



REPUBLIC OF KENYA



**Mokaya v Kebaso & 4 others (Environment & Land Case 40 of 2021)  
[2023] KEELC 20648 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20648 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 40 OF 2021**

**JM KAMAU, J**

**OCTOBER 12, 2023**

**BETWEEN**

**DANIEL MAROKO MOKAYA ..... PLAINTIFF**

**AND**

**REUBEN MOKAYA KEBASO ..... 1<sup>ST</sup> DEFENDANT**

**ELIJAH OGOTI MOGIRE ..... 2<sup>ND</sup> DEFENDANT**

**GIDEON MWEBI KEBASO ..... 3<sup>RD</sup> DEFENDANT**

**JARED NYAMARI ..... 4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR NYAMIRA COUNY ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced by a plaint dated November 10, 2011 where the plaintiff sought:-
  1. An order for cancellation of Title Deed No Central Kitutu/mwogeto/2216, 2217, 2218 & 2219.
  2. A Declaration that the acts of the Land Registrar, Nyamira County registering the aforesaid land parcel without going through the succession process is null and void.
  3. Costs.
  4. Any other relief the court may deem fit and just to grant.
2. His case is grounded on the averments that he is the uncle to the initially registered owner of Central Kitutu/mwogeto/1863 situate at Manga District, Nyamira County measuring 0.079 Hectares and registered in the name of Agnes Kwamboka Nyaigoti (Deceased). In 2009, the 1<sup>st</sup> Defendant in collaboration with the 5<sup>th</sup> Defendant fraudulently and procedurally altered the Land Register and



registered the land in the name of the 1<sup>st</sup> Defendant before subdividing it into several land parcels viz Central Kitutu/mwogeto/2216, 2217, 2218 & 2219 and sold the same to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants by presenting himself as the heir of the deceased. He also retained one parcel.

He presented himself to the transferees as the rightful owner of the parcel of land. This resulted in disinheriting the Plaintiff. On August 11, 2021 the 1<sup>st</sup> to 4<sup>th</sup> Defendants (inclusive) filed a statement of Defence and denied the contents of the Plaintiff and averred that the suit is incompetent, discloses no reasonable cause of action and offends the explicit provisions of the Civil Procedure Rules. Further, that the Plaintiff lacks locus standi to institute the suit and that the suit offends the provisions of the Government Proceedings Act. They also claim to be all bona fide purchasers for value without Notice (including the 1<sup>st</sup> Defendant). They therefore sought to have the suit dismissed with costs. The 5<sup>th</sup> Defendant never filed any Defence in spite of being served. But he did participate in the proceedings herein as an independent witness. Save the 5<sup>th</sup> Defendant, all the other parties filed their lists of documents and witness statements in compliance of Order 11 of the Civil Procedure Rules.

3. The Preliminary Objection dated July 25, 2022 by the 1<sup>st</sup> to 4<sup>th</sup> Defendants on locus standi was dismissed on September 28, 2022 and the Hearing of the suit commenced on October 13, 2022 when PW1 – Daniel Maroko, the Plaintiff took to the witness box. He told the court that he learnt from the Chairman of Manga Land Control Board that Central Kitutu/mwogeto/1954 no longer belonged to their late mother, Yunes Ariri. But the Title Deed he had still read Yunes Ariri. This was in 1991. The Chairman told him that the land had already been transferred to Agnes Kwamboka Nyaigoti who died around 1996, 1997. She then surrendered and transferred the land to the Plaintiff on 4/2/2008. But in 2011 the area District Commissioner, a Mr Onesmus Kiata came and asked the Plaintiff to give him the Title Deed which he never returned to him to date. The land was then in a discreet manner transferred to the Defendants and all the crops and trees thereon destroyed by the aforesaid 1<sup>st</sup> to 4<sup>th</sup> Defendants. The Plaintiff produced the following documents to support his case;
  1. Summons to appear before the Land Registrar, Nyamira on January 11, 2017
  2. Summons to appear before the aforesaid as February 22, 2017.
  3. Letter dated March 13, 2017 from the Land Registrar, Nyamira threatening to cancel the Title Deeds Central Kitutu/mwogeto/2216, 2217, 2218 and 2219.
  4. Copy of Green Card in respect of Central Kitutu/mwogeto/1863.
  5. Certificates of official searchers for the 2216 – 2219.
  6. Register of Powers of Attorney and Recreets of the same.
  7. Ruling dated July 19, 2017 where he had been charged with the offence of forcible detainer C/S 91 of the Penal Code.
  8. A copy of his letter dated June 9, 2009 for demanding the surrender of Title Deed Central Kitutu/mwogeto/1863 addressed to the 1<sup>st</sup> Defendant herein.
4. On cross-examination, the Plaintiff said they are 7 sons in the family and that his father had only 1 wife – Yunes Ariri who died in 1976 and that the 1<sup>st</sup> Defendant is his nephew through Stephen Kebaso Mokaya who died in Kodiago Prison serving a 6-year jail term for murder. He also said that he got Title No. Central Kitutu/mwogeto/1863 from Agnes Kwamboka after rectification, during her life time.

