



Musolo & another v Jerotich & another (Environmental and Land Originating Summons E016 of 2022) [2025] KEELC 6323 (KLR) (17 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6323 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2022**

EM WASHE, J

SEPTEMBER 17, 2025

**IN THE MATTER OF: LAND PARCEL NO. UASIN GISHU KIMUMU
SETTLEMENT SCHEME/PLOT NO. 107 IN UASIN GISHU COUNTY**

AND

**IN THE MATTER OF: SECTION 38 OF THE LIMITATION
OF ACTIONS ACT CAP 22 LAWS OF KENYA**

BETWEEN

CHRISTIAN WAFULA MUSOLO 1ST APPLICANT

GEORGINA ARONI ORODING 2ND APPLICANT

AND

PAULINE JEROTICH 1ST RESPONDENT

JOSEPHAT KIPROP KIMAIYO 2ND RESPONDENT

JUDGMENT

1. The Applicants herein commenced the instant suit by way of Originating Summons dated 23.06.2022 (hereinafter referred to as “the present OS”) seeking a determination of the following issues:-
 - a. That the 8 Acres in parcel of land known as L.R. Kimumu Settlement Scheme Plot No. 107 now registered in the names of the late Kimining Arap Kibuigot who died on 7th July 1995 and whose estate devolved to Pauline Jerotich and Josphat Kiproop Maiyo jointly as administrator of the same for their own benefit and for the benefit of other heirs including and not limited to them.
 - b. That the Plaintiffs are entitled to a declaration of title by dint of their purchase of the half acre ½ portion from the late Kimining Arap Kibuigot from the suit land and such order be issued.



- c. That the Plaintiffs are entitled to an order directing Pauline Jerotich and Josphat Kiproop Maiyo as administrators of the estate of the late Kimining Arap Kibuigut the registered proprietor of the suit land herein, to deliver title to the purchased portion to them in discharge of their duties as administrators of the said estate.
 - d. That the Plaintiffs are entitled to costs of this Originating Summons.
2. The present OS is supported by an Affidavit of even date sworn by the 1st Applicant herein, which can be summarised as follows: -
- i. The Applicants who are husband and wife purchased half an acre of the land known as Uasin Gishu Kimumu Settlement Scheme/Plot No. 107 (hereinafter “the suit property”) from the late Kimining Arap Kibuigut vide Agreement for Sale dated 2nd May, 1989 for a consideration of KShs.20,000/- which was paid in full.
 - ii. The Applicants averred that the sale was witnessed by one Samuel Kimining, a son to the Vendor as well as husband and father of the 1st and 2nd Defendants/Respondents herein respectively.
 - iii. The Applicants took possession and they have been in occupation and use of the land since 1989 including putting up semi-permanent structures on the land.
 - iv. The deceased Vendor was to transfer the portion of 0.5 acres to the Applicants immediately obtaining a discharge from the Settlement Fund Trustee who had charged the entire suit property but he died before completing the same.
 - v. The Applicants aver that the Respondents who are the administrators of the estate of the registered owner held several meetings with individuals who reside on the land and agreed that the land be surveyed to demarcate the boundaries of each plot, and that they participated in these meetings.
 - vi. The Applicants claim that they contributed in the survey and succession fees and other related costs, after which the land was surveyed and what remains is for the Respondents to transfer their respective portions to each person with a stake on the land.
 - vii. However, when the Respondents filed the succession cause, they failed to include the Applicants as beneficiaries prompting them to file objection proceedings.
 - viii. In a Ruling dated 2nd June, 2021 in High Court Succession Cause No. 204 of 2011, the Succession Court directed that the Certificate of Confirmation of Grant be amended to include them as beneficiaries of the Estate of Kimining Kibuigut.
 - ix. Despite issuance of the Amended Certificate of Confirmation of Grant and several reminders from the Applicants, the Respondents are keen not to deliver the title to them causing them anxiety and uncertainty.
 - x. According to the Applicant, unless the Respondents are compelled by this Court, they do not seem keen on completing the conveyance to ensure the Applicants get title to their portion.
3. The Respondents did not file any response to the present OS and the matter proceeded for hearing as an undefended claim on 15.05.2025.



