



REPUBLIC OF KENYA



**Maina & 4 others v Ngobu (Environment and Land Case 90 of 2015)
[2025] KEELC 6492 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6492 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE 90 OF 2015**

**JM MUTUNGI, J
SEPTEMBER 26, 2025**

BETWEEN

**SAMUEL MAINA 1ST PLAINTIFF
PETER MURAGE 2ND PLAINTIFF
JOSEPH MWANGI MUCHANGI 3RD PLAINTIFF
JOSPHAT KINYUA MIANO 4TH PLAINTIFF
LAWRENCE MUCHIRI KAMUTU 5TH PLAINTIFF**

AND

MURUGI KANYEKI NGOBU DEFENDANT

JUDGMENT

1. The Plaintiffs commenced the present suit by way of a Plaint dated 31st July 2015. The Plaintiffs prayed for:-
 - a. A permanent injunction restraining the Defendant from evicting the Plaintiffs, transferring, alienating, disposing off, land parcels No. Kiine/Kibingoti/Nguguine/167 and Mwerua/Mukure/327 and transfer same to the Plaintiffs as per the Memorandum of Understanding dated 23rd July, 2012.
 - b. Costs of the suit.
2. The 1st to the 4th Plaintiffs subsequently on 6th October 2021 filed an Amended Plaint of even date pursuant to leave to amend granted on the same date. By the Amended Plaint the 1st – 4th Plaintiffs prayed for:-
 - a. A permanent injunction restraining the Defendant from evicting the 1st, 2nd, 3rd and 4th Plaintiffs transferring, alienating, disposing off, land parcels No. Kiine/Kibingoti/



Nguguine/3789 and 3790 and transfer the same to the 1st, 2nd, 3rd and 4th Plaintiffs as per the Memorandum of Understanding dated 23rd July 2010 in the alternative a refund of the purchase price plus interest.

- b. Costs of the suit.
3. The Plaintiffs claims are that they each purchased a portion of land out of land parcels Kiine/Kibingoti/Nguguine/167 and Mwerua/Mukure/327 owned by one Charles Kanyeki Ngobu (deceased) and that the Defendant as the Administrator of the deceased estate by a Memorandum of Understanding dated 23rd July 2010 acknowledged their interest and agreed to have their respective interests transferred to them. They averred that they were let in possession of the portions they were purchasing but on finalisation of the succession proceedings, the Defendant instead of processing their titles in their names caused them to be forcibly evicted from the land precipitating the institution of the present suit.
4. The Defendant in her Defence dated 13th May 2016 denied the allegations contained in the Plaintiff and averred that the alleged Memorandum of Understanding was a conspiracy between one Antony Wachira Ndumbi and the Plaintiffs to grab the family land from the beneficiaries and was an illegality abinitio. The Defendant averred the land was in her late husband's name and she lacked capacity to deal with it. The Defendant denied that she ever transacted with the Plaintiffs and put them to strict proof.
5. The suit was partly heard before Cherono, J who took the evidence of 1st to 4th Plaintiffs. I took the evidence of the 5th Plaintiff and one Antony Wachira Ndumbi who the Plaintiffs dealt with and who apparently was assisting the Defendant financially with the succession case. I also took the evidence of Veronicah Nyawira Kanyeki who testified on behalf of her mother who was the Defendant.
6. The evidence by all the 5 Plaintiffs was virtually the same; that they each individually entered into a sale agreement with Antony Wachira Ndumbi to sell to them a portion of land out of land parcel Kiine/Kibingoti/Nguguini/167. The said Anthony Wachira Ndumbi as per the evidence adduced had in 2006/2007 entered into agreements with the Defendant (Mutugu Kanyeki Ngobu) and beneficiaries of the estate of the late Charles Kanyeki Ngobu to purchase portions of the land but the agreements were never completed as no land was transferred and registered in the name of Anthony Wachira Ndumbi.
7. In the copies of the sale agreements exhibited by the Plaintiffs, the said Antony Wachira Ndumbi entered into agreements with the Plaintiffs on diverse dates in 2009 describing himself as the vendor ostensibly as he had purchased the land from the registered owner. The agreements were as follows:-
 - i. Samuel Maina Muriuki – 1st Plaintiff on 16th October 2009 for purchase of $\frac{3}{4}$ Acres.
 - ii. Peter Murage – 2nd Plaintiff on 4th July 2009 for purchase of $\frac{1}{4}$ Acre.
 - iii. Joseph Mwangi – 3rd Plaintiff on 13th May 2009 for purchase of $\frac{1}{2}$ Acre.
 - iv. Joseph Kinyua – 4th Plaintiff on 20th June 2009 for purchase of $\frac{1}{4}$ Acre; and
 - v. Lawrence Muchiri – 5th Plaintiff on 21st January 2009 for purchase of $\frac{1}{2}$ Acre.
8. In all the agreements the purchase price was paid and payable to the vendor, the said Antony Wachira Ndumbi and not the Defendant. The Defendant denied she had any dealing or transaction with the Plaintiffs and contended that the said Antony Wachira failed to do what they had agreed with him where upon he hatched a scheme to grab the land from the family. The Plaintiffs given that they never dealt with the Defendant, peg their claim against the Defendant on the Memorandum of Understanding dated 23rd July, 2010 which they claim the Defendant signed but has reneged in



