



**Otsieno (Suing as Legal Representative of Otsieno Obatsa Otsieno  
- Deceased) v Adhiambo & another (Environment and Land Case  
E008 of 2023) [2025] KEELC 6181 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6181 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND CASE E008 OF 2023  
BN OLAO, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**WILLIAMS MULUKALA OTSIENO (SUING AS LEGAL REPRESENTATIVE OF  
OTSIENO OBATSA OTSIENO - DECEASED) ..... PLAINTIFF**

**AND**

**TERESINA ADHIAMBO ..... 1<sup>ST</sup> DEFENDANT**

**CAROLINE BRILIAN AUMA WERE ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Williams Mulukala Otsieno (the Plaintiff herein and suing as the Legal representative of the Estate of Otsieno Obatsa Otsieno- deceased) filed this suit against Teresina Adhiambo and Caroline Brilian Auma Were (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively) vide his plaint dated 15<sup>th</sup> August 2023. He sought judgment against the Defendants jointly and severally in the following terms with respect to the land parcels No Bukhayo/Malanga/2946 and 2947 (the suit land) and which was originally land parcel No Bukhayo/Malanga/663:
  1. An order of the cancellation of the titles to the land parcels No Bukhayo/Malanga/2946 and 2947 from the names of the Defendants and reversal of the same into the deceased's names with one title number.
  2. In the alternative but without prejudice to the foregoing, the Plaintiff seeks a declaratory order that the land parcel No Bukhayo/Malanga/2947 which the 1<sup>st</sup> Defendant sold to the 2<sup>nd</sup> Defendant forms part of the 1<sup>st</sup> Defendant's share in the certificate of confirmation and land parcel No Bukhayo/Malanga/2946 to be transferred to the Plaintiff and Robert Haron Obatsa as per the certificate of Confirmation.



2. The basis of the Plaintiff's case is that at all material times, the deceased was the absolute registered proprietor of the land parcel No Bukhayo/Malanga/663 until the time of his demise on 5<sup>th</sup> January 1989. The Plaintiff is the Administrator to the deceased's Estate and also among the beneficiaries vide the confirmed Grant issued in Busia High Court Succession CauseNo134 of 2004. However, on 14<sup>th</sup> October 2010, the 1<sup>st</sup> Defendant fraudulently transferred the land in her names allegedly via Busia High Court Succession CauseNo113 of 2009 which was in respect to the Estate of one Isaka Eroni Opukaand who was the owner of the land parcel No. South Teso/Osurette/1431 and not the land parcel No Bukhayo/Malanga/663. The Plaintiff placed a restriction on the land parcel No Bukhayo/Malanga/663 upon discovering the fraud in 2025 but in a scheme to circumvent the wheels of justice, the 1<sup>st</sup> Defendant fraudulently and mysteriously removed the restriction. Then on 8<sup>th</sup> September 2016, the Defendants sub-divided the land parcels No Bukhayo/Malanga/663 to create the suit land. The parcel No Bukhayo/Malanga/2946 was transferred to the 1<sup>st</sup> Defendant while the parcel No Bukhayo/Malanga/2947 was transferred to the 2<sup>nd</sup> Defendant. All the above transactions were done while the proceedings in Busia High Court Succession CauseNo134 of 2004 were in progress and in which the 1<sup>st</sup> Defendant was involved. At the conclusion of the Succession Causeaforesaid, both the Plaintiff and the 1<sup>st</sup> Defendant were listed as beneficiaries in the land parcel No Bukhayo/Malanga/663 which was sub-divided and partly transferred to the 2<sup>nd</sup> Defendant through fraudulent intermeddling.
3. The particulars of fraud have been pleaded in paragraphs 12(1) to (xi) as follows:
  - i. Intermeddling with the deceased's Estate per se.
  - ii. Fraudulently transferring the deceased's names without succession.
  - iii. Fraudulently using a P&A High Court case number that did not belong to the deceased to have the land transferred.
  - iv. Transferring the deceased's land without Letters of Administration.
  - v. Transferring the deceased's land without a certificate of confirmation.
  - vi. Transferring the deceased's land without an application to be registered as proprietor by transmission.
  - vii. Transferring the deceased's land using forged application to be registered as proprietor by transmission forms.
  - viii. Transferring the deceased's land using a forged transfer by personal representative to a person entitled under a will or on an intestacy.
  - ix. Intermeddling with the deceased's estate with the full knowledge that the deceased had died.
  - x. Fraudulently trying to disinherit the Plaintiff from benefitting from the deceased's estate as a son and beneficiary.
  - xi. Being fraudulent per se.
4. As a result of the Defendants' fraudulent acts, the Plaintiff cannot register and execute the certificate of confirmation over the land parcel number Bukhayo/Malanga/663 as it is no longer registered in the deceased's name. Despite that fraudulent transfer, the Plaintiff is still in occupation of his share of the land parcel No Bukhayo/Malanga/663 together with the other beneficiaries and the status quo should be maintained otherwise they stand to lose their inheritance in the said land.



