



REPUBLIC OF KENYA



**Mapesa v Simiyu & another (Environment and Land Case E008 of 2023)  
[2025] KEELC 6242 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6242 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND CASE E008 OF 2023  
EC CHERONO, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**RONALD SIMIYU MAPESA ..... PLAINTIFF**

**AND**

**JANEPHER NAVALAYO SIMIYU ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, BUNGOMA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background.**

1. By a Plaint dated the 30/10/2023, the Plaintiff prays for judgment against the Defendants for:
  - a. A Declaration that the transfer to, and registration of Land Parcel No. Ndivisi/Ndivisi/656 in the name of Jeremia Waswa Simiyu and the subsequent transfer to and registration thereof in the name of the 1st Defendant was irregular, fraudulent, null and void.
  - b. A Declaration that the sub-division of Land Parcel No. Ndivisi/Ndivisi/656 into 15 parcel Nos. Ndivisi/Ndivisi/2306 to 2320 is irregular, fraudulent, null and void, and that similarly, any transfer thereof or any of them to third parties is null and void.
  - c. An order to the 2nd Defendant to cancel the said transfer and registration.
  - d. An order to the 2nd Defendant for the rectification of the register to cancel the sub-divisions and revert the sub-divided parcels No. Ndivisi/Ndivisi/2306-2320 to Ndivisi/Ndivisi/656.
  - e. Consequent upon (d) above, an order to the 2nd Defendant to revert Land Parcel No. Ndivisi/Ndivisi/656 to Sabuni Muremi.



- f. A permanent injunction restraining the 1st Defendant from laying claim on Land Parcel No. Ndivisi/Ndivisi/656 or any subdivision or derivatives therefrom save to the extent as a beneficiary of the estate of her late husband Jeremia Waswa Simiyu aforesaid.
  - g. Costs of this suit.
  - h. Any other and further relief that this Honourable Court might deem just and fitting to grant and to give effect to the above declarations and orders.
2. It was the plaintiff's case that Sabuni Muremi(Sabuni)-deceased was the registered absolute proprietor of Land Parcel No. Ndivisi/Ndivisi/656(hereinafter referred to as 'the suit land'). That the said Sabuni was survived by several sons and daughters, among them was one Ainea Machuka (Ainea), the father of Jeremia Waswa Simiyu (Jeremia), now deceased, who was the husband of the 1st Defendant herein. That in the year 2000 Jeremia in collusion with the defendants herein fraudulently and illegally caused Land Registration No. Ndivisi/Ndivisi/656(hereinafter referred to as the "suit land") to be registered in his name (Jeremia) without the knowledge and inclusion of the rest of the family.
  3. That in the year 2010, the defendants herein caused a sub-division of the subject parcel of land into 15 units i.e. Land parcel Nos. Ndivisi/Ndivisi/2306 to 2320 and had all of them transferred to, and registered the name of the 1<sup>st</sup> Defendant. That the sub-division, transfer and registration aforesaid was irregular, fraudulent and illegal and solely meant for the purpose of depriving the beneficiaries of the estate of the late Sabuni of their rightful shares in the estate.
  4. The 1<sup>st</sup> Defendants entered appearance and filed a statement of defence dated 13/12/2023 in which she denied the Plaintiffs claim and averred that the children of Sabuni approached her husband i.e Jeremia (now deceased) to carry out Succession proceedings in respect of the estate of Sabuni, which her husband (deceased) accepted. That Jeremiah, sued the Plaintiff herein, James Muremi Mapesa and John Barasa Mapesa in Webuye Resident Magistrate's Court Misc. Application No. 210 of 1997 which suit was heard and determined with the said Jeremia being awarded a portion of the land. That the beneficiaries of Sabuni were allocated shares of land and were each to follow up on their respective titles. She sought to have the suit against her dismissed with costs.
  5. The 2<sup>nd</sup> defendant also entered appearance and filed a statement of defence dated 27/03/2024 where she denied the plaintiff's claim and averred that if any registration took place, the same was done following the documentation availed to it in compliance with the laid down legal procedures and the law. They sought to have the suit against her dismissed with costs.
  6. When the case came up for directions, the parties agreed that matter proceeds by way of viva voce evidence.

