



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO. 7 OF 2020**

**MARY NJOKI KIONDO** (*Suing on behalf of the estate of the late JOHN KAHUHU KIONDO*) .....**PLAINTIFF**

**=VERSUS=**

**KAMBAA TEA FACTORY LIMITED..... 1ST RESPONDENT**

**COUNTY GOVERNMENT OF KIAMBU..... 2ND RESPONDENT**

**LAND REGISTRAR, KIAMBU COUNTY..... 3RD RESPONDENT**

**JUDGMENT**

**Introduction**

1. The broad question to be answered in this judgment is whether the estate of the late **John Kahuhu Kiondo** [hereinafter referred to as **“the deceased”**] should be granted orders terminating the process of exchange of two parcels of land that commenced about 43 years ago between the deceased and the **County Council of Kiambu**. The exchange process involved

parcel number **Githunguri/Gathangari/2060** owned by the deceased and parcel number **Githunguri/Gathangari/T.465** owned by the County Council of Kiambu. For convenience, the two parcels will be identified by their parcels numbers without capturing their section and block numbers. The County Council of Kiambu will be identified simply as **“the Council”**. The County Government of Kiambu will be identified as **“the 2nd defendant”** or **“the County Government”**. Kambaa Tea Factory Limited will be identified as **“the tea factory”** or **“the 1st defendant”**.

2. There is common ground that under the land exchange arrangement, the deceased was to give the Council parcel number 2060 in exchange for parcel number **T.465**. He gave vacant possession of parcel number 2060 to the Council and the Council caused to be established a tea collection centre on the said parcel. The Council conveyed to him parcel number T.465 but did not give him vacant possession of the said parcel because another man, the late **Waweru Kamotho**, whose land the Council had acquired for public purpose, was in occupation of the land and claimed to have been put in possession by the Council.
3. Aggrieved by the failure by the County Council and the County Government to resolve the stalemate, the estate of the late Kiondo sought the following reliefs vide its amended plaint dated 7/3/2022: (i) an injunction restraining the defendants against alienating, developing, transferring, leasing, charging or interfering with its possession of parcel number 2060; (ii) a

declaration that the deceased is the rightful owner of parcel number 2060; (iii) an order compelling the Land Registrar to issue the estate with title documents relating to parcel number 2060, (iv) a declaration that the title held by the 1st defendant relating to parcel number 2060 is false and was fraudulently obtained; (v) a mandatory injunction compelling the 1st defendant to deliver for cancellation the title it holds relating to parcel number 2060 within 30 days; (vi) an order that the Land Registrar does “expunge reference of the 1st defendant from all documents, certificates, entries and details” relating to parcel number 2060; (vii) in the alternative to prayer (vi) above, an order decreeing the 2nd defendant to facilitate vacant possession of parcel number T.465 within 14 days from the date of judgement; (viii) an order that should the 2nd defendant fail to facilitate vacant possession of parcel number T.465 within 14 days, the property be valued by an independent valuer at the current market rate and the 2nd defendant be compelled to pay to the estate the value of the land within 14 days of receiving the valuation report.

4. The legal representative of the estate of the late Waweru Kamotho was named as a 4th defendant in the amended plaint. He was subsequently removed from the suit at the request of the plaintiff. Before I analyze and dispose the issues that fall for determination in the suit, I will outline the parties’ respective cases, based on their pleadings and evidence. I will also summarize the parties’ submissions.

### **Plaintiff’s Case**

5. The case of the plaintiff was that, vide a duly executed consent dated 7/6/2022, **Robert Kabiru Kiondo** and **Mary Waruguru Muchemi** authorized **Mary Njoki Kiondo** to institute and prosecute this suit on behalf of the estate. The late Kiondo was at all material times the registered proprietor of land parcel number **Githunguri/Gathangari/846** [hereinafter referred to as “**parcel number 846**”]. In 1991, Kinungu Tea Buying Centre wrote a letter to the Council requesting the Council to assist them by compensating the late Kiondo for his land which they wished to use as a tea collection/buying centre. The Council acceded to the request and on 7/11/1991, it made a resolution to acquire 0.08 acres out of the late Kiondo’s land, parcel number 846. The Council further resolved to compensate Mr. Kiondo with parcel number T.465. Consequently, Mr. Kiondo’s land, parcel number 846, was subdivided to create parcel number 2060. The Permanent Secretary for Local Government wrote to the Commissioner of Lands in 1997 confirming the Minister’s consent to the land exchange arrangement.
6. The estate added that in 2009, the late Kiondo was issued with a title deed relating to parcel number T.465. He could not, however, take possession of parcel number T.465 because it emerged that the Council had allocated the same parcel of land to one **Waweru Kamotho** and it had put Waweru Kamotho in possession of the land as the lawful owner. Through a letter dated 20/6/2010, the Council acknowledged there was double allocation of parcel number T.465 and promised to identify an alternative land for Waweru Kamotho whose land, parcel number