5. Together with the plaint, the plaintiff filed his statement and list of documents both dated 15<sup>th</sup> August 2023.
6. In his statement, the Plaintiff rehashed the contents of his plaint. That he is the legal representative of the estate of his late father Otsieno Obatsa Otsienowho, at the time of his death on 5<sup>th</sup> January 1989, was the registered proprietor of the land parcels No Bukhayo/Malanga/663, 681 and 463. That the 1<sup>st</sup> Defendant is his step-mother and on 14<sup>th</sup> October 2010, she fraudulently transferred the land parcel No Bukhayo/Malanga/663 to herself as a personal representative to the deceased's estate vide Busia High Court P&A NO 113 of 2009 which dealt with the estate of one Isaka Eroni Opuko who did not own that land. Upon that transfer, the 1<sup>st</sup> Defendant fraudulently sub-divided the said land to create the land parcels No Bukhayo/Malanga/2946 and 2947. She then transferred the land parcel No Bukhayo/Malanga/2946 to herself and parcel No Bukhayo/Malanga/2947 to the 2<sup>nd</sup> Defendant. At the time of that fraudulent transfer, the Plaintiff had himself filed Busia High Court Succession Cause No 134 of 2004 and obtained Letters of Administration on 2<sup>nd</sup> March 2005. He obtained a certificate of Confirmed Grant on 13<sup>th</sup> December 2022 in which both he and the 1<sup>st</sup> Defendant are beneficiaries to the land parcel No Bukhayo/Malanga/663 but he cannot register it because the title to the said land no longer exists hence this suit.
7. The Plaintiff also filed the following documents in support of his case:
  1. Copy of register for the land parcel No Bukhayo/Malanga/663.
  2. Copy of Official Search for the land parcel No Bukhayo/Malanga/2946.
  3. Copy of official Search for the land parcel No Bukhayo/Malanga/2947.
  4. Copy of register for the land parcel No Bukhayo/Malanga/2946.
  5. Copy of Certificate of death for Otsieno Obatsa Otsieno.
  6. Copy of the letter from the Chief Elukhari Location dated 19<sup>th</sup> November 2003 addressed to the Registrar Busia Court.
  7. Copy of Grant of Letters of Administration issued in Busia High Court P&A case NO 134 of 2004.
  8. Copy of proceedings and ruling in Busia High Court P&A NO 134 of 2004.
  9. Copy of confirmed Grant issued in Busia High Court P&A NO 134 of 2004.
  10. Copy of Petition of letters of Administration issued in Busia High Court P&A NO 113 of 2009 (Estate of Isaka Eroni Opuko).
  11. Copy of Affidavit in support of Letters of Administration intestate filed in Busia High Court P&A NO 113 of 2009.
  12. Copy of Gazette Notice for Estate of Isaka Eroni Opuko.
  13. Copy of Grant of Letters of Administration issued in Busia High Court P&A NO 113 of 2009.
  14. Copy of Confirmed Grant issued in Busia High Court P&A No 113 of 2009.
8. The record shows that the Defendants were served with the plaint on 8<sup>th</sup> February 2024 by one Joseph Obatsa Kweyu a process server of this Court. However, no defence was filed in response to the plaint.



And although they were also served to attend Court for mention for directions on 30<sup>th</sup> September 2024 and subsequently for the hearing on 11<sup>th</sup> February 2025, they did not attend Court.