### **Evidence By Parties.**

7. PW1 Ronald Simiyu Mapesa adopted his witness statement dated 30/10/2023 as his evidence-in-chief and produced referred to his list of documents of even date containing four (4) items as P-Exhibits 1, 2, 3 and 4 respectively. In cross-examination, he testified that one Ainea Maduka was his brother and that one of his sons was Jeremiah Waswa. That his father's parcel of land i.e LR Ndivisi/Ndivisi/656 measuring 43 acres was subdivided and shared amongst the sons of Ainea Maduka. That two of his brothers have taken out titles from sub-divisions of the suit land i.e. John Wamalwa and Joseph Mapesa. That he has not been allocated a number though he occupies a portion of the suit land.
8. He testified that there was a case in Webuye Resident Magistrate's Court Misc. Application No. 210 of 1997 which arose from the land Disputes tribunal in relation to the suit land. It was further his



evidence that his deceased father shared the suit land amongst his sons. When cross examined by the 2<sup>nd</sup> Defendant, he testified that the Land Registrar erred in allowing the 1<sup>st</sup> Defendant to subdivide the land without the input of the larger family and the estate of Sabuni. In re-examination, he testified that he did not have any document to prove that the 1<sup>st</sup> Defendant had presented any documents to the 2<sup>nd</sup> Defendant for sub-division of the suit land.

9. The 1<sup>st</sup> defendant called one witness. DW1 Janepher Navalayo Simiyu adopted his witness statement dated 17/10/2024 as his evidence-in-chief and produced four (4) documents contained in his list of documents of even date as D-Exhibit 1, 2, 3 and 4. When cross-examined by the Plaintiff, she reiterated the averments as contained in her statement of defence. She stated that the subdivision of the suit land was done to ensure that all the beneficiaries got their respective shares. That her plot is no. 2313. In re-examination, she testified that the Plaintiffs' plot is no. 2306.
10. The 2<sup>nd</sup> Defendant called one witness in support of her case. DW1 Babu Allan-relied on a list of documents dated 27/10/2024 containing 10 items and reiterated the averment contained in the 2<sup>nd</sup> Defendant's statement of defence that the sub-division was procedural in accordance with the documents presented to their offices. That by the time the area chief wrote a letter for the suit to be cautioned, its registration had changed hands from Sabuni to Jeremia and subdivision done vide a mutation dated 26/03/2007.

#### **Parties Submissions.**

11. When this matter came for directions, the parties agreed to file submissions.
12. The Plaintiff filed submissions dated 07/05/2025 where he reiterated his position as summarized above and relied on the case of Teleposta Pension Scheme Registered Trustees -Vs- Intercountries Importers & Exportes Limited & 5 Others and Dina Management Ltd -Vs- County Government of Mombasa & 5 Others (Petition No. 8 (E010) Of 2021).
13. The 1<sup>st</sup> Defendant filed submissions dated 23/05/2025 in which he submitted that there is evidence that the Plaintiff is entitled to L.R NO. Ndivisi/Ndivisi/2306. He simply has to process the said land and have his title deed and be satisfied as that is his share.

#### **Analysis and determination.**

14. I have considered the summary of the pleadings, the available evidence and exhibits produced, the opposing written submissions, and the cited authorities. I have also taken into account the relevant provisions of the law and in my view, the following issues comment for determination;
  - a. Whether the transfer, registration, and subsequent subdivision of Land Parcel No. Ndivisi/Ndivisi/656 into parcels Nos. 2306 to 2320, and their transfer to the 1st Defendant or third parties, was irregular, fraudulent, null and void.
  - b. Whether the Plaintiff is entitled to the orders sought for rectification of the register, including cancellation of the impugned subdivisions and reversion of the land to the name of the late Sabuni Muremi.
  - c. Whether the Plaintiff is entitled to injunctive relief, costs, and any other appropriate orders of the Court.



