



Malili Ranch Limited v Katilu (Suing as a Personal Representative of the Estate of John Kwangwala Katilu - Deceased) & another (Environment and Land Appeal E001 of 2024) [2025] KEELC 6209 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND APPEAL E001 OF 2024
EO OBAGA, J
SEPTEMBER 25, 2025**

BETWEEN

MALILI RANCH LIMITED APPELLANT

AND

FRANCISCA KANGWALA KATILU (SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN KWANGWALA KATILU (DECEASED) 1ST RESPONDENT

BEATRICE NDUMBUKA KATILU (SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF PETER MUTUA KANYI) 2ND RESPONDENT

(Being an appeal from the Judgment of Hon. Geno Okwengu, Senior Resident Magistrate delivered on 26th February, 2024 in Kilungu MELC No. 17 of 2019)

JUDGMENT

1. The 1st Respondent is a personal representative of John Kangwala Katilu (Deceased) who died on 2nd January, 2017. The deceased who was the Respondent's husband was a shareholder of the Appellant which was a land buying company. The deceased was member number 1679. He had 5 shares in the Appellant company. By virtue of the deceased's membership, he was allocated a commercial plot being No. 094 and an agricultural plot being No. 1933 measuring 7.8 acres.
2. In or around 2019, the Respondent discovered that the deceased's agricultural plot No. 1933 had been secretly taken over by one Peter Mutua Kanyi who was a director of the Appellant company and had been compensated by the Government of Kenya which had purchased 5000 acres for the construction of Konza Techno city. This is what prompted the Respondents to file a suit at Kilungu Magistrates Court in which she sought the following prayers:



- a. An order that the Defendant gives and/or delivers up to the Plaintiff the said property being agricultural land No. 1933 together with document of title in respect thereof.
 - b. In the alternative allot a suitable agricultural land in place thereof.
 - c. General damages.
 - d. Costs of this suit.
3. After the conclusion of the case before the lower court, the Respondent's claim was allowed. This is what triggered the appeal to this court in which the Appellant raised the following grounds:
- a. The learned Magistrate erred in law and in fact by holding that the court had jurisdiction to hear the matter since the suit was not time barred.
 - b. The learned Magistrate erred in law and in fact by holding that the allotment letter held by the 1st Respondent conferred any proprietary right to the 1st Respondent.
 - c. The learned Magistrate erred in law by overlooking a clear and binding authority from Supreme Court that an allotment letter per se does not confer any proprietary rights in the suit property after allocation to the deceased.
 - d. The learned Magistrate erred in law and in fact by failing to consider inequities of the 1st Respondent especially her delay in asserting any proprietary rights in the suit property after allocation to the deceased.
 - e. The learned Magistrate erred in law by failing to appreciate that capital assets (like the suit property) of a deceased person can only be distributed to their beneficiary in succession proceedings and only in a confirmed grant.
 - f. The learned Magistrate erred in law by failing to appreciate that the claim for the value of the suit property was in the nature of special damages that were neither specially pleaded nor specially proved.
 - g. The learned Magistrate erred in law by failing to ascertain the claim for indemnity by the Appellant in the third party proceedings.
 - h. The learned Magistrate erred by taking into account irrelevant extraneous matters and failed to consider relevant evidence.
4. This is a first appeal to this court and the duty of a first Appellate court was stated in the case of *Selle & Another -vs- Associated Motor Board Company and others* (1968) EA 123 as follows:
- “.....this court is not bound necessary to accept the findings of fact by the court below. An appeal to this court..... Is by way of retrial and the court of Appeal is not bound to follow the trial court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is in consistent with the evidence generally”.
5. The evidence which was adduced before the lower court is that the Respondent was wife of the deceased. The Respondent had gone to the offices of the Appellant seeking to know the status of the agricultural plot and commercial plot which the Appellant had allotted to the deceased. Whereas there was no issue with the commercial plot, there was an issue with the agricultural plot which had been



taken by one of the directors of the Appellant on the pretext that he had purchased it from the deceased on 29th August, 2007.