Applicant's Testimony and Evidence

4. The 1st Applicant testified under oath as PW1 and adopted his witness statement dated 23.06.2022.
5. The Applicant testified that they seek ½ an acre on LR Kimumu Settlement Scheme/107 which they duly purchased from Kimining arap Kibuigut (Deceased) and took possession thereafter.
6. The Applicant further explained that the 1st Respondent is a daughter to the Vendor and registered owner of the suit property while the 2nd Respondent is the grandson who were appointed as administrators to the Estate of Kimining Arap Kibigut.
7. The Applicant produced the following documents in support of his case;-
Applicant's Exhibit 1 - Copy of an Agreement for Sale dated 02.05.1989
Applicant's Exhibit 2 - Copy of Green Card of L.R. No. Uasin Gishu/Kimumu/107 in the names of the Respondent
Applicant's Exhibit 3 - Copy of the Summons in Eldoret HC Succession Cause No. 204 of 2011 dated 23/12/2019
Applicant's Exhibit 4 - A copy of the Ruling dated 2/06/2021 in HC Succession Cause No. 204 of 2011.
Applicant's Exhibit 5 - Copy of the Amended Certificate of Confirmation of Grant in HC Succession Cause No. 204 of 2011 dated 30/06/2021.
Applicant's Exhibit 6 - Copy of the demand letter dated 27/04/2022 from the Applicants to the Respondents.
8. The Applicant stated that despite orders in the Succession Cause, the Respondents are yet to alienate and transfer the ½ Acre that they purchased.
9. In concluding his evidence in chief, the Applicant sought the Court to grant the Orders sought herein together with costs.
10. The Applicant was discharged and this marked the close of the Applicants' case.
11. At the conclusion of the hearing, the Court directed the Applicants to file their final submissions and they complied by filing their submissions dated 11th June, 2025.
12. The Court has carefully gone through the Applicants' pleadings, the oral testimony and evidence adduced as well as submissions filed and identifies the following issues for determination; -
Issue No. 1 - Whether the applicants are entitled to a portion of the suit property?
Issue No. 2- Whether the court should order the transfer of the applicants portion in their favour?
Issue No. 3 - Whether the orders sought in the instant os should issue?
Issue No. 4 - Who bears the cost of this suit?
13. Having identified the above issues for determination, the will now proceed to discuss them as herein-below.



Issue No. 1 - Whether the Applicants are Entitled to a Portion of the Suit Property

14. The instant OS is brought under Order 37 Rule 3 of the Civil Procedure Rules which provides that: -
- “3. Summons by vendor or purchaser of land [Order 37, rule 3]
- A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the judge sitting in chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”
15. There is no doubt that the Applicants herein are not seeking a determination on whether the agreement between them and the deceased is valid, so the present OS is in order and complies with Order 37 Rule 3.
16. The Applicants have brought the summons as purchasers of a ½ Acre portion of land parcel known as LR.No.Uasin Gishu/Kimumu/107 which they claim to have bought from Kimining Arap Kibuigut, now deceased.
17. The Applicants produced an Agreement for Sale dated 02.05.1989 between themselves and the deceased for sale of ½ an Acre of the land known as Plot No. 107 situate at Kimumu Settlement Scheme within Uasin Gishu District.
18. The consideration was KShs. 20,000/- which the Agreement acknowledges had been paid in full as at the date of execution thereof vide Cheque No. 938171.
19. Under the Agreement, the Vendor (the Deceased) undertook that he would sign and execute the necessary documents for consent and transfer of the said portion of land in favour of the purchasers.
20. Notably, the Agreement was witnessed by one Samwel Kimining, who is described therein as the Vendor’s son.
21. The Applicants have also produced a copy of a Green Card for the suit property which shows that the register of the suit property was opened on 12.05.1986 in the name of the Settlement Fund Trustee and thereafter, suit property registered in the name of the Vendor on 14.01.2016.
22. The Applicants entitlement to a portion of the suit property was the subject of objection proceedings lodged in Eldoret High Court Succession Cause No. 204 of 2011 where they sought to have the grant issued to the Respondents herein revoked on grounds that it was obtained fraudulently, through making false statement of and/concealment of material facts.
23. In its Ruling dated 02.06.2021, the Succession Court noted that in a prior suit brought by the Applicants seeking adverse possession that is ELC Cause No. 111 of 2013, the ELC found that whereas the Applicants had not proved that adverse possession, there was no doubt that the Applicants had purchased land from the deceased and that they took possession thereof.



24. The High Court in Eldoret HC Succession Cause No. 204 of 2011 held that the Applicants had established that indeed there was material non-disclosure that warranted revocation, hence the following Order :-

“ However, since there is an admission by the Petitioners that the objectors are entitled to the portion they claim, and in order not to waste the court’s time, and in light of the fact that the court is clothed with wide discretion, I am persuaded that rather than order revocation (which will result in a delayed process) I direct that an amended certificate of confirmed grant do issued (sic) to include the Objectors/applicants herein.”

25. Pursuant to this, an Amended Certificate of Confirmation of a Grant dated 30th June, 2021 was issued including the Applicants herein as beneficiaries of a ½ Acre portion of Plot No. 107 Kimumu Settlement Scheme.

26. In view of the finding of the High Court and the Amended Certificate of Confirmation of a Grant issued pursuant to it, there can be no doubt that the Applicants herein are indeed entitled to the ½ Acre portion of the suit property.

Issue No. 2 - Whether the Court Should Order the Transfer of the Applicants Portion in Their Favour?

27. The Respondents have been sued as the personal representatives/administrators of the estate of the former registered owner whom the Applicants purchased the land from.

28. The duties of the personal representatives both under a grant of probate and a grant of letters of administration are set out at section 83 of the Law of Succession Act, and of interest to this suit, Section 83(f) and (g) in particular provides that:-

83. Duties of Personal representatives shall have the following duties—

...

(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration...