**Whether the transfer, registration, and subsequent subdivision of Land Parcel No. Ndivisi/Ndivisi/656 into parcels Nos. 2306 to 2320, and their transfer to the 1st Defendant or third parties, was irregular, fraudulent, null and void.**

15. It is imperative for this court to note that the legal framework on legitimacy of title documents is governed by Sections 24, 25 and 26 of the *Land Registration Act*. Section 24(a) thereof recognizes the registered owner as the absolute owner of land. This section provides as follows;

“The registration of a person as proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.
16. This absolute right is limited by Section 25 which provides that land shall be held by the registered proprietor together with all other privileges appurtenant thereto but subject to charges, leases, encumbrances, restrictions, liabilities, rights and interests as stipulated in Section 28. Section 26 provides that courts shall prima facie deem the registered owner of land as the proprietor. However, this right is not absolute and a title can be challenged on grounds of fraud, misrepresentation or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
17. In the case of *Munyu Maina v. Hiram Gathiha* (2013) eKLR, the Court of Appeal expressed itself thus; “We have stated that when a registered proprietor’s root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”
18. Also see the case of *Elijah Makeri Nyang’wara v Stephen Mungai Njuguna & Another* [2013] eKLR, where it was held that indefeasibility of title does not extend to titles founded on illegality or fraud.
19. It is not in dispute that the late Sabuni Muremi was the registered proprietor of Land Parcel No. Ndivisi/Ndivisi/656 as demonstrated by the adjudication form produced as D-Exhibit 2 and by the green card produced as D-Exhibit 9. Upon his demise, the property fell within the scope of Section 45(1) of the *Law of Succession Act*, Cap 160, which prohibits any dealings with a deceased person’s free property except under a grant of letters of representation. The Plaintiff contends that in the year 2000, Jeremia Waswa Simiyu, husband to the 1<sup>st</sup> Defendant and a son to his brother namely Ainea Maduka, caused the suit land to be registered in his own name without the participation or consent of the other beneficiaries of the estate of Sabuni (deceased).
20. The 1<sup>st</sup> Defendant on her part alleged that the estate of Sabuni requested her husband, Jeremia to take out letters of administration for the said estate of Sabuni and proceed with the sub-division of the suit land as had been proposed by the deceased. However, it is important to note that the Defendant did not present to this honourable court the said letters of administration in the absence of which this court is left in doubts how the said Jeremia obtained registration of the suit land and proceeded to transact as he did.
21. The 1<sup>st</sup> Defendant further relied on proceedings in *Webuye RM Misc. Application No. 210 of 1997*, alleging that Jeremia lawfully litigated against some of the beneficiaries of the estate of Sabuni and was awarded land. However, and as mentioned above, no grant of representation or certificate of confirmation of grant was produced to demonstrate that lawful succession proceedings were undertaken in accordance with Sections 51 and 71 of the *Law of Succession Act* and do not explain how the said Jeremiah obtained title of the suit land. The proceedings relied upon cannot substitute the



statutory process of administration of estates. Further, the Defendant produced evidence as D-Exhibit 1, 3 and 4 which suggests that the said Jeremia was dealing with the suit land as his own to the exclusion of the beneficiaries of the estate of Sabuni as alleged by the Defendant.

22. From the record, Jeremia's registration was neither grounded in succession proceedings nor supported by a confirmed grant. His registration on 16/12/2007 and subsequent subdivision of the suit land on 22/02/2010 into fifteen parcels and the registration of various plots in the names of third parties cannot therefore be upheld. As was observed in *Kenya Anti-Corruption Commission v Online Enterprises Limited & 4 others* [2019] KEELC 4680 (KLR), once the root of title is tainted, all subsequent transactions built upon it collapse.
23. I agree with the words of Lord Denning in the case of *Benjamin Leonard Mcfloy – vs – United African Company Limited (UK)* (1962) AC 152, when he stated as follows;

“If an act is void, then it is in law a nullity. It is not only bad ...and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.” Accordingly, the subdivision and subsequent transfers of the resultant parcels of the suit land were irregular, unprocedural and therefore null and void.

**Whether the Plaintiff is entitled to the orders of rectification of the register, including cancellation of the impugned subdivisions and reversion of the land to the name of the late Sabuni Muremi.**

24. The Plaintiff seeks rectification of the register by cancellation of parcels Nos. 2306 to 2320 and reversion to the suit land. Section 80 of the *Land Registration Act* provides as follows:

“80.