6. The former director of the Appellant who took the deceased's land was compensated a sum of Kshs.1,400,000/= as it was initially thought that the plot was within the five thousand acres which the Appellant had sold to the government for the Konza Techno City. After a survey was carried out, it turned out that the plot was outside the five thousand acres sold to the government but the former director had already been compensated and had subsequently died before the issue of the alleged purchase could be sorted out.
7. The Respondent adduced evidence to show that the deceased was a shareholder of the Appellant and had been allotted plot 1933 which was agricultural and plot 094 which was commercial. This is after the deceased had balloted and he picked out the plot numbers. The evidence of the Respondent was corroborated by PW2 Julius Maweu Kilonzo who was a former secretary of the Appellant. He stated that the records showing that the deceased was owner of plot 1933 (suit property) did not change in the records held by the Appellant. He stated that if there could have been sale by the deceased, the records would have changed but this was not the case.
8. The position on the ownership was confirmed by DW1 Leonard Kyanya Mutua a director of the Appellant who stated that despite Peter Mutua Kanyi claiming to have purchased the suit property from the deceased, the documents he presented were suspect and he was asked to explain but unfortunately he died before he could explain. This witness stated that the records held by them showed that the suit property remained the property of the deceased. He also confirmed that Peter Mutua Kanyi was compensated for plot 1933. He was paid Kshs.1,400,000/=. Efforts to have the administrators of his estate to explain did not bear any fruit as they did not enter appearance in response to third party proceedings served upon them.
9. The parties were directed to dispose of the appeal by way of written submissions. The Appellant filed submissions dated 15th April, 2025. The Respondent filed submissions dated 13th May, 2025.
10. The Appellant submitted that the trial magistrate was wrong in failing to go by the decision of the Supreme Court in the case of *Torino Enterprises Limited –vs- Attorney General* (Petition 5 (E006) of 2022 (2023) KESC 78 which had been cited in the Appellant's submissions that the allotment letter which had been issued to the deceased did not confer any proprietary interest or title upon him.
11. The Appellant quoted the relevant part of the of the judgment in the *Torino Enterprises Limited Case (supra)* where it was stated as follows:

“(55) So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer awaiting the fulfilment of conditions stipulated therein. In *Dr. Joseph NK Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* CA 60/1997 (unreported); and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 Others* HC Civil Case No. 182 of 1992; (2008) eKLR, the Superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offeror and the offeree and does not confer an interest in land at all.



12. The Appellant submitted at length on the doctrine of *stare decisis* citing Article 163 (7) of the [Constitution](#) which provides as follows:

“All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court”.

13. The Appellant also submitted that the suit before the lower court was time barred and the trial magistrate had no jurisdiction to determine it. The Appellant also submitted that the lower court’s judgment amounted to the trial Magistrate distributing the property of the deceased before a confirmed grant was obtained.

14. The Appellant also submitted that the Respondent prayed for the value of the suit property when the value was a special damage claim which should have been specifically pleaded and proved. Reliance was placed on the case of [Peter Ndegwa Kiai Ya Pema Wines & Spirits –vs- Attorney General & 2 others](#) (Civil Appeal 243 of 2017) (2021) KECA 328 (KLR) (17 December, 2021) (Judgment).

15. The Appellant finally submitted that the trial magistrate failed to make a finding on the third party proceedings and particularly whether the third party should indemnify the Appellant for liability arising from the judgment.

16. The 1st Respondent submitted that she had *locus standi* to bring the suit before the lower court as she had obtained grant of letters of administration *ad litem* for purposes of preserving the estate of the deceased.

17. The 1st Respondent relied on Rule 36 of the [Probate and Administration Rules](#) which state as follows;

“(1) Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration and colligenda bona defunct of the estate of the deceased.

(2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until further grant is made”.

18. The Appellant submitted that she did not ask the court that the suit property be registered in her name. She simply asked that the Appellant delivers the suit property.

19. On the issue of limitation, the 1st Respondent submitted that the cause of action arose in 2017 upon the demise of the deceased when the 1st Respondent went to follow up on the suit property when she learned that the same had been fraudulently taken by Peter mutua Kanyi who was a Director of the Appellant. The 1st Respondent relied on Section 7 of the [Limitation of Actions Act](#) which provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.