fulfilling its terms. The Defendant in response alleges the Memorandum of Understanding was but a conspiracy between Antony Wachira and the Plaintiffs to defraud them of their land. The Defendant aver no money was paid to them and that they never sold any land to the Plaintiffs. The Defendants deny they received any money from Ann Thungu Advocate, to who it was alleged money for the purchase was paid. DWI in her testimony affirmed that Antony Wachira was the one who sold portions of the land to the Plaintiffs and the Defendant (her mother) never received any money towards the purchase. She was emphatic that Wachira failed to do what he was to do for her mother and hence they had no obligation to him. The witness confirmed the beneficiaries got their titles following completion of the succession proceedings and that the Plaintiffs whom Wachira had granted possession vacated from the land and they (Defendants) were now in possession of the land.

9. Following the close of the trial the parties filed their final closing submissions. The 1st to 4th Plaintiffs filed their submissions dated 29th November, 2024. The submissions principally reiterated the evidence led by the parties and urged the Court to allow the Plaintiffs prayer as per the Amended Plaint. The 5th Plaintiff in his submissions dated 2nd May 2025, submitted that he had discharged the burden of proof that he had purchased ½ acre of land from Antony Wachira out of land that he had purchased from the Defendant and her children who were beneficiaries of the estate of the late Charles Kanyeki Ngobu. The 5th Plaintiff argued that the Memorandum of Understanding dated 23rd July 2010 recognised the agreements the Plaintiffs had entered into with Antony Wachira and the Defendant undertook to honour the same by effecting transfers of the portions directly to the Plaintiffs.
10. The 5th Plaintiff further submitted the agreements conformed with the requirements of Section 3 of the Law of Contract Act as it was in writing and was signed by all the parties and the signatures were attested. The 5th Plaintiff asserted that on the basis that the contract he entered into was valid he was entitled to a remedy and prayed that the Court order a refund of the purchase price he paid together with interest from time of the agreement.
11. The Defendant filed her written submissions dated 28th December 2024 and it was her position that the Plaintiffs never entered into any valid contracts that could be enforced by the Court. She argued Antony Wachira Ndumbi with whom the Plaintiffs entered into the sale agreements had no capacity to sell the suit land which was still in the name Charles Kanyeki Ngobu (deceased). The Defendant submitted the agreements were illegal and were entered into in contravention of Section 82 of the Law of Succession Act, Cap 160 Laws of Kenya. She contended the actions of the Plaintiffs amounted to intermeddling with the deceased estate contrary to Section 45 of the Law of Succession Act. In support of her submissions the Defendant placed reliance on the case of:- In re Estate of Jamin Inyanda Kadambi(deceased)(2021) eKLR. The Defendant thus submitted the Plaintiffs had not proved their claim against her and were not entitled to the relief sought against her. She urged the Court to dismiss the suit with costs.
12. Having reviewed and considered the pleadings, the evidence and the submissions made on behalf of the parties, the issues that arise for determination are as follows:-
 - i. Whether the Plaintiffs had entered into any valid agreements enforceable under the Law?
 - ii. Whether the Plaintiffs are entitled to reliefs that they seek in the Plaint?
 - iii. What orders should the Court grant?
13. It was common ground that land parcel Kiine/Kibingoti/Nguguine/167 which was the subject of the sale transactions entered into between one Antony Wachira Ndumbi (as seller) and the Plaintiffs (as purchasers) was owned Kanyeki Ngobu (deceased) who was registered as owner on 16th May 1984 as per the exhibited abstract of title. As at the time the said Antony Wachira Ndumbi purported to enter



