



REPUBLIC OF KENYA



**Mutio & 2 others v Mukuthi (Environment and Land Case E015 of 2022)  
[2025] KEELC 7026 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7026 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND CASE E015 OF 2022**

**EO OBAGA, J**

**OCTOBER 16, 2025**

**BETWEEN**

**BETTY MUTIO ..... 1<sup>ST</sup> PLAINTIFF**

**MARGARET KANINI MUTUA ..... 2<sup>ND</sup> PLAINTIFF**

**ROSE NDUNGE MUTUA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**DOMITILLA MUTUNGI MUKUTHI ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs filed the suit herein vide the Plaint dated 21<sup>st</sup> June, 2022. They prayed for the following orders against the Defendant: -
  1. An order of declaration that land Parcel No. Makueni/Nguu Ranch/1984 belongs to the Plaintiffs.
  2. An order of permanent injunction be granted against the Defendant, her agents, servants and or anyone acting or claiming through her from trespassing, entering, evicting or in any other manner interfering with the parcel of land number Makueni/Nguu Ranch/1984.
  3. An order of eviction.
  4. Costs of the suit.
  5. Any other or further relief that this Honourable Court may deem fit and just to grant.
2. The Defendant filed a Statement of Defence on 2<sup>nd</sup> August, 2022 denying the Plaintiffs' claim and urging that the suit be dismissed with costs. She pleaded the doctrine of adverse possession



3. The Plaintiffs filed a reply to defence on 23<sup>rd</sup> September, 2022 reiterating the contents of plaint and urging them to enter judgment as sought.
4. The Plaintiffs called one witness at the hearing of their case and by virtue of the authority to swear dated 21/6/2022, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants appointed Rose Ndunge Mutua to represent them in these proceedings.
5. PW1, Rose Ndunge Mutua, adopted her statement that was filed in court on 22/6/2022 as her evidence in chief. In addition, she produced the list and bundle of documents of even date as PEX 1 – 5 respectively in support of her evidence.
6. It is PW1's case that the suit property land Parcel No. Makueni/Nguu Ranch/1984 is registered in the name of Joshua Mutua Mutisya (Deceased) who was their father and that the said land devolved to the Plaintiffs by virtue of the Certificate of confirmation of grant issued to them on 21/4/2021 in Makueni SPMSC No. 61 of 2017.
7. She averred that the Defendant trespassed into the suit property in the year 2022 and that she has constructed a structure thereon. She urged the court to issue the orders sought in the Plaint.
8. On cross-examination by the Defendant, PW1 averred that the land is registered in the name of her father and that she has a title deed in that respect.
9. The Defendant called two witnesses at the hearing of her case.
10. DW1, Domitilla Mutungi Mukuthi adopted her statement dated 11/03/2024 as her evidence in chief. She also produced the list and bundle of documents that was filed in court on 25/9/2023 as DEX 1 – 4 respectively.
11. DW1 averred that she does not know the Plaintiffs and that they instituted this suit after her husband died. It was her case that she is a member of Nguu Ranching Cooperative Society and that the suit property was allocated to her husband Daniel Ndambuki Mutua in the year 1996. She further averred that she has cultivated the suit property in addition to building permanent structures thereon.
12. On cross-examination by Mr. Kithuka, DW1 stated that her husband was allocated land Parcel No. Makueni/Nguu Ranch/1893 by Nguu Ranching Co-operative Society by virtue of his membership. She asserted that she does not know Joshua Mutua (Deceased). She contended that she is still waiting to be issued with a title deed for the suit property.
13. DW1 contended that she constructed the houses appearing in PEX 4. DW1 denied being summoned by the Ward Administrator to avail her documentation in relation to the ownership of the suit property. DW1 acknowledged that she had not filed succession proceedings with respect to the estate of her deceased husband. She reiterated that she was still residing and cultivating the suit property.
14. DW2, Joseph Sanya Mwakavi adopted his statement that was filed on 11/3/2024 as his evidence in chief. He averred that he has been a resident of Nguu area since the year 1997. He averred that he was allocated land as a squatter at Nguu Ranch by former President Daniel Moi. It was his case that he found the Defendant already residing in the suit property. He averred that he is settled next to the Defendant's land as a neighbour and has been residing there to date.
15. On cross-examination, DW2 averred that he does not know the parcel number of the land occupied by the Defendant. He averred that he does not have a title to his own land and that he is a squatter.
16. DW2 testified that he does not know who Daniel Ndambuki Mutua is contending that the Defendant's husband's name was Mutungi Mukuthi. He further testified that he could not recall when



