2002 and registered on 23rd July 2008 states as follows in part :-
1. To take charge and supervise any transactions specifically in respect of our land. LR No. Makueni/Mubau/57.
 2. To sue, be sued, enter into judgment, arbitration, defend, commence or abandon any or all actions or other proceedings touching the said property known as L.R. No. Makueni/Mubau/57
 3. To execute sign any or all documents relating to the aforementioned property known as our said attorney shall find necessary.
68. The Specific Power of Attorney is specific on what the Plaintiff could do. A close reading of the power of attorney shows that it did not give the Plaintiff power to transfer the suit property to her name. The power donated to the Plaintiff was to enable her to take charge of all transactions regarding the suit property.
69. The Plaintiff testified that the agreement to transfer the suit property to her name was supported by the consent issued her brother Emmanuel Mbuvi Musomi. I have carefully read the consent by Emmanuel Mbuvi Musomi(PEX10). The consent is with regards to confirmation of grant in Succession Cause No 1212 of 1995 in the matter of the Estate of the Late Comet Musomi Nzuki. The consent states as follows in part:-
- “do hereby consent to in respect of the property known as Makueni/Mobau/57 all actions to be undertaken by Maureen Ndunge Musomias per the Specific Power of Attorney sworn by my mother and sister to wit Anne Wayua Comet and Jane Mbithe Comet on 9th day of February 2008”.
- It is clear that Emmanuel Mbuvi Musomi gave consent in respect of the suit property in all actions to be undertaken by the Plaintiff as per the Specific Power of Attorney. A reading of the Specific Power of Attorney shows that it did not authorise the Plaintiff to transfer the suit property to herself. I therefore find that Emmanuel Mbuvi Musomi did give his consent for the suit property to be transferred to the Plaintiff.
70. The Plaintiff produced a letter by the 1st and 2nd Defendants dated 5/9/2006 addressed to the general manager. The letter states as follows in part;-
- “ to release the title for the suit property to the Plaintiff or her agents for safe keeping on behalf of the beneficiaries as the outstanding arrears had been cleared.”
71. It is clear from the letter that the legal administrators instructed the bank, the to release the title to the Plaintiff for safe keeping on behalf of the other beneficiaries. From the foregoing, I find that the specific power of attorney donated to the Plaintiff did not authorize her to transfer the suit property to her name but to take charge and supervise any transaction of the suit property amongst other functions. The Plaintiff submitted that the replying affidavit sworn on 3rd September 2015 by the 2nd Defendant



- ought be admitted in accordance with Section 34 and 35 of the Evidence Act. The affidavit was not produced by either party and therefore does not form part of evidence,
72. The Plaintiff also sought for an order to reinstate and/or direct the 3rd and 4th Defendant to register the suit property in her name.
73. The Plaintiff testified that the Land Registrar revoked her title for the suit property in accordance with Section 79(2) of the Land Registration Act. The Plaintiff asserted that she was not granted an opportunity to be heard in accordance with the provisions of Section 79 of the Land Registration Act. The Plaintiff complained that the acts and omissions perpetrated by the Defendants had caused her loss and embarrassment. She relied on the particulars of illegality, wrongfulness and unlawfulness on the part of the Defendants as follows:-
- i. Failing to appreciate that this matter was sub-judice as it was already pending before the High Court-Succession Cause No. 1212 of 1994;
 - ii. Failing to conduct a proper hearing involving all the parties in this matter to establish any allegation of fraud as envisaged under Section 79 (1) and (2) of the Land Registration Act of 2012;
 - iii. Failing to accord the parties a right to be heard;
 - iv. Failing to establish if there existed any allegation of fraud all and hence proceeded to cause the revocation of the title deed to my detriment;
 - v. Failing to respect the fundamental rights of private property as envisaged under Article 40 of the Constitution of Kenya.
 - vi. Being very uncooperative and failing to assist me to obtain the necessary papers requested;
 - vii. Causing the revocation of the title deed.
74. The Plaintiff lamented that she was not issued with a hearing notice and that no hearing took place.
75. Learned State Counsel submitted that the 4th Defendant invoked his mandate under Section 79(2) of the Land Registration Act to rectify the register after he discovered that the documents presented by the Plaintiff to confer ownership of the suit property were not genuine.
76. Section 79 of the Land Registration Act deals with rectification and indemnity and provides as follows:-
79. Rectification by the Registrar
- (1) The Registrar may rectify the register or any instrument for registration in the following cases:-
 - (a) in formal matters and in the case of errors, mistakes or omissions not materially affecting the interest of any proprietor;
 - (b) in any case and at any time with the consent of all the affected parties'
 - (c) if upon a resurvey, a dimension or are shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of a parcel;
 - (d) for purposes of updating the register;