9. The hearing therefore proceeded ex-parte on 11<sup>th</sup> February 2025 whereby the Plaintiff testified and adopted his statement dated 15<sup>th</sup> August 2023 and a further statement dated 6<sup>th</sup> February 2025. He also produced the documents dated above as his documentary evidence. And although he had filed the statement of his witness one Kenneth Otsieno dated 6<sup>th</sup> February 2025, that witness was not called to testify. Submissions were thereafter filed by Mr. Onsongo instructed by the firm of Obwoge Onsongo & Company Advocates for the Plaintiff.
10. I have considered the evidence by the Plaintiff and the submissions by counsel.
11. It is clear from the register to the land parcel No Bukhayo/Malanga/663 that it was first registered in the name of one MAKOBE BWIRE on 20<sup>th</sup> May 1975 before being transferred to Otsieno Obatsa Otsienothe deceased herein as also known as YONAMU OTSIENO on 5<sup>th</sup> August 1981. On 14<sup>th</sup> October 2010, it was registered in the name of the 1<sup>st</sup> Defendant but on 11<sup>th</sup> May 2015, a restriction was registered against the title by the Plaintiff. That restriction was however lifted by the Land Registrar on 1<sup>st</sup> September 2016 and on 8<sup>th</sup> September 2016, the title was closed upon sub-division to create the suit land. The register for the land parcel No Bukhayo/Malanga/2946 shows that it was registered in the name of the 1<sup>st</sup> Defendant on 10<sup>th</sup> February 2013 before a title was issued in her names on 21<sup>st</sup> September 2016. The land parcel No Bukhayo/Malanga/2947 was also registered in the name of the 1<sup>st</sup> Defendant on 10<sup>th</sup> February 2015 before being transferred to the 2<sup>nd</sup> Defendant on 6<sup>th</sup> December 2016.
12. The Plaintiff's case is that the registration of the suit land in the name of the Defendants was procured fraudulently. The allegations of fraud have been set out in paragraph 12(i) to (xi) which I have already referred to above. The main issue which calls for my determination is whether those allegations of fraud have been proved and if so what remedies is the Plaintiff entitled to. In the case of *Vijay Monjaria v Nansingh Madhusing Darbar & Another*[2000 eKLR], Tunoi JA (as he then was) stated that:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”

In *Arthi Highway Developers Ltd v West End Butchery Ltd and 6 Others* 2015 KECA 816 KLR [2015 eKLR], the Court of Appeal observed that:

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond a reasonable doubt.”

See also the cases of *Central Kenya Ltd v Trust Bank Ltd & Others* C.A Civil Appeal No 215 of 1996 [1996 eKLR] and also the case of *Ndolo v Ndolo* 2008 1 KLR (G&F) 742 among others.

13. Among the allegations of fraud levelled against the Defendants is that the 1<sup>st</sup> Defendant fraudulently used the Grant issued in Busia High Court P&A Cause No 113 of 2009 to transfer the land parcel No Bukhayo/Malanga/663 into her name when that Succession Cause was in respect to the Estate of one Isaka Eroni Opuko and who had no interest in that land. I have looked at the register for the land parcel No Bukhayo/Malanga/663 and it is true that on 14<sup>th</sup> October 2010, it was transferred to the 1<sup>st</sup> Defendant on account of orders issued in Busia High Court P&A Succession Cause No 113 of 2009.



I have also looked at the Confirmed Grant issued in Busia High Court P&A NO 113 of 2009 on 2<sup>nd</sup> March 2009. It was in respect to the Estate of one Isaka Eroni Opuko and was only in respect of the land parcel No. South Teso/Osurette/1432 which is not the subject matter of this suit. Therefore, in so far as the land parcel No Bukhayo/Malanga/663 was transferred to the 1<sup>st</sup> Defendant on the basis on the Confirmed Grant issued in Busia High Court P&A Cause No 113 of 2009, that transfer was fraudulent and so too was the sub-division of the land parcel No Bukhayo/Malanga/663 to create the suit land which was subsequently transferred in the names of the Defendants. This is because a nullity begets a nullity. It follows therefore that the titles to the land parcels No Bukhayo/Malanga/2496 and 2497 were obtained through a fraudulent and illegal process and must be cancelled for the simple reason that the land parcel No Bukhayo/Malanga/663 was never the subject of Busia High Court P&A Cause No 113 of 2009 whose Grant was used to transfer the said land to the 1<sup>st</sup> Defendant leading to its sub-division and culminating in the creation of the said parcels of land and transfer to the Defendants. As was stated by Lord Denning in *Macfoy v United Africa Co. Ltd* 1961 3 ALL ER 1169 at page 1172:

“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado although it is sometimes convenient to have the Court declare it to be so. 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.”

