



**Mbuthia & another v Land Registrar, Kajiado (Environment and Land Case 7 of 2020) [2025] KEELC 5767 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5767 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 7 OF 2020**

**MD MWANGI, J  
JULY 31, 2025**

**BETWEEN**

**JAYNE MBUTHIA ..... 1<sup>ST</sup> PLAINTIFF**

**LUCY WANGARI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LAND REGISTRAR, KAJIADO ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. By way of a Plaint dated 18th February 2020, the 1st Plaintiff, instituted this suit against the Defendant, the Land Registrar, Kajiado County. The Plaint was amended, to join as the 2nd Plaintiff, the co-owner of the suit property.
2. The Plaintiffs sought, the following orders:
  - a. A declaration that the subdivision envisaged in the Defendant’s records showing that Land Parcel Number Kajiado/Kitengela/3915 has been subdivided is null and void;
  - b. An order directing the Defendant to cancel all titles indicated as Kajiado/Kitengela/31455 to 31471 emanating from the impugned subdivision;
  - c. An order directing that the title deed and green card for Land Parcel Number Kajiado/Kitengela/3915 be reconstructed to reflect the Plaintiffs as the registered co-owners;
  - d. Costs of the suit; and
  - e. Such further or other relief as this Honourable Court may deem fit to grant.



3. It is the Plaintiffs' case that they are the bona fide co-owners of Land Parcel Number Kajiado/Kitengela/3915, situated within Kajiado County at Ongata Rongai and measuring approximately 2.0 hectares. They aver that an official search conducted on the suit property on 18th September 2009, revealed that the Defendant's records indicated a subdivision of the parcel into multiple parcels, marked as land titles Kajiado/Kitengela/31455 to 31471, none of which was ever sanctioned or executed by the Plaintiffs.
4. The Plaintiffs contend that they lodged a report at Ongata Rongai Police Station under Occurrence Book Number 30/03/11/14, reporting that the subdivision and resultant titles were obtained through false pretences and fraudulent means. Despite raising the anomaly with the Defendant and issuing a formal demand, no corrective action was taken to restore the register and green card to reflect the Plaintiffs as the registered co-owners.
5. The Plaintiffs maintain that there is no other suit pending in this Court involving the same subject matter or the same parties. They assert that this Honourable Court is properly vested with the requisite jurisdiction to hear and determine the matter.
6. The Defendant, though duly served with summons to enter appearance, failed to do so within the prescribed period. Consequently, the matter proceeded undefended with the Plaintiffs being allowed to formally prove their claim.

### **Plaintiffs' Evidence**

7. The Plaintiffs, Jane Mbuthia and Lucy Wangari, both testified in support of their case. PW1, Jane Mbuthia, adopted her witness statement as her evidence in chief and further relied on the documents filed alongside the plaint, which were produced as exhibits 1 to 7 in the order listed. She testified that she and the 2nd Plaintiff are the bona fide co-owners of Land Parcel No. Kajiado/Kitengela/3915, having jointly purchased the property in 1992 from Pan Staff Company Limited, an entity formed by employees of Panafric Hotel in Nairobi. She further averred that upon purchase, they were issued with a valid title deed on 31st May 1993, which has at all times remained in their names.
8. PW1 stated that she later discovered, through an official search at the Defendant's offices in Kajiado on 18th September 2014, that the suit property had been subdivided into numerous subdivisions without her knowledge or consent. She emphasised that neither she nor her co-owner, the 2nd Plaintiff, had ever applied for or approved such subdivision, nor had they undertaken any of the statutory processes required for a lawful subdivision. She testified that upon learning of the subdivision, she immediately placed a caution on the title to protect her and her co-owner's interests. She further reported the matter to Ongata Rongai Police Station, where it was booked under OB No. 30/03/11/14, citing fraud and acquisition by false pretences.
9. In her testimony, PW1 attributed the irregular subdivision to one Daniel Katei ole Ibrahim, who has since passed away, stating that he carried out the purported subdivision without their consent. She lamented that despite reporting the anomaly and making formal demands, the Defendant has to date failed to rectify its records and reinstate the register to reflect the Plaintiffs as the lawful owners of the original parcel. She reiterated her prayer for cancellation of the purported subdivisions and restoration of the register to its status prior to the irregular entries, noting that the continued state of affairs exposes them to the real risk of loss of their retirement investment.
10. PW2, Lucy Wangari, equally adopted her witness statement as her evidence in chief and fully associated herself with the testimony of PW1. She confirmed that she is the co-owner of the suit property and that at no time did she consent to or approve the subdivision reflected in the Defendant's records. She too



urged the Court to grant the prayers in the plaint, contending that the subdivisions were irregularly and fraudulently effected, and that their proprietary rights ought to be protected.