- (e) for purposes of correcting name, address or other particulars of the proprietor upon the written application by the proprietor in the prescribed form.
- (2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless-
 - (a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission;
 - (b) it would for any reason be just for the alteration not to be made provided that a written notice of ninety days shall be given to the proprietor .
- (3) upon proof of the change of name or address of any proprietor, the Registrar shall, on the written application of the proprietor make an entry in the register to record the change.
- (4) Any person aggrieved by the decision of the Registrar under this section may apply to the court for necessary orders.

77. I have read the letter dated 9th May 2016 by the Chief Land Registrar addressed to the District Land Registrar Makueni (PXE17). Arising from a complaint by the 1st Defendant who alleged that the suit property was fraudulently transferred to the Plaintiff herein, the Chief Land Registrar instructed the District Land Registrar to invoke Section 14 of the *Land Registration Act* to summon the parties for a hearing. The Plaintiff complained that she was not notified of the hearing and that no hearing ever took place.
78. The Plaintiff produced the green card for the suit property (PEX13) which shows that she was registered on 11/1/2011 and a title deed was issued on 2nd February, 2011.
79. Entry No. 22 dated 1/9/2016 shows that the Land Registrar revoked entry No 18 and 19 under Section 79 (2) of the *Land Registration Act* and reinstated entry No.17. In entry No. 18, the Plaintiff was registered as the proprietor of the suit property on 11/01/2011, in entry No. 19, the Plaintiff was issued with a title deed on 02/02/2011) and in entry No. 17, Anne Wayua Comet and Jane Mbithe Comet were registered to hold the suit property in trust for her children on 30/01/2009.
80. Under Section 79 (1) of the *Land Registration Act*, the Land Registrar has power to rectify the register of land in formal matters, and with the consent of the parties. It is clear from the evidence presented that the Plaintiff was not granted an opportunity to be heard before her registration as the proprietor of the suit property was cancelled by the 4th Defendant. No notice was issued to the Plaintiff before entry Nos. 18 and 19 were revoked. The actions by the Land Registrar effectively changed proprietorship from the Plaintiff to the 1st and 2nd Defendants was illegal and contrary to Section 79(2) of the *Land Registration Act*. In the case of *Mbiri Kamau (representing ACK Kitharaini Church Commissioners of Kenya v Munyangia Njoka* [2021] eKLR the court observed that the Land Registrar has no power to revoke a title to land as demonstrated in the case herein
81. In so far as the Plaintiff acquired the title on the basis of the specific power of attorney which made no provision for the transfer thereof, it follows that the Plaintiff did not hold a good title and is therefore not entitled to the orders sought.
82. The Plaintiff also sought for an order to wind up the estate of Comet Musomi Nzuki and/or dissolved upon the 1st and 2nd Defendants providing full books of account of the estate.



83. It is trite law that jurisdiction is everything and without it the court cannot make one step. Matters regarding administration and/or winding up of an estate of a deceased person fall under the ambit of the probate and administration court. This court has no jurisdiction to hear and determine succession matters.

84. In the end I find that the Plaintiff has not proved her case against the Defendant on a balance of probabilities as required. The upshot of the foregoing is that this suit is hereby dismissed. In view of the fact that the parties herein are closely related, I direct that each party bears its own costs.

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HON. T. MURIGI

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF OCTOBER, 2024.

In The Presence Of:

Kipkirui for the Plaintiffs.

Obere for the 1st and 2nd Defendants.

Kerubo for 3rd and 5th Defendants.

