



REPUBLIC OF KENYA



**Mwangangi & 7 others v Attorney General for and/on behalf of the Land Registrar Machakos
(Environment & Land Case 296 of 2017) [2023] KEELC 394 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 394 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 296 OF 2017
CA OCHIENG, J
FEBRUARY 2, 2023**

BETWEEN

**MUTUA MWANGANGI 1ST PLAINTIFF
PRISCILLA NZISA MWANGANGI 2ND PLAINTIFF
PATRICK MUTUKU MWANGANGI 3RD PLAINTIFF
MULI IKONZE 4TH PLAINTIFF
MUTUNGA MWANGANGI 5TH PLAINTIFF
MUTUKU MWANGANGI 6TH PLAINTIFF
MUTUGI MWANGANGI 7TH PLAINTIFF
NTHEI MWANGANGI 8TH PLAINTIFF**

AND

**ATTORNEY GENERAL FOR AND/ON BEHALF OF THE LAND REGISTRAR
MACHAKOS DEFENDANT**

JUDGMENT

1. By an originating summons dated the April 25, 2017 and amended on the May 12, 2021, the plaintiffs pray for judgement and orders against the defendant for:-
 - a. Land Reference number Machakos/ Masinga 5218, 5219, 5220, 5221, 5222 and 5223 be registered in the name of Mwangangi Sila (deceased).
 - b. Costs of this motion
2. The originating summons is supported by the affidavits of Mutua Mwangangi alias Kasoloi Mwangangi and Priscilla Nzia Mwangangi where they depose that Machakos/ Masinga 5218, 5219,



5220, 5221, 5222 and 5223 hereinafter referred to as the ‘suit lands’ were registered as follows: 5218 – Muli Ikonze; 5219 – Mutunga Mwangangi; 5220 – Mutuku Mwangangi; 5221 – Kasoloi Mwangangi; 5222 – Mutungi Mwangangi; and 5223 – Nthei Mwangangi. Further, that these are family members and there is no dispute between them regarding ownership, boundary and occupation of the suit lands. They contend that the title deeds were issued in the names of the children but in a wrong, unfair and disorganized manner without their knowledge. They state that it is the late Mutunga Mwangangi who single handedly allocated all family members land without consultation and in secrecy. They state that the current registration would force family members to relocate and demolish or abandon existing developments for no good reason. They aver that the ownership of the respective parcels of land had been interchanged but the District Land Registrar declined to rectify the register unless there is a court order.

3. In response to the originating summons, the defendant filed a replying affidavit sworn by Rosaline Soo, the District Land Registrar, where she explains that as per their records Masinga/ Masinga/ 5218 was first registered on January 19, 2015 in the name of Muli Mwangangi and a title deed issued on January 12, 2015. Further, that Masinga/ Masinga/ 5219 was registered in the name of Mutunga Mwangangi on January 19, 2015 and a title deed was issued on January 12, 2015. She further explains that Masinga/ Masinga/ 5220, was registered in the name of Mutuku Mwangangi on January 19, 2015 and a title deed issued on January 12, 2015. While Kasoloi Mwangangi was registered as owner of Masinga/ Masinga/ 5221 on January 19, 2015 and a title deed was issued on January 12, 2015. Further, on 19th January, 2015, Masinga/ Masinga/ 5222 was registered in the name of Mutungi Mwangangi and a title Deed issued on January 12, 2015. She further explains that Ndei Mwangangi was registered as owner of Masinga/ Masinga/ 5223 on January 19, 2015 and a title deed issued on January 12, 2015. She avers that these titles were first registration emanating from the process of survey and adjudication. She contends that these being ancestral lands, the registered owners should follow due process by attending a Land Control Board and do a transfer by exchange since there is no dispute on ownership amongst them. She reiterates that the applicants seek orders that will affect their brothers including the late Mutunga Mwangangi yet his personal representatives are not parties to the suit. Further, that the applicants cannot seek costs from the Land Registrar who is not the reason for the dispute. She reaffirms that the application is frivolous, vexatious including a waste of the court’s time and lacks merit.
4. The originating summons was canvassed by way of written submissions, although it is only the applicants who filed theirs.

Analysis and Determination

5. Upon consideration of the originating summons dated the April 25, 2017 and amended on May 12, 2021, including the respective affidavits and the applicants’ submissions, the only issue for determination is whether the suit lands should be registered in the name of the deceased Mwangangi Sila (deceased).
6. The applicants in their submission reiterated their averments as per the supporting affidavits and contend that the area Chief in his letter dated the September 30, 2016 addressed to the defendant sought for the registration of the suit lands to be cancelled and revert to Mwangangi Sila (deceased). Further, that the deceased Mutunga Mwangangi had already requested for de registration as well as re registration of his title in his deceased father’s name, *vide* his letter dated the September 26, 2016 addressed to the defendant. To buttress their averments, they relied on section 26 (1) of the [Land Registration Act](#).
7. It is not in dispute that the plaintiffs are the registered proprietors of their respective parcels of land. The plaintiffs have sought for rectification of title claiming their registration was done wrongfully by their



late brother Mutunga Mwangangi, since they occupy different parcels of land as opposed to where their titles have been registered. It further emerged in evidence that there is no dispute amongst the plaintiffs in respect to ownership of land. In this instance, the plaintiffs are simply seeking for rectification of register to amend the anomaly and reflect the correct position on the ground on the portion each occupies. They aver that there was a mistake committed when Mutunga Mwangangi processed titles to the suit lands without consulting them and registered them in portions they do not occupy. The defendant opposed the originating summons insisting that the plaintiffs should revert back to the adjudication process as this was first registration. However, as per the law, once the adjudication register is closed and titles are issued, the regime governing the rectification of register reverts to the [Land Registration Act](#).

8. Sections 26 (1) (b) of the [Land Registration Act](#) stipulates that: “The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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 ... 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.”
9. From this legal provision, it is clear that a title acquired unprocedurally can actually be challenged and that is what the plaintiffs are seeking. I note none of the plaintiffs including the deceased Mutunga Mwangangi are opposed to rectification of the register to reflect the correct position. Further, the defendant has not demonstrated what prejudice, it stands to suffer if the register was rectified to reflect the true position on the ground. On the issue of rectification of register, I wish to make reference to section 80 of the [Land Registration Act](#) which provides that: ‘
 - (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 who is in possession and had acquired the land, lease or charge for valuable consideration, 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.’
10. From a reading of this legal provision, it is only the court mandated to order the Land Registrar to rectify the register. Further, a register can be rectified in instances where the registration was done by mistake as in this instance.
11. Based on the facts as presented while relying on the legal provisions I have cited, I find that the originating summons is merited and will allow it.
12. I will proceed to make the following final orders:
 - a. The Land Registrar Machakos, be and is hereby directed to rectify the register in respect to Land Reference numbers Machakos/ Masinga 5218, 5219, 5220, 5221, 5222 and 5223 issued in the names of the plaintiffs by cancelling the titles and reverting them to the estate of Mwangangi Sila (deceased).
 - b. Each party to bear their own costs



DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 2ND DAY OF FEBRUARY, 2023.

CHRISTINE OCHIENG

JUDGE

