



**Kago v Muchina & 2 others; Mburu (Applicant) (Suing as the Administrator of the Estate of the Late Samuel Mburu Kago - Deceased) (Environment and Land Case 1974 of 2000) [2025] KEELC 6859 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6859 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 1974 OF 2000  
AA OMOLLO, J  
OCTOBER 2, 2025**

**BETWEEN**

**SAMUEL MBURU KAGO ..... PLAINTIFF**

**AND**

**JULIUS MAINA MUCHINA ..... 1<sup>ST</sup> RESPONDENT**

**MARY NYOKABI GAKURU ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF NAIROBI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**LUCY WAMAITHA MBURU ..... APPLICANT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SAMUEL MBURU KAGO - DECEASED**

**RULING**

1. The Applicant has filed the notice of motion dated 4<sup>th</sup> November 2024, supported by the affidavit sworn on the same date by Lucy Wamaitha Mburu and further affidavit by Ann Githogori on 16<sup>th</sup> June 2025, seeking the following orders;
  1. That this Honourable Court be pleased to grant leave to the firm of M/S Githogori and Harrison Associates Advocates LLP to come on record for the Plaintiff and/ or Intended Substitute/Applicant in this matter after judgment was entered on 27<sup>th</sup> June, 2017 by honourable Justice S. Okong'o and the resultant Decree extracted and dated 28th October, 2019.



2. That after the grant of Order (1) above, the Court be pleased to substitute the Plaintiff- the late Samuel Mburu Kago (deceased) with Lucy Wamaitha Mburu who is the administrator of the Estate of the (deceased) for purposes of this application.
  3. That this Honourable Court be pleased to issue an order requiring the Chief Land Registrar Nairobi to effect compliance of, and or implement Order number (2) of the judgment delivered in this suit on 27<sup>th</sup> June, 2017 and the resultant Decree dated 28<sup>th</sup> October, 2019 by nullifying and voiding the title issued to the 2<sup>nd</sup> Defendant over the property known as Nairobi/block 83/143 and issuing the Plaintiff with the Certificate of Lease over the Property known as Plot No. B115, Umoja.
  4. That this Honourable Court be pleased to issue eviction orders against the 2<sup>nd</sup> defendant, its servants, agents and Tenants if any to vacate forthwith the property known as Nairobi/block 83/143 in Umoja, Nairobi.
  5. That the OCS Buru Buru Police Station do assist to carry out the eviction orders as issued.
  6. That the cost of this Application be sourced by the 2<sup>nd</sup> Defendant.
2. The motion was based on the grounds inter alia that Lucy Wamaitha, an administrator of the estate of the late Samuel Mburu Kago, seeks substitution as the plaintiff following the demise of the original plaintiff on 22<sup>nd</sup> October 2020. She was granted Letters of Administration and a Certificate of Confirmation of Grant over the deceased's estate which legally mandated to act on behalf of the estate.
  3. The Applicant referred to the judgment of 27<sup>th</sup> June 2017 by Hon. Justice S. Okong'o, which nullified the title held by the 2<sup>nd</sup> Defendant over land parcel Nairobi/Block 83/14/143. That following the said judgment, the Nairobi City County 3<sup>rd</sup> Defendant complied with the court order and reverted the property to the deceased's name.
  4. However, despite these steps, the Chief Land Registrar has refused to complete the title cancellation and re-registration as ordered, citing that Family Bank, which holds a charge over the title, was not properly enjoined or served. The Applicant clarified that Family Bank was in fact notified via a letter dated 10<sup>th</sup> May 2019, and their failure to respond does not negate the binding nature of the court's ruling.
  5. She emphasized that since the title was declared null and void ab initio, all transactions tied to it including the charge by Family Bank are also void. That the Land Registrar has no discretion to defy implementing a court order and as a result of the Registrar's inaction, the estate continues to suffer prejudice and is denied the fruits of the judgment.
  6. She also avers that the 2<sup>nd</sup> Defendant has refused/failed to vacate the suit property despite the court ruling, causing further injustice. The Applicant pleads with the court to exercise its inherent jurisdiction and compel the Land Registrar to fully implement the judgment, arguing that this is the only way to serve the interests of justice, equity, and fairness.
  7. The 2<sup>nd</sup> Defendant filed grounds of opposition dated 10<sup>th</sup> February 2025 stating that a party is bound by its pleadings and that the Applicant is seeking to amend his pleadings after judgment. That the application is seeking Orders against the Chief Land Registrar who is not a Party to this suit and that the Plaintiff failed to obtain Court Orders seeking to cancel all encumbrances registered against the Property in particular the charge registered to Family Bank Limited.