- (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.
- (2). The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

25. This section gives the court powers to order for rectification of a register by directing that any registration be cancelled or amended if it is satisfied that such registration was obtained, made or omitted by fraud or mistake.
26. From the totality of the evidence adduced, it is evident that the subdivision of the suit property was undertaken without the involvement of all the lawful beneficiaries of the late Sabuni Muremi and in the absence of a grant of representation. Such dealings amount to intermeddling with the estate of a deceased person, an act expressly prohibited under Section 45 of the *Law of Succession Act*, Cap 160. I have already found and held that the transfer, registration, and subsequent subdivision of the suit property were irregular, null and void.



27. It therefore follows that the registration of the suit property in the name of Jeremia and the subsequent transfers to third parties, was tainted with illegality and is, in law, impeachable. In line with Article 40(6) of *the Constitution* of Kenya, 2010, the right to property does not extend to property unlawfully acquired. Consequently, this Court finds that the impugned transfers, subdivisions and resultant registrations must be cancelled and the register duly rectified to restore the property to its proper legal status.

**Whether the Plaintiff is entitled to injunctive relief, costs, and any other appropriate orders of the Court.**

28. The Plaintiff seeks a permanent injunction restraining the 1st Defendant from laying claim to the suit property or any of its subdivisions save as a beneficiary through succession. It is trite law that an injunction will ordinarily issue where a claimant demonstrates a legal or equitable right that is under threat of violation. The principles guiding the grant of injunctive relief were set out in the celebrated case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, namely, that the applicant must establish a prima facie case with a probability of success, that they would suffer irreparable injury which cannot be adequately compensated in damages, and, where the court is in doubt, it will determine the matter on a balance of convenience.

29. Having found that the transfer and subdivision of the suit property were undertaken without a valid grant of representation and in contravention of Section 45 of the *Law of Succession Act*, this Court is satisfied that the estate of the late Sabuni was unlawfully deprived of its property. In the circumstances, the balance of convenience and the interests of justice overwhelmingly favour protection of the estate of Sabuni Muremi pending lawful succession proceedings. Accordingly, this Court finds that the Plaintiff is entitled to a permanent injunction as prayed.

30. On the question of costs, the guiding principle is encapsulated in Section 27 of the *Civil Procedure Act*, which provides that costs follow the event unless the Court, for good cause, orders otherwise. While the Plaintiff has substantially succeeded in proving his claim, the Court cannot ignore the close consanguinity between the parties, all of whom trace their rights to the estate of the late Sabuni. In the interests of family harmony and equity, I direct that each party shall bear their own costs.

31. Ultimately the following are the disposal orders;

- a. It is hereby declared that the transfer and registration of Land Parcel No. Ndivisi/Ndivisi/656 in the name of Jeremiah Waswa Simiyu, and the subsequent transfer and registration thereof in the name of the 1st Defendant, was irregular, fraudulent, null and void.
- b. It is further declared that the sub-division of Land Parcel No. Ndivisi/Ndivisi/656 into parcel numbers Ndivisi/Ndivisi/2306 to 2320 was irregular, fraudulent, null and void, and that any subsequent transfer thereof to third parties is of no legal effect.
- c. An order of rectification is hereby issued directing the 2<sup>nd</sup> Defendant, the Land Registrar Bungoma, to cancel all entries relating to the impugned transfers and subdivisions, and to revert the register to Land Parcel No. Ndivisi/Ndivisi/656 in the name of the late Sabuni Muremi, pending lawful succession proceedings.
- d. A permanent injunction is hereby issued restraining the 1<sup>st</sup> Defendant, her agents, servants, or assigns from laying claim to Land Parcel No. Ndivisi/Ndivisi/656 or any of its subdivisions, save to the extent that she may be entitled as a beneficiary of the estate of her late husband, Jeremiah Waswa Simiyu, upon lawful distribution of the estate of Sabuni Muremi.



- e. For avoidance of doubt, the estate of Sabuni Muremi shall remain available for distribution in accordance with the *Law of Succession Act* (Cap. 160 Laws of Kenya).
- f. On costs, each party shall bear their own costs of this suit.

32. It is so ordered.

**DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

Mr. Athunga for the 1<sup>st</sup> Defendant

M/S Kerubo H/B for Simiyu for the 2<sup>nd</sup> Defendant

Plaintiff-present

Bett C/A.