**Githunguri/Gathangari/1064**, the Council had acquired for the purpose of expanding a public access road.

7. Despite being aware that the exchange transaction had faced the above challenge, in 2016, the Council processed and caused to be issued to the 1st defendant a certificate of lease for 99 years relating to Mr Kiondo's land, parcel number 2060.
8. The estate added that when the estate of the late Waweru Kamotho learnt about the title which the late Kiondo had been given relating to parcel number T.465, they registered a caution against the title. The estate termed as fraudulent, the decision of the Council to process a lease title in favour of the 1st defendant relating to parcel number 2060 while aware that the land exchange transaction had been "deactivated". They pointed out that for more than 30 years, the land exchange process had not been completed and accused the County Government of fraud and deceit.
9. At the hearing, the estate of the late Kiondo contended that whereas the Council processed a title in the name of the deceased in 2009, on the ground, there was no land to be given to the estate of the deceased because the land had been allocated to the late Waweru Kamotho whom the Council put in possession. The estate emphasized that they were ready to surrender the title they held and asked the court to cancel the title and restore parties to their original positions.

### **1st Defendant's Case**

- 10.** The 1st defendant filed a defence and counterclaim dated 15/10/2020. During trial, they led evidence by **Joyce Nyawira Nthiga** who testified as **DW1**. They admitted the plaintiff's averments on exchange of land parcels between the deceased and the Council. They, however, denied fraud in their registration as proprietors of parcel number 2060. They added that in April 2016, the County Government of Kiambu processed and gave them a 99 year lease title relating to parcel number 2060 to hold the land as a trustee of Kinungu Tea Buying Centre. They contended that the lease was issued after the Council had duly compensated the late Kiondo.
- 11.** By way of counterclaim, they prayed for a declaration that they were the legal and lawful owners of parcel number 2060; a permanent injunction barring the plaintiff against interfering with parcel number 2060; an order dismissing the plaintiff's suit; and an order awarding them costs of the primary suit and the counterclaim.
- 12.** During trial, the 1st defendant's witness testified that a tea buying centre had been established on the suit land [parcel number 2060], adding, that Mr Kiondo having been given land [parcel number T.465] as compensation, the 1st defendant proceeded to develop parcel number 2060. It was the evidence of DW1 that the tea buying centre serves many farmers. They supported the plaintiff's alternative prayer relating to monetary compensation.

## **2nd Defendant's Case**

**13.** The County Government filed a statement of defence dated 17/9/2021 through the **Kiambu County Attorney**. They admitted the land exchange arrangement between the deceased and the Council in relation to the two parcels. They also confirmed that the estate of the late Waweru Kamotho placed a caution against parcel number T.465. They added that issuance of the 99 year lease to the tea factory was in furtherance of the land exchange arrangement, adding that the tea factory holds the land as a trustee of Kinungu Tea Buying Centre. They denied fraud in the processing of the 99 year lease. It was their case that the plaintiff's suit did not disclose any reasonable cause of action against them. They urged the court to dismiss the plaintiff's suit.

**14.** During trial, the County Government led evidence by **Patrick Ithifu Mbari** who testified as DW2. He reiterated the case of the County Government as summarized above, adding that the County Government was keen to resolve the dispute. He testified that the land which was earmarked to compensate the late Kiondo [parcel number T.465] was occupied by another family which was not ready to vacate it. He added that there had been no co-operation from the parties concerned. DW2 stated that the land which the plaintiff wanted to be returned to them was already developed for use by the local community while the land which was transferred to the late Kiondo as compensation was occupied by someone [the family of Waweru Kamotho] who was unwilling to vacate it. He added that the land which the County Government wanted to settle the family of Waweru

Kamotho on did not have records in the Lands Office hence the stalemate.