## Submissions

8. The Applicant filed submissions dated 16<sup>th</sup> June 2025 while 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents filed submissions both dated 7<sup>th</sup> July 2025.
9. The Applicant submitted that the judgment delivered on 27<sup>th</sup> June 2017 by Hon. Justice S. Okong'o is a judgment in rem, not in personam. That the judgment declared the sale agreement and subsequent Certificate of Lease issued to the 2<sup>nd</sup> Respondent null and void, thereby conclusively determining the legal status of the suit property.
10. She stated that under Section 44(2)(d) of the *Evidence Act*, such a judgment binds not only the parties to the suit but also third parties like the Chief Land Registrar and Family Bank. In support the Applicant cited the case of *Okiya Omtatah Okoit v Ministry of Lands & Others* [2017] eKLR, where the Court affirmed that a judgment in rem operates universally and binds even those not party to the suit and the Court of Appeal in *Attorney General v Ndung'u & Others* [2023] KECA 979 (KLR) which reinforced that such judgments conclusively determine title and are enforceable against all.
11. The Applicant argues that the 2<sup>nd</sup> Respondent's opposition, consist merely of grounds of opposition and does not meet the threshold to counter a sworn affidavit. That it contains no evidence, legal citations, or affidavit rebutting the applicant's factual averments and as such, the application remains uncontested in substance.
12. The Applicant submitted that Courts have held that where no replying affidavit is filed, factual claims in the supporting affidavit stand as uncontroverted and in support cited the case of *Daniel Kibet Mutai & 9 Others v Attorney General* [2019] eKLR and *Kennedy Otieno Odiyo & 12 Others v Kenya Electricity Generating Co. Ltd* [2010] eKLR, where courts held that facts in unopposed affidavits must be deemed admitted.
13. The Applicant further submitted that the Chief Land Registrar, though not a party to the original suit, has a statutory duty under Section 80 of the *Land Registration Act*, 2012 to give effect to court judgments that impact land records. That their refusal to register the decree due to Family Bank's non-joinder is legally flawed and in support relied on the case of *Okonga v Inyangala & 3 Others* [2024] KESC 5906 (KLR), where the High Court held that the Land Registrar, as a custodian of land records, can be compelled to act on court orders even if not party to the original proceedings.
14. Similarly, in *Republic v County Land Registrar, Narok; Ex Parte Zubeda Bhachu* [2021] eKLR, the Court emphasized that public officers like registrars must implement court decisions affecting land ownership. She stated that the Registrar's role is ministerial, not adjudicatory, and defiance of a valid court order, especially a judgment in rem, undermines the rule of law.
15. The Applicant contended that once the title itself was declared null and void, all derivative interests including any charges registered by Family Bank are rendered equally null, thus no separate order is needed to cancel the charge. She argued that the principle of *nemo dat quod non habet* applies and 2<sup>nd</sup> Respondent's title being void, then they could not have validly created a charge over the property noting that the lease was already revoked by Nairobi County, and the title reverted to the deceased's name.
16. The Applicant relied on the case of *Republic v County Chief Officer, Finance, Nairobi City County* [2018] eKLR and *Econet Wireless Kenya Ltd v Minister for Information* [2005] 1 KLR 828, where courts held that public officers must obey valid court orders, and that no one may disobey them on the pretext of procedure.



