



**Odhiambo & 2 others v Odhiambo (Environment and Land Case
33 of 2020) [2025] KEELC 6496 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6496 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND CASE 33 OF 2020**

**MN KULLOW, J
OCTOBER 1, 2025**

BETWEEN

**DANIEL OPIYO ODHIAMBO 1ST PLAINTIFF
NICHOLAS HABAZA ODHIAMBO 2ND PLAINTIFF
ANDREW ODHIAMBO 3RD PLAINTIFF**

AND

JANES ORUONGO ODHIAMBO DEFENDANT

JUDGMENT

1. The Plaintiffs commenced this suit by way of a Plaint dated 09.03.2020 and Amended on 4th March, 2022 against the Defendant seeking the following orders: -
 - i. An Order of Revocation and annulment of resultant and irregular subdivision of parcels to wit; Suna West/ Wasweta II/1090, 1091, 6041 & 6749 and the same to revert to the original parcel No. L.R. No. Suna West/ Wasweta II/529.
 - ii. Costs of the suit.
 - iii. Any other reliefs this court shall deem fit to grant in the circumstances.

Plaintiffs' Case

2. It is the plaintiffs' claim that the suit parcel No. L.R. No. Suna West/Wasweta II/529 was originally registered in the name of their late father, Odhiambo Onyango.
3. That the defendant without any colour of right or lawful justification and in collusion with the Land Registrar, proceeded and subdivided the original parcel of land into 4 portions; Suna West/Wasweta II/1090, 1091, 6749 and 604.



4. They aver that their late father had 7 wives; they listed all the wives and their respective children including the defendant herein, who hails from the 6th house.
5. It is however their contention that the defendant fraudulently subdivided the original land parcel and outlined the particulars of fraud thereof and in particular dealing with the property of a deceased person without the due process of court through succession.
6. They therefore argued that it is in the interest of justice that the illegal subdivisions be revoked and for a proper succession process to ensue.
7. They urged the court to allow their claim and grant the orders sought in the Amended Pleint.

Defence Case

8. The Defendant entered Appearance through the firm of Odhiambo Oronga & Co. Advocates and filed a Statement of Defence dated 26th August, 2020.
9. He admitted/confirmed that the original suit parcel L.R. No.Suna West/ Wasweta II/529 was originally registered in the name of their late father, Odhiambo Onyango.
10. He dismissed the plaintiff's suit as being vexatious, ill-motivated, frivolous, bad in law and amounting to an abuse of the court process.
11. He denied the allegations of fraudulent subdivisions and/or collusion with the Land Registrar, of the original parcel of land, without succession. He further denied the particulars of fraud outlined and put the plaintiffs to strict proof thereof.
12. He maintained that the family and the plaintiffs were all included and directly involved in the transfer of the suit property. He further averred that the properties were transferred in name to hold in trust for the rest of the family members.
13. It was his claim that the 1st plaintiff sold his portion of the suit property to one Peter Ongang. He further contended that all subdivisions and subsequent sales of any portion of the suit land had never been to his benefit.
14. The defendant also argued that the portions identified and allocated to each household remains intact and unsold save where the specific household has individually sold their portions of the suit property.
15. That the suit is thus intended to impeach and dispossess third parties who validly purchased portions of the suit land. He therefore urged the court to dismiss the plaintiffs' suit with costs.
16. Upon close of pleadings, the matter proceeded to hearing.

Trial

17. The Plaintiff's case proceeded for hearing *ex-parte* on 06.07.2023, the 3rd Plaintiff, Andrew Odhiambo testified as PW1 and thereafter closed the plaintiff's case. He adopted his witness statement dated 04.05.2022 as his evidence in chief.
18. He also stated that the suit parcel was registered in the name of their father, who had 7 wives. He confirmed that the defendant is his step-brother.
19. His claim was that the defendant failed to institute succession proceedings in respect of the estate of their late father but went ahead and subdivided the original parcel of land and obtained the title of the suit parcels registered in his name.



20. He also produced the documents on his List of Documents dated 9th March 2020 as Plaintiff Exhibits 1 – 8. He urged the court to grant them the orders sought.
21. In conclusion, he urged the court to revoke the title deed that was illegally acquired and for the same to revert to the name of his late father together with costs of the suit.
22. The plaintiff thereafter closed their case.
23. Despite being served with the hearing notice and an Affidavit of Service duly filed to that effect, the defendant failed to attend court for hearing or send a representative or give a justifiable explanation for his absence. This court therefore deemed his case closed.