into the sale agreements dated 7th April 2006 and 29th June 2007 (“PEX 1 & 2”) the subject land was still in the name of the deceased as the same was transmitted to the beneficiaries on 31st March 2009 as is evident from Entry 9 on the abstract of title (“PEX 11”) which shows the land was transmitted to Murugi Wanyeki Ngobu & 4 Others in undivided shares. Thus as at 7th April 2006 and 29th June 2007 the land had not been distributed pursuant to the succession proceedings.

14. Unless with the leave of the Court, the Defendant could not legally deal with the estate of the deceased person and hence the purported agreements were entered into in contravention of Sections 45(1), 71(1) and 82(b)(ii) of the Law of Succession Act, Cap 160 Laws of Kenya which I reproduce hereunder:-

45. (1) 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.

71. (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

(a) -----

(b) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative; to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best: Provided that—

(i) -----

(ii) no immovable property shall be sold before confirmation of the grant;

15. The agreements I have referred to “PEX1” AND “PEX2” indicate the sellers were beneficiaries of the estate of Charles Kanyeki Ngobu (deceased) and were selling their entitlements. The property had not been distributed to them and therefore they had nothing to sell. I am conscious there is a growing practice where alleged “financiers” of succession proceedings and/or “surveyors” infiltrate bereaved families and entice them with money to finance succession and/or survey services for subdivision for purposes of distribution to the beneficiaries and in return the so called “financiers” or “surveyors” are promised a portion of the deceased land as reward for the money or survey services. Often times, these are couched as sale agreements and invariably contravene the provisions of the Law of Succession Act and where disputes emerge along the way, we end up with a scenario such as is before me. I believe that could be what happened in the instant case. The said Antony Wachira acted as the financier of the succession proceedings that the family of the deceased was supposed to undertake.

16. I would like to make it clear that such agreements would be and are illegal and constitute intermeddling with the deceased estate. In the instant case, it is evident that even before Antony Wachira Ndumbi got title to what he claimed he was buying from the Defendant and the other beneficiaries, he was selling his anticipated entitlement to the Plaintiffs. Clearly he had nothing to sell and those agreements were not enforceable as they were illegal. The Memorandum of Understanding in my view could not sanitise what were in effect illegal contracts.



17. In the case of In the re estate of Jamin Inyanda Kadambi (Deceased) (2021) eKLR Musyoka, J while considering the validity of sale of estate property put it succinctly thus:-
22. A valid sale of estate property can only be by those to whom the assets vest by virtue of Section 79, and who have power to sell the property by virtue of Section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the Court must be obtained. That is the purport of Section 82(b)(ii) of the Law of Succession Act. Clearly, the sale that was carried out by the Administrators was contrary to Section 45 and 82(b) (ii) of the Law of Succession Act, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein was vested can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.
18. I need not point out that there was no way the agreements relied on by the Plaintiffs herein could be held to be enforceable. There was no compliance with the provisions of the Land Control Act, as relates to obtaining consent, and that alone rendered the agreements void for all purposes and therefore unenforceable.
19. I have said enough to demonstrate that the Plaintiffs suit is devoid of any merit and is for dismissal. I dismiss the suit with costs to the Defendant.

Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 26TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC – JUDGE