PW2 – Charles Monyoncho Mokaya, a farmer, testified that he is a brother to the Plaintiff. He added that they also have 3 sisters. He supported PW1’s evidence. But he said that his father had another wife called Sandimu who deserted him. He could not remember her other name.



PW3 – Benard Mokaya Maroko, a son to the Plaintiff testified that Agnes Kwamboka Nyaigoti was her aunt. He said that the Land Registrar, Nyamira, cancelled his father’s Title Deed Central Kitutu/mwogeto/1963 on 03/07/2009 on the ground that the entry was erroneously made and the same was sub-divided into Central Kitutu/mwogeto/2216, 2217, 2218 and 2219 and transferred to 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively in 2010.

5. Having the Plaintiff’s case closed, DW1 – Reuben Mokaya Kebaso took to the witness box on 30/12/2022 and testified that he is a nephew to the Plaintiff, his father, who is now deceased being the last born in the family and who was buried on Central Kitutu/mwogeto/1863, the suit land where Yunes Ariri was also buried. He testified that Central Kitutu/mwogeto/2216 belongs to Reuben Mokaya, 2217 to Elijah Ogoti Mogire, 2218 to Gideon Mwebi Kebaso and Central Kitutu/mwogeto/2219 to his cousin – Jared Nyamari.

He produced the following documents to support the Defendants’ Case;

1. Title Deed for Central Kitutu/mwogeto/1863.
  2. Mutation form.
  3. Letter of consent dated 18/12/1997 in favour of Sibia Nyakoboke Kebaso.
  4. Letter of consent dated 25/06/2008 in favour of Reuben Mokaya Kebaso.
  5. Letter dated 30/12/2005 from the District Officer Manga to the Chairman, Land Disputes Tribunal, Manga.
6. On cross-examination, the witness admitted that Central Kitutu/ Mwogeto/1863 came from Central Kitutu/mwogeto/1801 owned by his grandmother Yunes Ariri Mokaya.

He also in re-examination testified that his grandmother Yunes Ariri died in April 1988.

The last witness in the case was Martin Osano, the Land Registrar, Nyamira. He testified that his office did not have documents supporting Entries Nos. 2, 3, 5 & 6 in Central Kitutu/mwogeto/1863. Entries 2 & 3 show that the land was transferred to the Plaintiff on 04/02/2008. The Title Deed was issued on 03/07/2009. The same were cancelled as allegedly having been so done by error. Entries 5 & 6 show the land was transferred to the 1<sup>st</sup> Defendant on 07/05/2009 and a Title Deed issued on the same day. Entry No. 7 shows the same was closed on sub-division to Title Nos. Central Kitutu/mwogeto/2216, 2217, 2218 and 2219. But the Land Registrar could not tell what error under entries 2 & 3 his predecessor Mr. Bosire was referring to. He doubted it. Entry No. 5 in favour of the 1<sup>st</sup> Defendant does not indicate the interest conferred to the transferee and as a consequence Entry No. 7, sub-division is not sustainable since it is grounded on Entries 5 & 6. He summed up his evidence by saying that there was no evidence of succession in respect of the Estate of Yunes Ariri Mokaya, the proprietor of Central Kitutu/mwogeto/1863 which came from Central Kitutu/ Mwogeto/1801.

7. It is evident from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant’s list of documents dated 9/6/2022 that the Title Deed in respect of LR. No. Central Kitutu/ Mwogeto/1863 was issued to one Reuben Mokaya Kebaso (1<sup>st</sup> Defendant) on 7/5/2009. Mutation forms were later processed to create subdivisions 2216,2217,2218 and 2219.