17. The Applicant sought for eviction order against the 2<sup>nd</sup> Respondent, who has unlawfully occupied the suit property for over seven years despite the Court's judgment nullifying their title. She asserted that while the original judgment did not explicitly order eviction, courts are empowered to grant consequential reliefs to enforce their judgments and in support cited the case of *Park Towers Ltd v John Mithamo* [2017] eKLR, where the Court held that once proprietary rights are declared, eviction orders may follow to effectuate the decision.
18. That under Section 152B of the *Land Act*, unlawful occupants may be evicted from private land and she also request for police assistance under Section 22 of the *National Police Service Act* due to the 2<sup>nd</sup> Respondent's persistent non-compliance, which raises a reasonable apprehension of resistance.
19. The 2<sup>nd</sup> defendant submitted that their grounds of opposition are properly on record and constitute valid opposition to the plaintiff's application citing Order 51 Rule 14(1) of the Civil Procedure Rules which allows a respondent to file a notice of preliminary objection, replying affidavit, and/or a statement of grounds of opposition.
20. She further submitted that the court's judgment granted the plaintiff only declaratory reliefs voiding the sale agreement, assignment, and the 2<sup>nd</sup> defendant's lease. That there was no declaration of ownership, no order directing the Chief Land Registrar to reissue a title, and no prayer granted for eviction. The 2<sup>nd</sup> Respondent submitted that the Applicant is improperly attempting to seek substantive reliefs post-judgment, which is impermissible, noting that the court is now functus officio, having fully adjudicated the matter.
21. In support she cited the case of *Board of Trustees Full Gospel Churches of Kenya v Commissioner of Lands & 2 others* [2025] KEELC 4732, where a post-judgment application for eviction and injunction was dismissed as those orders had not been sought or granted in the main suit.
22. The 2<sup>nd</sup> Respondent further stated that the plaintiff relies on obiter remarks in the judgment regarding her unlawful entry, but contend that these did not crystallize into any ownership or eviction orders. That the Applicant's reliance on the decision in *Park Towers Ltd v John Mithamo* [2017] eKLR is misplaced, as that case involved a clear judicial declaration of ownership, which is absent here.
23. Further, the 2<sup>nd</sup> Respondent submitted that the plaintiff has not complied with Section 157E of the Land Laws (Amendment) Act, which sets procedural safeguards before eviction and without a declaration of ownership and compliance with statutory requirements, the plaintiff lacks locus standi to seek eviction at this stage.
24. The 3<sup>rd</sup> Respondent submitted that the Applicant seeks mandatory injunctions compelling the Chief Land Registrar to cancel the 2<sup>nd</sup> Defendant's title and issue a Certificate of Lease in her favour, alongside eviction orders, however, as established in *Kenya Breweries Ltd v Washington Okeyo* [2002] EA 109, a mandatory injunction can only be granted in clear and compelling cases or where special circumstances exist.
25. It submitted that the Applicant must meet a higher threshold than that required for a prohibitory injunction, as emphasized in *Malier Unissa Karim v Edward Oluoch Odumbe* [2015] eKLR and *Nation Media Group & Others v John Harun Mwau* [2014] eKLR.
26. The 3<sup>rd</sup> Respondent submitted that in this case, the Applicant has not met this burden particularly given that the judgment she relies upon did not declare her the lawful owner nor grant eviction or title issuance orders.



27. Further, that the Applicant has not demonstrated compliance with the legal framework governing land allocation, including failure to provide a Part Development Plan (PDP), cadastral survey, or beacon certificate which are key procedural steps highlighted in *African Line Transport Co. Ltd v AG* (2007) eKLR and *Nelson Kazungu Chai v Pwani University College* (2014) eKLR.
28. It stated that these documents are necessary for authentication by the Director of Surveys and subsequent issuance of a land reference number and Certificate of Lease. Therefore, without them, his entitlement to the land remains unproven.
29. On eviction, the 3<sup>rd</sup> Respondent relied on the case of *Kamau Mucuha v Ripples Ltd* [1993] eKLR, citing *Shepherd Homes Ltd v Sandham* (1970) the court cautioned against granting mandatory injunctions where dismantling existing structures may cause irreparable harm, especially when ownership is disputed.