Analysis and Determination

24. I have carefully reviewed the amended plaint herein, the statement of defence in response thereto, the witness testimony and the respective exhibits in totality and it is my considered opinion that the following issues arise for determination: -
 - a. Whether this court can issue an order for revocation and annulment in the nature sought.
 - b. Whether the plaintiffs have proved their case to the required standard to warrant the grant of the orders sought.
 - c. Who shall bear the costs of the suit.

A. Whether this court can issue an order for revocation and annulment in the nature sought

25. Section 80 of the of the *Land Registration Act* vests a court of law with the powers to cancel and/ or revoke a certificate of title and provides for instances when a court can order for revocation of a certificate of title.
26. Section 80 (1) and (2) of the *Land Registration Act* states as follows:-
 - (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, 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.”
27. It is not in dispute that the parties herein are all blood related, being siblings from different mothers. It is also not in dispute that the original suit land was registered in the name of Odhiambo Onyango, the father of the parties herein and who is since deceased.
28. It is also common ground that the original parcel of land has since been subdivided into portions, transferred and registered in the name of the defendant. This fact was admitted by the defendant in his statement of defence and further confirmed by the certificate of search produced in support of the plaintiffs’ case.
29. It is also not in contention that no succession process had/has been instituted in respect to the estate of the late Odhiambo Onyango, either at the time of the alleged subdivision and transfer of the suit parcels or at all.



30. The question that therefore follows and which is at the centre of the dispute herein is on what grounds and/or basis was the suit land, which forms part of the estate of the deceased Odhiambo Onyango, subdivided and transferred in the name of the defendant herein.
31. Section 45 of the *Succession Act* states as follows: -
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
32. This court is cognizant of the limits of its jurisdiction and is mindful not to delve into any issue touching on the estate and the division thereof which is the preserve of the High Court, sitting as a family court.
33. The court in the case of *Chemey Investment Limited v Attorney General & 2 others* [2018] eKLR held that title to property that is obtained fraudulently or illegally in violation of the provisions of the statute is not sacrosanct and does not enjoy protection of the law under the repealed Act.
34. Thus, having established no succession proceedings were instituted either at the time of the alleged subdivision and transfer or at all, it is clear that the defendant had no capacity or legal basis whatsoever to deal with the property forming part of the estate of their deceased father.
35. In addition, I must point that the averments made by the defendant that all the family members held a meeting where it was agreed that the land would be subdivided, transferred and registered in his name, to hold in trust for all the family members or that the subsequent sale to third parties was reduced into writing, is not a lawful and justifiable excuse and the same cannot legitimize and take the place of Grant of Letters of Administration issued in succession proceedings.
36. Consequently, it is the finding of this court that the certificate of title held by the defendant in respect of the suit parcels, was acquired unprocedurally, without following the outlined statutory provisions in the Succession Act and is therefore subject for revocation and/or cancellation.

B. Whether the plaintiffs have proved their case to the required standard to warrant the grant of the orders sought.

37. In support of their case, the plaintiffs called one witness, the 3rd plaintiff who testified as PW1 and produced the various documents in their list of documents as Plaintiffs' Exhibits 1-8 in support of their case.
38. In view of the foregoing, it is the finding of this court that the plaintiffs proved their claim satisfactorily and to the required standard and demonstrated that the certificate of title in the name of the defendant was acquired unprocedurally.
39. As a result thereof, I find that they are entitled to the reliefs sought in the Amended plaint.

C. Who shall bear the costs of the suit

40. The general rule is that costs shall follow the event unless for good reason the court directs otherwise.
41. In this case, I do note that the dispute herein is a family dispute and the parties are all blood relatives and I will therefore direct each party to bear their own costs of the suit.



Conclusion

42. The upshot of the above is that the plaintiffs have proved their claim against the defendant and I accordingly allow the Amended Plaint dated 21st September, 2020 on the following terms;
- I. An Order of Revocation and annulment of resultant and irregular subdivision of parcels to wit; Suna West/ Wasweta II/1090, 1091, 6041 & 6749 and the same to revert to the original parcel No. L.R. No. Suna West/ Wasweta II/529 be and is hereby issued.
 - II. Each party shall bear their own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 1ST DAY OF AUGUST, 2025.

MOHAMED N. KULLOW

JUDGE

In presence of; -

N/A for the Plaintiff

N/A for the Defendant

Philomena W. Court Assistant