- 15.** During cross-examination, DW2 confirmed that parcel number T.465 was earmarked to compensate the late Waweru Kamotho after he surrendered his land to the Council to create a public road. He also confirmed that the family of the late Waweru Kamotho was in occupation of the said land, adding that the family of Waweru Kamotho entered the land after the land [parcel number T.465] was given to them by the Council as compensation. Lastly, DW2 stated that parcel number T.465 and parcel number 2060 had been valued, adding that in the event compensation in form of land was unachievable, the reasonable thing to do was to offer compensation in monetary terms to the estate of the late Kiondo.

### **Submissions**

- 16.** The plaintiff filed written submissions dated 25/11/2024 through **M/s Mucheru Law LLP**. The 1st defendant filed written submissions dated 9/12/2024 through **M/s Kibatia & Company Advocates LLP**. The 2nd defendant filed written submissions dated 8/1/2025 through **Mr. David Mararo** of the Office of the County Attorney. The court has read the submissions.

### **Analysis and Determination**

- 17.** The court has considered the pleadings, evidence and submissions presented in the case. The court has also considered the legal frameworks and the jurisprudence relevant to the issues that fall for determination in the case. The following are the key issues that fall for determination: (i) Whether there

was fraud in the processing of the 99 year lease relating to parcel number Githunguri/Gathangari/2060 in favour of Kambaa Tea Factory Limited; (ii) Whether the mutually agreed land exchange arrangement between the County Council of Kiambu and the late Kiondo by way of conveying and delivery of vacant possession of parcel number T.465 to the late Kiondo has failed; (iii) If the answer to (ii) above is in the affirmative, what remedy is available to the estate; (iv) Whether the reliefs sought in the counterclaim are available to the 1st defendant; and (v) What order should be made with regard to costs of this suit? The five issues will be analyzed and disposed sequentially in the above order.

- 18.** Did the plaintiff prove fraud on the part of the County Government in the processing of the 99 year lease relating to parcel number 2060 in favour of Kambaa Tea Factory Limited? The law on pleading and proof of fraud was summed up by **Tonui JA** in ***Vijay Morjoria v Nansingh Madhusingh Darbar & Hulashiba Nansingh Darbar(Civil Appeal 106 of 2000)***eKLR as follows:

***“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”.***

**19.** The estate of the late Kiondo contends that there was fraud on part of the County Government because the County Government processed the 99 year lease relating to parcel number 2060 in favour of the 1st defendant while knowing well that parcel number T.465 which was intended to be given to the estate as compensation had already been allocated and given to a third party. The 1st defendant and the County Government deny fraud. The court has considered the rival contentions and the available evidence. The land exchange transaction started about 43 years ago. In furtherance of the land exchange transaction, on 12/2/2009, the Council transferred parcel number T.465 to the name of the late Kiondo and caused a title to be issued to him. Six years later, in 2016, the County Government caused to be processed and conveyed to the 1st defendant a 99 year lease title relating to parcel number 2060. The 1st defendant holds the title as trustee for Kinungu Tea Buying Centre. Although the title for parcel number T.465 was processed and issued to the late Kiondo, the Council did not give him vacant possession. When he went to take vacant possession, he found that the same land had been allocated to the late Waweru Kamotho as compensation and the late Waweru had been put in possession of the land

**20.** Evidence was tendered by the County Government to the effect that when it was established that there was double allocation of parcel number T.465, a Full Council Meeting was convened on 9/9/2010 and the Full Council resolved that: (i) Mr Kiondo was to remain in parcel number T.465 since he had already acquired

title documents relating to the land; and (ii) an alternative plot of equal size was to be hived out of parcel number 1082, owned by the Council, and was to be conveyed to the late Waweru Kamotho as compensation. The County Government tendered further evidence to the effect that the Government subsequently issued Circular No. OP/CAB/58/4A dated 19/1/2012 suspending all land transactions until such a time when the County Governments and the National Land Commission established under the new Constitution would be in place. The County Government tendered evidence that they had not excised the portion of land that was to be given to the estate of the late Waweru Kamotho because the land records relating to parcel number 1082 were missing from the Lands Office.

**21.** It is clear from the above evidence that the County Government did not engage in fraud. At the time they processed the title relating to parcel number 2060, there existed in the name of the late Kiondo, a title relating to parcel number T.465. What the estate of the late Kiondo did not receive was delivery of vacant possession of the physical land. The Full Council addressed Mr Kiondo's concern and provided a way forward. The anticipated solution has, however, not been realized because the records relating to parcel number 1082 are missing from Lands Office. Given the above circumstances, the finding of the court is that there was no fraud in the processing of the 99 year lease title.

