



REPUBLIC OF KENYA



KENYA LAW
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**Walekhwa v Mechi & another (Land Case E001 of 2023)
[2025] KEELC 4663 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4663 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
LAND CASE E001 OF 2023
EC CHERONO, J
JUNE 19, 2025**

BETWEEN

ALVVARES WABWILE WALEKHWA PLAINTIFF

AND

EDWARD MUSOMBI MECHE 1ST DEFENDANT

MATILI TECHNICAL INSTITUTE 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated the 13/06/2023, the Plaintiff seeks judgement against the Defendants for:
 - a. An order of cancellation of title deed No. Kimilili/Kimilili/635 issued to the defendant Edward Musombi Mechi of ID No. 16104698 issued on 28/09/2016 and the title closed on 17/11/2017 upon sub-division and a cancellation of the title deed Kimilili/Kimilili/866 issued to Matili Youth Polytechnic issued on the 24/03/2016 and closed on 09/09/2022 on combination of new members fraudulently.
 - b. A declatarion that the plaintiff is the lawful owner and proprietor of Kimilili/Kimilili/630 and the same be reverted back to title deed no. Kimilili/Kimilili/630 in the name of Jackton Walekhwa(deceased) who is the biological father of the plaintiff herein.
 - c. An order directing the defendants to surrender the illegal title deed that was obtained fraudulently and vest title deed to Jackton Walekhwa(deceased) and do execute transfer forms and all relevant documentation in favour of the plaintiff to vest title to Kimilili/Kimilili/630 in the names of the original owner, and upon failure to so do the executive officer of this honourable court be mandated to execute the transfer forms and all the relevant documentation on behalf of the owner to vest title in the names of the plaintiff Jackton Walekhwa.



- d. An order directing the land registrar and district surveyor to revert back the original mutation of land parcel no. Kimilili/Kimilili/630 measuring 21.0 acres and erect beacons along the boundary with the neighboring parcels of land that was fraudulently interfered during illegal sub-division.
 - e. A permanent injunction restraining the defendant, his agents, representatives, assigns and/or any person claiming through him from, encroaching, trespassing, alienating or in any way interfering with the plaintiff's lawful use and occupation of Kimilili/Kimilili/630.
 - f. Costs and interests of the suit.
2. The plaintiff avers that she is the bona fide, beneficial and equitable owner of all that land known as Kimilili/Kimilili/630 measuring 21.0 acres. That the 1st and 2nd Defendants illegally trespassed into the said land and hived out 0.5 acres of land and registered it as land parcel Kimilili/Kimilili/635 and a further 3.5 acres registered as land parcel no. Kimilili/Kimilili/866 and later consolidated the latter with land parcel NO. Kimilili/Kimilili/7140 to form land parcel no. Kimilili/Kimilili/8033 reserved for the 2nd defendant. That the said sub-division was undertaken in secrecy in the year 2016 and the same was illegal and fraudulent. They set out particulars of fraud thereunder against the defendants.
 3. Upon being served with summons to enter appearance, the 2nd Defendant filed a statement of defence dated 20/08/2023 and averred that there was no clear cause of action against her and that contrary to the plaintiff's claim, land parcel no. Kimilili/Kimilili/7140 and 866 did not undergo any sub-division but were simply amalgamated to form land parcel no. Kimilili/Kimilili/8033. They urged the court to dismiss the suit with costs.
 4. On the part of the 1st Defendant, he only filed a memorandum of appearance but did not file a defence.

Parties Evidence.

5. During pre-tri-trial conference, the parties agreed that the suit proceeds by way of viva voce evidence.
6. PW1 Alvares Wabwile Walekhwa adopted his witness statement dated 06/07/2023 as his evidence-in-chief. He produced into evidence seven documents contained in his list of documents dated 6/7/2023 as P-Exhibit 1-7. In re-examination, he stated that he is the administrator of the estate of Jackton Walekwa Marani who was the owner of land parcel no. Kimilili/Kimilili/630. That the deceased had been in occupation of the said land since the year 1981 until his demise in the year 1993. That land parcel no. Kimilili/Kimilili/635 was expunged from forming part of the deceased's estate. It was also his evidence that the Land Registrar and Surveyor noted that land parcel no. Kimilili/Kimilili/630 had not undergone any sub-division and that land parcel no. Kimilili/Kimilili/635 and 630 were separate parcels of land divided by an access road.