The same are dated 5/5/2010, at least this is evident from the rubber stamp and signature of the District Surveyor, Nyamira. On 18/12/1997 a letter of consent was issued by the Manga Land Control Board to Agnes Kwamboka Negoti consenting to her transfer of the suit property to Sibia Nyakoboke Kebaso. The subject is Central Kitutu/mwogeto/ 1863. It is not clear from the pleadings who Sibia



Nyakoboche Kebaso is and whether the said transfer was ever effected or not. On 25/6/2009 the same Board issued consent to Reuben Mokaya Kebaso to sub-divide the property L.R. No. Central Kitutu/Mwogeto/1863 into 4 subdivisions. From the Plaintiff's list of Documents dated 13/7/2022 and filed in court on the same date there is an Abstract of Title in respect to Central Kitutu/mwogeto/1863 which shows that the suit property measuring 0.272 Hectares was registered in the name of Agnes Kwamboka Nyaigoti on 20/1/1993. Then on 4/2/2008 the land was transferred to one Daniel Maroko of ID No. xxxx and the Title Deed issued on 3/7/2009. I suppose the said Daniel Maroko is the Plaintiff herein. The 2 last entries were later cancelled with the remarks "Entry Nos. 2 and 3 above entered by Error". Then on 7/5/2009 the land was registered in the name of Reuben Mokaya Kebaso of P.O.Box Manga and ID. No. xxxx (I suppose the 1<sup>st</sup> Defendant).

8. None of the parties have explained how the original land left the hands of Agnes Kwamboka Nyaigoti (the first registered owner) and got into the hands of the 1<sup>st</sup> Defendant. We have also not been told when the said Agnes Kwamboka Nyaigoti died. We cannot presume her death.

It is the Plaintiff's claim that the suit land belonged to his late mother Yunes Ariri who died in April 1988. The Defendant has stated that the Plaintiffs have no capacity to bring this suit. It was submitted that the Plaintiffs have not taken out Letters of Administration to the Estate of the said Yunes Ariri. It is indeed not in doubt that the Plaintiff herein has not availed any evidence to show that he is the Administrator of the estate of Yunes Ariri and that he therefore has capacity to bring this suit on behalf of the said estate.

Section 79 of the [Law of Succession Act](#) provides as follows: -

"The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative."

9. Indeed, the Plaintiff has no capacity to bring this suit on behalf of the said estate. However, that does not bar him to institute the suit as a beneficiary.

On the other hand, Section 45 of the [Law of Succession Act](#) Cap 160 Laws of Kenya forbids any transaction involving the Estate of a Deceased person without first obtaining letters of Administration. It reads as follows: -

"Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

Any person who contravenes the provisions of this section shall: -

Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

Be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration."

10. In the present case no letters of administration have ever been applied for, let alone being granted in respect to the Estate of Yunes Ariri. The transfer to the Plaintiff and the 1<sup>st</sup> Defendant contravenes the provisions of section 45 of the [Law of succession Act](#) (cap 160 Laws of Kenya) and as such it is unlawful.



The upshot of the above is that whatever was done in respect to the registration and the subsequent transfers of property L.R. No. Central Kitutu/mwogeto/1863 after April 1988 was intermeddling with the Estate of Yunes Ariri and not lawful. Before then, the land parcel known as property L.R. No. Central Kitutu/ Mwogeto/1863 was still the property of the Deceased, Yunes Ariri and no living person had a good Title over the property. Any Transfer or sub-division thereafter was therefore a nullity and this court hereby nullifies the same.

I hereby invoke the provisions of Section 80 (1) of the [Land Registration Act](#) No. 3 of 2012 which 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.
11. And since the proviso under sub section (2) is not applicable to the 1st Defendant as he was a party to the fraud, I hereby enter judgement in the following terms:
1. A Declaration that the acts of the Land Registrar, Nyamira County transferring parcel Number L.R. No. Central Kitutu/mwogeto/1863 and the subsequent sub-divisions into parcel Numbers Central Kitutu/mwogeto/2216, 2217, 2218 & 2219 without going through the succession process is null and void.
  2. An order for cancellation of Title Deed No. Central Kitutu/mwogeto/2216, 2217, 2218 & 2219 and to have the same revert to L.R. No. Central Kitutu/mwogeto/1863 to be registered in the name of Yunes Ariri.
  3. The Land Registrar, Nyamira is hereby ordered to rectify the properties known as Title NOs. Central Kitutu/mwogeto/2216, 2217, 2218 & 2219 to ensure that the same revert to L.R. No. Central Kitutu/mwogeto/1863 and the entries made therein after April 1988 and any subsequent entries are hereby cancelled and the proprietorship section of the said property reverts back to the name of Yunes Ariri forthwith pending the process of Succession Cause.
  4. An order of eviction is hereby issued against the 1<sup>st</sup> Defendant, his agents and/or servants from LR. No. Central Kitutu/mwogeto/1863 or any part thereof.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 12TH DAY OF OCTOBER 2023.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant:

Mr. Ochoki for the Plaintiff

Mr. Nyamari for 1st to 4th Defendants