**22.** Has the mutually agreed compensation to the late Kiondo, through conveyance and delivery of vacant possession of parcel number T.465, failed? From the evidence on record, the title was

conveyed to the late Kiondo. He was, however, not given vacant possession of the land because the land had already been given to the late Waweru Kamotho as compensation for his land which the Council took to create a public road. The transaction is now 43 years old. The County Government contends that it has been unable to excise and allocate an alternative parcel of land to the family of the late Waweru Kamotho because the relevant records are missing from the Lands Office. Factually, the estate of the late Kiondo has a title but has no land and cannot access the land because the land is occupied by the family of the late Waweru Kamotho. The family of the late Waweru Kamotho is in possession and occupation of the land because the land was given to the late Kamotho as compensation after the Council took his land to create a public road. For 43 years, the compensation land has not been availed to the late Kiondo. Clearly, the mutually agreed compensation arrangement to the late Kiondo through conveyance and delivery of vacant possession of parcel number T.465 has failed. That is the finding of the court.

- 23.** What remedy is available to the estate of the late Kiondo? The estate's case is that parties should be put back to their original positions. The estate wants to be given back parcel number 2060. The estate prayed for the alternative relief of compensation at the market value but in their oral evidence and written submissions, they stated that they did not want compensation.
- 24.** The court has considered the entire evidence on record. The estate tendered a valuation report relating to parcel number

2060 dated **12/7/2023** prepared by **M/s Sterling Valuers Limited**. The valuers assessed the value of land alone at Kshs. 2,000,000. The value of the improvements on the land was assessed at Kshs 2,500,000. According to the report, there exist the following improvements on the land: (i) single story stone building which is smooth plastered and painted internally with GCI roofing sheets on timber purlins; and (ii) an ablution block with construction materials similar to the main house. The main house serves as a tea buying hall for the general tea farming public.

- 25.** It is clear from the valuation report that the value of the improvements on the land is higher than the value of land alone. Secondly, the 1st defendant led evidence to the effect that upon being given the land, they developed it and the developments serve as a tea buying centre for the general tea farming public in the area. Put differently, the land and the developments on it currently serve a public utility purpose. Taking parties to their original positions would entail demolishing the permanent public-purpose developments that are on the land. I do not think that would be a reasonable way of resolving the dispute.
- 26.** The view the court takes is that, given the above circumstances, the proper relief to be granted to the estate of the late Kiondo is to give them monetary compensation for the land alone at the assessed value of Kshs 2,000,000 plus interest at court rate from the date of the valuation report, 12/7/2023.
- 27.** Are the reliefs sought in the counterclaim available to the 1st defendant? For the reasons outlined in the court's analysis of the

first issue, the court comes to the finding that the 1st defendant is entitled to prayer (a) and (b) of the counterclaim.

**28.** On costs, the estate of the late Kiondo came to court because the 2nd defendant and their predecessor [the County Council of Kiambu] took the late Kiondo's land but were not able to give him vacant possession of the compensation parcel. They were unable to deliver to him vacant possession of the compensation parcel because the parcel was double-allocated and someone else was in possession of the land, having been put in possession by the council. For this reason, the County Government will bear costs of the suit.

### **Disposal Orders**

**29.** In light of the above findings, the plaintiff's primary suit and the 1st defendant's counterclaim are disposed as follows: -

***(a) The registration of the late John Kiondo Kahuhu as proprietor of land parcel number Githunguri/Gathangari/T.465 is hereby cancelled and the Land Registrar is hereby ordered to register the said land in the name of the County Government of Kiambu. The County Attorney of the County Government of Kiambu shall liaise with the Land Registrar and collect the title issued in the name of the County Government.***

***(b) The County Government of Kiambu shall pay to the estate of the late John Kiondo Kahuhu, as compensation for land parcel number Githunguri/Gathangari/2060, the sum of Kshs***

***2,000,000 together with interest on the said sum at court rate from 12/7/2023 till payment in full.***

***(c) The 1st defendant's counterclaim is allowed in terms of prayers (a) and (b) only.***

***(d) The 2nd defendant shall bear costs of the primary suit and the counterclaim.***

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF SEPTEMBER, 2025**

**B M EBOSO [MR]  
ELC JUDGE**