Parties submissions.

7. At the close of the plaintiff's and the defendants' case, directions were taken for the parties to file and exchange their respective written submissions.
8. The plaintiff submitted that on 09/10/2024, he sought for leave to file an application to amend his plaint dated 16/01/2024 and the trial court allowed the request and granted him leave to do so within 14 days. When the matter came for mention on 24/10/2024, the plaintiff had not filed the application in which leave was given and the trial court fixed the case for hearing on 05/12/2024 but was eventually heard on 20/03/2025. As far as the record is concerned, there is no amended plaint. The plaintiff asked the court to interrogate the process leading to the issuance of the impugned titles to the Defendants and



the root thereof. He argued that although section 26(1) of the [Land Registration Act](#), 2012 provides that a certificate of title (read “title deed”) issued by the Registrar is prima facie evidence that the person named as the proprietor of the land is the absolute and indefeasible owner, such a title should be subjected to scrutiny especially where the same is challenged to determine whether it was obtained lawfully or through fraud or misrepresentation, and even more, if the (title) was acquired “illegally, unprocedurally or through a corrupt scheme.”. Reliance was placed in the cases of Teleposta Pension Scheme Registered Trustees -Vs Intercountries Importers & Exporters Limited & 5 Others and Dina Management Ltd -Vs County Government of Mombasa & 5 Others (Petition No. 8 (E010) Of 2021).

9. The 1st defendant filed his submissions dated 29/04/2024 wherein he referred to an amended plaint which does not form part of the record. It is his submissions that according to the survey report dated 18/01/2023, land parcel no. Kimilili/Kimilili/630 has never undergone any sub-division and that the actual approximate area is 17.2acres and not 21.0acres as indicated. The said report also indicates that land parcel no. Kimilili/Kimilili/630 and 635 are separated by a road measuring 8.0 meters. It was submitted that the plaintiff did not produce any evidence as required under Section 107 of the [Evidence Act](#) that the 1st defendant hived out 4 acres.

Analysis and Determination

10. I have carefully considered the pleadings by the parties, the evidence adduced, the rivals written submissions, authorities cited and the relevant provisions of law. It is my considered view that the single issue for determination in this appeal is whether the plaintiff made a case for cancellation of title deed for land parcel no. Kimilili/Kimilili/635 and 866 and a permanent injunction against the defendants. Before I proceed it is imperative that I give a brief background regarding the defendants’ case.
11. As previously noted, the 1st Defendant entered appearance but did not file a statement of defence or call any witnesses. The 2nd Defendant on her part filed a statement of defence, but did not adduce any evidence during the hearing. Having failed to call any witness, the contents of the Statement of Defence by the 2nd defendant remain mere allegations which is not tested. The Plaintiff’s testimony and the documents produced by the Plaintiff therefore, remain uncontroverted. This principle has been reiterated in the case of North End Trading Company Limited (Carrying on the Business Under the Registered Name of) Kenya Refuse Handlers Limited Vs. City Council of Nairobi [2019] eKLR where J.A. Makau J held as follows:

“In Edward Muriga through [Stanley Muriga vs. Nathaniel D. Schulter Civil Appeal No.23 of 1997](#), it was held that where a defendant does not adduce evidence the plaintiff’s evidence is to be believed, as allegations by the defence is not evidence.”
12. Further, although the 1st defendant filed submissions, it is my view that submissions cannot take the place of pleadings but remain mere persuasions. This position was succinctly captured by the Court of Appeal in the case of Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR where the court stated thus; “Submissions cannot take the place of evidence... Such a course only militates against the law...Submissions are generally parties’ “marketing language.” Further, the said submissions and the outlandish prayers therein are inconsequential for not being grounded on any pleadings.