### **Analysis and Determination:**

30. There is no challenge to the grant of the orders seeking change of advocate post judgment and substitution of the deceased plaintiff (prayers 1 & 2 of the motion). Hence, the same is granted as prayed.
31. The dispute which is for this court's determination relates to prayers 3-5 of the application which essentially refers to the interpretation of the judgement. I have read the judgment of S. Okongo J delivered on 27<sup>th</sup> June 2017. Page 7 which is the final page of the judgment read thus;

“Since the 2<sup>nd</sup> Defendant did not have a valid title over the suit property, it was wrong for the 3<sup>rd</sup> Defendant to approve plans for development which she wanted to commence on the suit property. The 2<sup>nd</sup> Defendant's entry on the suit property was also unlawful because the property belonged to the deceased and she had no authority from the deceased to enter the premises or to carry any construction thereon.”
32. Under paragraph 4 of the application, an order for eviction is sought. The 2<sup>nd</sup> Defendant is arguing that no eviction order was sought and none was granted. Any person reading the quoted part of the judgment gets the impression that the judge found the 2<sup>nd</sup> Defendant is on the suit land unlawfully. To allow her to continue staying on the land because no order of eviction was made is to perpetuate an illegality.
33. Further, her title to the suit land was revoked which would bring to question the basis upon which she wants to continue staying on the land. The court granted prayer bA of the plaint which read thus

“a declaration that the certificate of lease in respect of LR NO Nairobi block/83/14/143 issued on 6<sup>th</sup> November 2001 to the 2<sup>nd</sup> Defendant is null and void”
34. The order implies that the certificate of title of the 2<sup>nd</sup> Defendant ceased to exist. Plus the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was also declared null and void and the subsequent assignment dated 19<sup>th</sup> July 2000. Section 80(10) of the *Land Registration Act* provides thus;

“(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.”



35. I assume that since the registration of the 2nd Defendant has been nullified, the records should be amended to reflect the Plaintiff's name. The charge in favour of Family Bank Ltd was in favour of the 2nd Defendant, and since it was registered on the nullified title, it cannot be transferred to the Plaintiff. This is because the privity of contract exists only between the bank and the 2nd Defendant.
36. The office responsible for recording the nullification of the certificate of lease in the name of the 2nd Defendant is the Land Registrar, who by law maintains records of all titles as outlined in section 7 of the *Land Registration Act*. It does not need to be a party to a case to issue such an order, and during the process of record rectification, it is to enter or register the plaintiff's name as the registered owner of L.R No Nairobi Block 83/143.
37. The re-issuance of the title to the Plaintiff follows the rectification of the record. It is an administrative act, not a new issue requiring litigation for this court to issue an order. Since the Applicant already possesses a decree that has not been set aside or reviewed, I conclude that the application is merited.
38. Consequently, I allow the motion and grant the orders thus;
- a. That this Honourable Court does grant leave to the firm of M/S Githogori and Harrison Associates Advocates LLP to come on record for the Plaintiff and/ or Intended Substitute/ Applicant in this matter after judgment was entered on 27th June, 2017 by honourable Justice S. Okong'o and the resultant Decree extracted and dated 28th October, 2019.
  - b. That an order is made substituting the Plaintiff- the late Samuel Mburu Kago (deceased) with Lucy Wamaitha Mburu as the administrator his Estate of the (deceased) for purposes of this application.
  - c. That this Honourable Court do issue an order directing the Chief Land Registrar Nairobi to effect compliance of, and or implement Order number (2) of the judgment delivered in this suit on 27th June, 2017 and the resultant Decree dated 28th October, 2019 by nullifying and voiding the title issued to the 2nd Defendant over the property known as Nairobi/block 83/143 and issuing the Plaintiff with the Certificate of Lease over the Property known as Plot No. B115, Umoja.
  - d. That this Honourable Court directs the 2nd defendant, its servants, agents and Tenants if any to surrender vacant possession of the property known as Nairobi/block 83/143 in Umoja, Nairobi within sixty (60) days of this order. In default, the Plaintiff at liberty to evict using lawful means.\*\*
  - e. That the OCS Buru Buru Police Station to assist with security during the eviction exercise.
  - f. Cost of this application be paid by the 2nd Defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THE 2<sup>ND</sup> DAY OF OCTOBER, 2025.**

**A. OMOLLO**

**JUDGE**