29. Section 83 of the Law of Succession Act imposes on the personal representatives a duty to not only collect the assets of the deceased and pay the estate’s creditors, but to also distribute the remaining assets to the heirs or other beneficiaries thereof.

30. The law further imposes a duty on the personal representatives to complete the administration of the estate within 6 months, but this has not been done in respect of the deceased’s estate which has resulted in the instant suit.

31. Notably, according to the Green Card produced in this Court, the Respondents managed to have the suit land transferred to their names and one Robert Kipkemei Maiyo on 29th March, 2016 and a title



deed issued to them on the same date, but there is no indication that the land was transferred to any other beneficiaries thereafter.

32. Even after the Amended Certificate of Confirmation of Grant was issued on 30th June, 2021 it would appear that the Respondents still did not bother to redistribute the estate as directed therein.
33. There is no doubt that the reasons for this failure is attributable to the Respondents herein who remain as the personal representatives of the estate, and who despite service and being aware of this suit, did not bother to even respond to it or give reasons why the ½ Acre parcel has not been transferred to the Applicants herein.
34. There being no reason for the failure to transfer the ½ Acre awarded to the Applicants by the Succession Cause, there is no reason why reason why this court should not order the Respondents to transfer the Applicants land and have it registered in their names.

Issue No. 3 - Whether the Orders Sought in the Instant Suit Should Issue

35. Section 79 of the [Law of Succession Act](#) provides that all the property of the deceased shall vest in the person appointed as the personal representative of their estate, subject to any limitation imposed by the grant.
36. The effect of Section 79 is well explained in Re Estate of Julius Mimano (deceased) (2019) e KLR, where the court stated as follows:-

“The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the [Law of Succession Act](#). The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the [Trustee Act](#), Cap 167, Laws of Kenya, defines trustees to include executors and administrators.”

37. Pursuant to Section 79 therefore, the suit property did in fact devolve to the Respondents herein as the personal representatives of the deceased’s estate for their own benefit but also for the benefit of other heirs and beneficiaries.
38. Consequently, the first issue for determination in the instant OS is answered in the positive.
39. The Applicants have also asked this Court to declare that they are entitled to the ½ Acre portion purchased from the deceased.
40. Upon consideration of the pleadings and evidence herein in Issue No. 1 above, this Court makes a finding that the Applicants are entitled to the ½ Acre portion purchased from the deceased who is the previous registered owner of the suit land on 2nd May, 1989 therefore are entitled to prayer No. 2 of the Originating Summons.



41. The third issue that the Applicants placed before this Court for determination was whether the Court should direct the Respondents to deliver the title over the purchased portion to them in discharge of their duties as administrators.
42. The Applicants herein wrote to the Respondents prior to filing of this suit vide a letter dated 27th April, 2022 produced herein as PW1 Exhibit 6 indicating that they had served the amended certificate of confirmation of grant on them on 7th July, 2021.
43. On the evidence, it has been demonstrated that there has been an unexplained failure on the part of the Respondents even after due notice to distribute the deceased's estate as directed by the Succession Court and complete administration.
44. The Court has found at Issue No. 2 that there is no reason why the Respondents should not be ordered to transfer the said portion to the Applicants as sought in this suit and as a result, the third issue in the instant OS is answered in the positive.

Issue No. 4 - Who Bears the Cost of this Suit?

45. As to costs, it is trite law that costs follow the event, which rule is to the effect that costs are awarded to the successful party.
46. There is no doubt that the Applicants have succeeded in proving their claim in the instant suit.
47. The Applicants herein are therefore entitled to costs from the Respondents.

Conclusion

48. In conclusion therefore, the Originating Summons dated 23rd June, 2022 is determined by the following orders:-
 - a. The declaration be and is hereby made in favour of the applicants to be the lawful and legitimate owners of a portion of land measuring 0.5 acres in the property known as Lr.no. Kimumu Settlement Scheme Plot.107 measuring approximately 8 acres.
 - b. The respondents be and are hereby directed to take a sub-division of the property known as LR.No.kimumu Settlement Scheme Plot.No.107 measuring 8 acres are excise 0.5 acre which is in occupation of the applicants within 60 days from the date of this judgement.
 - c. The respondents be and are hereby directed to register the sub-division of the property known as LLR.No.kimumu Settlement Scheme Plot.107 and transfer the portion measuring 0.5 acres occupied by the applicants within 60 days after the sub-division exercise has been undertaken.
 - d. In the event the respondents shall fail to comply with orders b & c hereinabove, the deputy registrar, environment & land court be and is hereby directed to execute all relevant documents required to facilitate the sub-division, registration of the sub-division and transfer of the 0.5 acres within the property known as LR.No. Kimumu Settlement Scheme occupied by the applicant as soon as practical.
 - e. The applicants shall have the costs of this originating summons from the respondents.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 17TH DAY OF SEPTEMBER 2025.

EMMANUEL.M. WASHE



JUDGE

In the Presence of:

Court Assistant: Mr. Brian

Counsel for the Applicant: Ms. Tanui holding brief Mr. Ngigi for the Applicant

Counsel for the Respondent: N/A