13. That said and done, the plaintiff was required to discharge his burden of proof by adducing empirical evidence in relation to his claim. In the case *Miller V. Minister Of Pension* (1947) ALL ER 373 the Court held regarding the standard of proof as follows:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a Criminal Case. If the evidence is such that the tribunal can say; ‘we think it more probable than not’, the burden is discharged, but if the probabilities are equal, it is not. Thus, proof on a balance of probabilities means a win, however narrow; a draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un) convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

14. I now proceed on the legal and jurisprudential analysis on the issues identified for determination.
15. The plaintiff’s case was that land parcel no. Kimilili/Kimilili/630 which measures 21.0 acres forms part of the estate of Jacton Walekhwa Marani-deceased and that the Defendant herein through fraud caused the sub-division of the said land to form land parcel no. Kimilili/Kimilili/635 which measures 0.5 acres in the name of Timoteo Mechi represented by the 1st Defendant and land parcel Kimilili/Kimilili/866 which measures 3.5 acres which was later consolidated with land parcel no. Kimilili/Kimilili/7140 to form land parcel no. Kimilili/Kimilili/8033 registered in the name of the 2nd defendant.
16. He produced into evidence letters of administration ad-litem for the estate of Jacton Walekhwa Marani as P-Exhibit 1, Grant of letters of administration for the same estate as P-Exhibit 2, copy, of official search for land parcel no. Kimilili/Kimilili/630 as P-Exhibit 3, copies of green cards for land parcel no. Kimilili/Kimilili/630,635 and 866 as P-Exhibit 4a, 4b & 4c, a copy of certificate of death for Jacton Walekhwa Marani as P-Exhibit 5, a copy of surveyor’s report in relation to succession. cause 67 of 2018 dated 18/01/2023 as P-Exhibit 6 and a mutation form as P-Exhibit 7.
17. From the above evidence, it is clear that land parcel no. Kimilili/Kimilili/630 was registered in the name of Jacton Walekhwa Marani on 10/08/1965 and later in the name of the plaintiff herein on 28/01/2022. The approximate area is indicated to be 8.5ha. As for land parcel no. Kimilili/Kimilili/635, the same was first registered in the name of Timoteo Mechi on 10/08/1965 and later in the name of the 1st defendant on 29/09/2016 and its approximate area is 15.5 acres. Land parcel no. Kimilili/Kimilili/866 on the other hand was first registered in the name of the County Council of Bungoma on 10/08/1965 and later in the name of the 2nd defendant on 24/03/2016. It also emerges that the said title was closed on subdivision and consolidated with another portion to form a new title no. 8033. Its approximate area is indicated to be 6.5 acres and the land was reserved for a youth center.
18. Based on the above background, it is evident that land parcels Kimilili/Kimilili/630, 635, and 866 were initially registered on 10th August 1965, indicating a common historical origin likely tied to an adjudication or allocation process.
19. As for the surveyor’s report, it shows the transactions that the various parcels have undergone over time. It is however noteworthy that contrary to the plaintiff’s assertions, land parcel no. Kimilili/Kimilili/630 has never undergone any sub-division. He also clarified that the approximate registered area is different from that on the ground. As for the mutation forms, they seem to make reference to parcels of land not in issue in this case.



20. From the foregoing analysis of the evidence, it is my considered view that the plaintiff has failed to discharge his burden of proof required to establish allegations of fraud as pleaded in the plaint. It is trite law that the standard of proof in claims of fraud is higher than a balance of probabilities but below reasonable doubt. This principle of law was well enunciated in the Court of Appeal decision of Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others (2015) eKLR. Further, the legal basis for this burden of proof is founded in Section 107 of the Evidence Act which ideally provides that he who alleges must prove.
21. In my view, the plaintiff has not adduced cogent or compelling evidence to demonstrate that the defendants, either jointly or severally engaged in fraudulent conduct in relation to the registration of land parcels No. Kimilili/Kimilili/630, 635 and 866. The evidence on record merely reveals discrepancies or possible clerical errors in the area size reflected in the register pertaining land parcel no. Kimilili/Kimilili/630 and 635. However, such discrepancies or inaccuracies in the absence of deliberate misrepresentation or dishonest intent do not constitute fraud in law. As noted in P-Exhibit 6, the details regarding registration are solely under the Land Registrar who has the mandate to correct such errors. Furthermore, there is no evidentiary basis to support the plaintiff's allegation that the defendants subdivided the land in question or procured registration of the resultant subdivisions in their names through deceit or fraudulent misrepresentation. Accordingly, the plaintiff's claim founded on fraud is not proved to the required standard nor is it substantiated and the same must fail.
22. The upshot of my finding is that this suit is devoid of merit and the same is hereby dismissed with costs to the defendants.
23. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 19TH DAY OF JUNE, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Wayongo for the 1st Defendant.
2. Appellant/Advocate-absent.
3. Bett C/A.

