



Muriithi v Mbogo & another (Sued as the Legal Administrators of the Estate of Francis Mbogo Ndambiri - Deceased) (Environment and Land Case E024 of 2024) [2025] KEELC 6249 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6249 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E024 OF 2024
JM MUTUNGI, J
SEPTEMBER 25, 2025**

BETWEEN

WINSTONE MBURU MURIITHI PLAINTIFF

AND

LYDIA WAKUTHI MBOGO 1ST DEFENDANT

PETER MWANGI MBOGO 2ND DEFENDANT

**SUED AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF FRANCIS
MBOGO NDAMBIRI - DECEASED**

JUDGMENT

1. The Plaintiff, Winstone Mburu Muriithi, instituted this suit by way of a Plaint dated 8th August 2024. He seeks the following orders:
 - a. A declaration that Land Parcel No. Ngariama/Ngiriambu/3952 was transferred to the Plaintiff in error.
 - b. An order rectification of the mistake/error of selling and transferring LR Ngariama/Ngiriambu/3952 to the Plaintiff instead of Ngariama/Ngiriambu/3947.
 - c. That the Land Registrar, Kirinyaga be ordered to transfer and register LR Ngariama/Ngiriambu/3947 to the Plaintiff Winstone Mburu Muriithi and revert LR Ngariama/Ngiriambu/3952 back to Francis Mbogo Ndamiri (Deceased).
 - d. Costs of the suit and interest at Court rate.
 - e. Any other or further relief that this Court may deem fit to grant.



2. The Plaintiff's case is that on 30th July 2014, he entered into a sale agreement with the late Francis Mbogo Ndambiri to purchase Land Parcel No. Ngariama/Ngiriambu/3952 at a consideration of Kshs. 1,300,000/-, (though the parcel of land he was shown on the ground was parcel 3947); which amount was paid and acknowledged by the vendor upon execution. The Plaintiff avers that all the necessary transfer formalities were undertaken following the agreement. The title however, that was processed in his name was for Parcel LR Ngariama/Ngiriambu/3952 instead of land parcel LR Ngariama/Ngiriambu/3947 which he was in possession of and had developed. The Plaintiff averred that he only discovered the error in 2024 when he sought to use the land as collateral for a loan and was informed during valuation that the parcel he occupied was LR No. Ngariama/Ngiriambu/3947.
3. The Plaintiff averred that before the transaction, he physically inspected Land Parcel No. 3947, was satisfied with its condition, and was placed in possession by the vendor. Since 2014, he has been in uninterrupted occupation of that parcel, where he has built a permanent house, planted coffee, and installed water and electricity. The Plaintiff avers that Land parcels Ngariama/Ngiriambu/3947 and 3952 measure 0.40 hectares each, were initially registered in the deceased's name, and lie opposite each other. He claims that the transfer of land parcel Ngariama/Ngiriambu/3952 registered in his name was a genuine and correctable mistake that ought to be rectified to reflect the parties' true intention at the time of entering into the sale transaction.
4. Despite service, the Defendants did not enter an appearance nor file a defence. The matter therefore proceeded by way of formal proof as undefended suit on 5th March 2025.
5. The Plaintiff testified as PW1 on 14th May 2025. He adopted his witness statement dated 8th August 2024 and relied on his list and further list of documents dated 8th August 2024 and 12th May 2025, respectively. His testimony reiterated that although he holds a title to Ngariama/Ngiriambu/3952 the parcel he physically inspected, purchased and has occupied was land parcel Ngariama/Ngiriambu/3947.
6. The Plaintiff's submissions dated 10th June 2025 framed the core issue as whether the erroneous registration of Parcel No. 3952 in favour of the Plaintiff can be rectified to reflect the parties' true intention, which was to transfer Parcel No. 3947 to the Plaintiff. Counsel submitted that the registration error arose from a common mistake where both he and the seller operated under the same misapprehension of fact that the parcel of land he was shown was the same title was processed in his name. It was argued that the vendor showed the Plaintiff Parcel No. 3947, which he was satisfied with, and was placed in possession. The transfer documents, however, mistakenly referred to Parcel No. 3952 instead of land parcel 3947.
7. Counsel relied on the holding in the case of *Nebart Njeru Munyi v Nicholas Muriithi Zakaria* [2015] eKLR, where the court affirmed its jurisdiction to intervene and correct a common mistake that goes to the root of a contract. The Plaintiff further cited the case of *Kiplagat Arap Biator v Esther Tala Cheyegon* [2016] eKLR, where the Court of Appeal held, where there was a genuine mistake at the time of contracting respecting the number of a land parcel and its location on the ground, the Court would be justified to order rectification in order to reflect the true intention of the parties.
8. The Court of Appeal in the case upheld the trial Court reliance and guidance in paragraph 1670 of *Halsbury's Laws of England*, 3rd Edition where the law on the subject is stated thus:-

“Where there exists a real common intention between the two parties to a transaction, but mistake occurs in the expression of that intention, the Court may correct the mistake in order to give effect to the real intention. To justify the Court in so doing it must appear that there has been a mistake common to both the contracting parties, and that the agreement



purports to have been expressed in a deed or instrument in a manner contrary to the intention of both.”

9. I have considered the pleadings and the Plaintiff’s written submissions. The sole issue for determination is whether the Plaintiff has proved his case on a balance of probabilities to justify rectification of the land register. Under Sections 107–109 of the *Evidence Act*, the party who desires a court to find in his favour must prove the existence of the material facts he relies upon. These provisions provide that:

107. Burden of proof.

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. (1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.(2)When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

10. In the present matter, the Plaintiff has led evidence that has established and demonstrated the following:

1. He entered into a sale agreement with the late Francis Mbogo Ndambiri;
2. The parcel intended for sale and occupation was NGARIAMA/NGIRIAMBU/3947.
3. He was put in possession of that parcel, which he has developed extensively.
4. The transfer was processed for land parcel NGARIAMA/NGIRIAMBU/3952 instead, due to a mutual mistake.
5. Both parcels were initially registered in the vendor’s name and are of equal size and are at the same location next to each other.

11. The above evidence was uncontested and supports the Plaintiff’s assertion that the registration of Parcel No. 3952 was not the result of fraud but was a common mistake between the parties’ that indeed that was the land parcel the subject of the sale agreement. It was the kind of mistake that the Courts will allow to be rectified so as to give effect to the real intention of the parties in entering into the contract. In the case of *Nebart Njeru Munyi (supra)* and *Kiplangat Arap Biator (supra)*, the court affirmed that where both parties operate under the same misunderstanding, and the error goes to the heart of the transaction, the Court may invoke the equitable doctrine to rectify the error or mistake to achieve the true intention of the parties. Section 80(1) of the *Land Registration Act*, empowers the Court to order rectification of a land register where the Court is satisfied the registration was obtained, made or omitted by fraud or mistake. It 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.
12. The Plaintiff has proved his case on a balance of probabilities. The Court is satisfied that the transfer and registration of land Parcel No. Ngariama/Ngiriambu/3952 in the name of the Plaintiff in place of land parcel No. Ngariama/Ngiriambu/3947 that the Plaintiff occupies on the ground was a genuine mistake and unintentional and that an order for the rectification of the register is justified.
13. In the premises, Judgment is hereby entered in favour of the Plaintiff in terms of prayers (a), (b) and (c) of the Plaint.
14. I make no order for costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 25TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC JUDGE