The term fraud is defined in Black’s Law Dictionary 10<sup>th</sup> Edition as:

“A knowing misrepresentation or knowing concealment of material fact made to induce another to act to his or her detriment.”

As is now already clear from the register, the transfer of the land parcel No Bukhayo/Malanga/663 to the 1<sup>st</sup> Defendant on the basis of the Grant issued in Busia High Court P&A Cause No 113 of 2009 was done fraudulently. Titles No Bukhayo/Malanga/2496 and 2497 must therefore be cancelled since they were the result of a fraudulent process.

14. Having said so, the title No Bukhayo/Malanga/663, together with other titles, was the subject of Busia High Court P&A Succession Cause No 134 of 2004 in which the Plaintiff and the 1st Defendant was the beneficiary of some 2.4 acres. The Confirmed Grant issued by J.R KaranjahJ reads in as far as is relevant, as follows:

“Description Of Property L.R No Bukhayo/Malanga/663 & 681

No	Name	Shares
1.	Teresina Adhiambo Otsieno	2.4ha
2.	William Mulukala Otsieno	3.0ha
3.	Robert Haron Obatsa	3.0ha



It follows therefore that notwithstanding the cancellation of the titles to the land parcels No Bukhayo/Malanga/2496 and 2497, the 1<sup>st</sup> Defendant is still entitled to a share as beneficiary to the portion of land parcel No Bukhayo/Malanga/663 measuring 2.4 Acres pursuant to the orders in the Confirmed Grant issued in Busia High Court P&A Cause No 134 of 2004. She should pursue her interest in the land parcel No Bukhayo/Malanga/663 through that Grant in which the 2<sup>nd</sup> Defendant is not a beneficiary. Although the Plaintiff has also prayed for a declaratory order in the alternative, that the land parcel No Bukhayo/Malanga/2947 which the 1<sup>st</sup> Defendant sold to the 2<sup>nd</sup> Defendant be transferred to him and one Robert Haron Obatsa, this Court is not persuaded to take that route. It would be improper to issue such a declaration having found that the creation of the suit land was done through a fraudulent process. In any case, the said Robert Haron Obatsa is already a beneficiary through the Grant issued in Busia High Court Succession Cause P&A No 134 of 2004.

15. On the issue of costs, the suit was not defended. The Plaintiffs shall meet their own costs.
16. Ultimately therefore and having considered all the evidence herein, this Court makes the following disposal orders:
  1. The titles to the land parcels No Bukhayo/Malanga/2946 and 2947 are hereby cancelled.
  2. The Defendants shall within 30 days of this judgment deliver to the Land Registrar Busia for cancellation the above titles and in default, the Land Registrar Busia shall proceed to cancel the register and the same shall revert Bukhayo/Malanga/663 in the name of Otsieno Obatsa Otiseno aka Yonamu Otsieno as per the records in the register dated 5<sup>th</sup> August 1981.
  3. The Plaintiff, the 1<sup>st</sup> Defendant and Robert Haron Obatsa shall pursue their interests in the land parcel No Bukhayo/Malanga/663 in accordance with the Confirmed Grant in Busia High Court Succession Cause No P&A 134 of 2004.
  4. The Plaintiff shall meet his own costs of the suit.

**BOAZ N. OLAO**

**JUDGE**

**24<sup>TH</sup> SEPTEMBER 2025**

**JUDGMENT DATED, SIGNED AND DELIVERED ON THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025  
BY WAY OF ELECTRONIC MAIL.**

**Right of Appeal.**

**BOAZ N. OLAO**

**JUDGE**