- the Defendant's husband died or whether he was a member of Nguu Ranching Co-operative Society. DW2 stated that he was not aware whether the land occupied by the Defendant had a title or that the same was in the name of Joshua Mutua Mutisya.
17. The parties agreed to dispose of the suit by way of written submissions at the close of their respective cases.
  18. At the time of writing this judgment, only the Plaintiffs had filed their submissions dated 16<sup>th</sup> May, 2025.
  19. Counsel identified the sole issue for determination as whether land Parcel No. Makueni/Nguu Ranch/1984 belongs to the Plaintiffs.
  20. Counsel submitted that the suit property is registered in the name of the Plaintiffs' father, Joshua Mutua Mutisya. That upon his death, the Plaintiffs filed succession proceedings vide Makueni SPMSC No. 61 of 2017. Counsel contended that by virtue of the certificate of confirmation of grant issued subsequently, the suit property was allocated to the Plaintiffs.
  21. Counsel submitted that whereas the Plaintiffs had adduced a certificate of title to the suit property, the Defendant did not avail any evidence to prove that she owns the land in question. Counsel contended that the membership certificate that was issued to one Daniel Ndambuki Mutua did not confirm her ownership of the suit property. It was further contended that whereas DW1 insisted that Daniel Ndambuki Mutua was her late husband, DW2 otherwise stated that he only knew the husband of the Defendant as Mutungi Mukuthi.
  22. Counsel contended that the Defendant did not adduce evidence to prove her marriage to her late husband Daniel Ndambuki Mutua. In addition, it was pointed out that the Defendant was not an appointed legal representative of the estate of her alleged deceased husband. Counsel submitted that the Defendant is a trespasser in the suit property and that she ought to be evicted accordingly.
  23. After a perusal of the pleadings, the evidence and submissions herein, the following particulars are not in dispute: -
    - i. The suit property Parcel No. Makueni/Nguu Ranch/1984 is registered in the name of Joshua Mutua Mutisya.
    - ii. Joshua Mutua Mutisya died in or about 30/4/2016
    - iii. The Plaintiffs were confirmed as the administrators of his estate vide the Certificate of Confirmation of grant issued on 21<sup>st</sup> April, 2021 in Makueni SPMSC No. 61 of 2017.
  24. The apparent issues for determination are as follows: -
    - i. Whether the Plaintiffs are the lawful proprietors of the suit property;
    - ii. Whether the Defendant has acquired the suit property through adverse possession; and
    - iii. Whether they are entitled to an order of evictions against the Defendant.
  25. Section 26(1) of the *Land Registration Act*, 2012 outlines as follows:-

‘The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—



- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.’
26. It is the Plaintiffs’ case under paragraphs 7 and 8 that the suit property is registered in the name of Joshua Mutua Mutisya as per the Title deed that was produced as PEX 1. The Plaintiffs averred that Joshua Mutua Mutisya is their deceased father and that the land devolved to them as beneficiaries of his estate. To support this assertion, PW1 produced PEX 3 which is the Certificate of confirmation of grant showing that the land was allocated to them.
  27. In her defence, the Defendant contended that the suit property was allocated to her late husband Daniel Ndambuki in 1996 being a member of Nguu Ranching Co-operative Society Limited. In support of this assertion, she produced DEX 3 which is a copy of payment receipt by Daniel Ndambuki Mutua to Nguu Ranching Co-operative Society Limited.
  28. It is noteworthy that the said receipt does not indicate the Plot No. that was allocated to Daniel Ndambuki let alone the suit property. In her evidence, the Defendant insisted that her husband was allocated Parcel No. Makueni/Nguu Ranch/1893 which is a distinct property from Parcel No. Makueni/Nguu Ranch/1984. Whereas the payment receipt in favour of Daniel Ndambuki Mutua was issued on 19/3/1979, the Defendant did not avail any other document to support her claim of ownership. The Defendant did not even avail proof that indeed she was the legal representative of the estate of Daniel Ndambuki Mutua whom she claims to derive her ownership claim to the suit property from. The Defendant having maintained that she had nothing to do with LR No. Makueni/Nguu Ranch/1984, she cannot claim the land by way of adverse possession. Her evidence and earlier affidavits show that she had stated that her late husband was allocated Makueni/Nguu Ranch/1893. She did not produce any evidence to show that her husband was given LR. No. Makueni/Nguu Ranch/1893.
  29. In the statement of defence, the Defendant alleged that the suit property had been fraudulently registered in favour of the Plaintiff. In Bullen & Leake & Jacob’s, Precedents of Pleadings 13<sup>th</sup> Edition at pg 427, the authors outlined as follows:-
 

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford -vs- Mutual Society (1880) 5 App. Cas.685 at 697, 701, 709, Garden Neptune -vs- Occidental [1989] 1 Lloyd’s Rep. 305,308). The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrance -vs- Lord Norreys (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved (Davy -vs- Garrett (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice.”
  30. Similarly, in the case of Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR Tunoi JA (as he then was) adopted the above position when he aptly held as follows: -
 

“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 as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

31. The Defendant did not prove the fraudulent acts she had complained of against the Plaintiffs as she bore the burden of proof thereof. Section 107 (1) of the *Evidence Act* outlines as follows: -

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.

32. In determining whether a case has been proved in accordance with the required legal standard, the Court observed as follows In re Estate of Francis Waita Mbaki (Deceased) [2018] eKLR,: -

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind the factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighting the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be evidence that it did occur before, on the balance of probability, its occurrence will be established.”

33. Section 25 (1) of the *Land Registration Act*, 2012 protects the title of a registered proprietor in the following terms: -

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b. To such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

34. From the foregoing, it is clear that the Plaintiffs have established lawful proprietorship of the suit property. On the other hand, the Defendant did not successfully challenge the Plaintiffs’ title to the suit property or prove her claim of adverse possession.

35. There being no evidence in support of the Defendant’s claim of ownership of the suit property or acquisition by way of adverse possession, the Plaintiffs have conclusively established that the Defendant is a trespasser and that an order of eviction is an appropriate relief. The permanent houses on the suit property were under construction in 2022. There is therefore no evidence that the Defendant had been in possession of the suit property from 1996 as claimed. Her claim for adverse possession is dismissed.

36. Accordingly, it is the finding of this court that the Plaintiffs have established their claim against the Defendant on a balance of probabilities. The suit is hereby allowed in terms of prayers (1), (2), (3) and (4) of the Plaint.



**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....

**HON. E. O. OBAGA**

**JUDGE**

In the absence of parties who were aware of the date and time of delivery of judgment.

Court assistant - Nelima.