20. I have considered the evidence adduced before the lower court, the grounds of appeal as well as the submissions by the parties. The following are issues for determination. Firstly, whether the 1st Respondent had *locus standi* to bring the suit before the lower court. Secondly, whether the 1st Respondent's suit was statute barred. Thirdly whether the trial magistrate erred in not following the decision in *Torino Enterprises Limited* (*supra*). Fourthly, whether the trial magistrate erred in not making a determination on the third party proceedings.
21. On the first issue, there is no contention that the deceased was the husband of the 1st Respondent. He died on 2nd January, 2017. As he had been allotted the suit property for which title had not been issued, the 1st Respondent had to take steps to preserve the same. She moved to court and obtained a limited grant of letters of administration *ad litem* which enabled her to file the suit before the lower court. She therefore had the *locus* to bring the suit.
22. The 1st Respondent was not distributing the property of the deceased as alleged by the Appellant. She was merely seeking to preserve the same pending issuance of a full grant.
23. On the second issue, the evidence which emerged during the hearing is that the 1st Respondent wanted to pursue the deceased land particularly the suit property. She discovered and this was after the death of the deceased in 2017 that the suit property had been taken by the late Peter Mutua Kanyi who purported to have purchased it from the deceased. The purported sale agreement was allegedly thump printed by the deceased when in all other previous documents, he used to sign. The Appellant's witness during the hearing admitted that the agreement which is alleged to have been executed between Peter Mutua Kanyi and the deceased was suspect as there were no changes in the records held by the Appellant as was the norm in cases where sale occurred.
24. The 1st Respondent would not have filed a suit earlier than when she discovered the fraud by Peter Mutua Kanyi. Time for purposes of filing the suit did not start running until the fraud was discovered. The 1st Respondent's suit was therefore not statute barred.
25. On the third issue, it is true that the trial magistrate did not refer to the *Torino Enterprises Limited case* (*supra*). The *Torino case* was a decision based on allotments which are given by the commissioner of Lands or the relevant County Councils which were existing then. The allotment which was the subject of litigation in the lower court was an allocation by a company to its shareholders. The deceased had made full payment of Kshs.5000/= for five shares of one thousand each. On the basis of his shareholding, he was allocated plot 1933 which was an agricultural plot and plot 094 which was a commercial plot. He had fulfilled all the conditions and that is why he was allocated the two plots.
26. The *case of Torino Enterprises Limited* is therefore distinguishable from the circumstances before the lower court.
27. On the fourth issue, it is clear that the trial Magistrate did not make a determination on the third party proceedings which were before him. The record of proceedings of 18th October, 2023 show that the Appellant's advocate asked the trial Magistrate to enter judgment for the Appellant against the third party who had been served with third party notice but did not enter appearance. The trial Magistrate instead of entering judgment for the Appellant against the third party, entered judgment for the Plaintiff against the third party. This was wrong. It is the Appellant who had commenced the third party proceedings.
28. The proper practice is that where the third party did not enter appearance, the trial Magistrate should have addressed the issue in the judgment by entering judgment for the Appellant against the third party



and for completeness of the judgment made a finding that execution of the judgment against the third party could only be done after the Appellant had satisfied the judgment against it.

29. The trial Magistrate did not award any damages be it special or general and therefore ground 6 is misplaced. Equally ground 4 of the memorandum of Appeal is misplaced as the trial magistrate was under no obligation to consider the period taken to file the suit save for the limitation period.
30. Other than ground 7 which succeeds, the rest of the grounds of appeal fail. Consequently I affirm the judgment of the trial Magistrate save to add that the 2nd Respondent who was the third party before the lower court is obliged to indemnify the Appellant in terms of the third party notice. Judgment is accordingly entered for the Appellant against the 2nd Respondent. Execution against the 2nd Respondent shall only be undertaken after the Appellant has satisfied the judgment in favour of the 1st Respondent. The 1st Respondent shall have the costs of the suit before the lower court and this appeal.

JUDGMENT SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 25TH DAY OF SEPTEMBER, 2025.

.....

HON. E. O. OBAGA

JUDGE

In the presence of:

Mr. Apollo for 1st Respondent.

Court Assistant - Mueni