11. Having carefully evaluated the uncontroverted evidence tendered by the Plaintiffs, I note that the Defendant, despite being duly served, neither entered appearance nor filed a defence. The Defendant, being the custodian of land records, has offered no explanation for the anomaly or for its failure to rectify its register despite demand.

### **Issues of Determination**

12. Upon consideration of the pleadings, the evidence tendered and the submissions filed, the Court is of the view that the following issues arise for determination:
  - i. Whether the Plaintiffs are the legal owners of Land Parcel No. Kajiado/Kitengela/3915; and
  - ii. Whether the Plaintiffs are entitled to the reliefs as sought in the Plaint.

### **Analysis and Determination**

#### **i. Whether the Plaintiffs are the legal owners of Land Parcel No. Kajiado/Kitengela/3915**

13. Section 26(1) of the [Land Registration Act](#), 2012 provides that:

“The certificate of title issued by the Registrar ... 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.”

14. Further, the case of *Elijah Makeri Nyangw’ra v Stephen Mungai Njuguna & Another* [2013] eKLR affirmed that:

“Although it has been held time without end that the certificate of title is ... conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, ownership can only be challenged on the ground of fraud or misrepresentation to which the person must be proved to be a party ... Section 26 of the [Land Registration Act](#) ... confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner ... except on the ground of fraud or misrepresentation ... or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

15. It is not in dispute from the evidence that the plaintiffs acquired the suit property in 1992 under Pan Staff Company Limited and were issued with a valid title on 31st May 1993. The 1st Plaintiff testified that neither she nor the 2nd Plaintiff ever consented to any subdivision of the land and that upon discovering the unauthorized subdivision she placed a caution on the property. PW2 adopted her witness statement and confirmed that she never consented to the subdivision and supported PW1’s evidence. The Defendant did not enter appearance, and no evidence was presented to contradict the Plaintiffs’ testimony or the exhibits produced.



16. The Plaintiffs' certificate of title stands as prima facie evidence of ownership, and no evidence has been adduced to challenge its validity on grounds of fraud, misrepresentation, illegality, or procedural impropriety involving the Plaintiffs. The purported subdivision was effected by a third party, Daniel Katei ole Ibrahim, now deceased, without the Plaintiffs' knowledge or participation. There is no proof that the Plaintiffs were party to any fraud or irregularity in obtaining their title.
17. In light of the foregoing, the Court finds that the Plaintiffs are the legal owners of Land Parcel No. Kajiado/Kitengela/3915. Their title remains valid and constitutes prima facie evidence of ownership that has not been displaced by any contrary evidence. This issue is therefore answered in the affirmative.

**ii. Whether the Plaintiffs are entitled to the reliefs as sought in the Plaint.**

18. Section 80(1) of the *Land Registration Act*, 2012 empowers this Court to order rectification of the register where a registration has been obtained, made, or omitted by fraud or mistake. It provides:

“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 the registration was obtained, made or omitted by fraud or mistake.”
19. In addition, Section 79(2) of the same Act provides:

“The Registrar may rectify the register or any instrument presented for registration in the following cases— (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor; (b) in any case and at any time with the consent of all affected parties; or (c) if upon resurvey a dimension or area shown in the register is found to be incorrect.”
20. The Court of Appeal in *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR emphasised that:

“The law is extremely protective of title, and provides only two instances for challenge of title, firstly, where the title is obtained through fraud or misrepresentation to which the person is proved to be a party, or, secondly, where the title has been acquired illegally, unprocedurally or through a corrupt scheme.”
21. From the evidence tendered, PW1 testified that she and the 2nd Plaintiff are the registered proprietors of Land Parcel No. Kajiado/Kitengela/3915, which they lawfully acquired and for which they hold a valid title issued on 31st May 1993. They did not at any time apply for or consent to its subdivision. Upon conducting an official search at the Defendant's offices, PW1 discovered that the property had been irregularly subdivided into multiple parcels without their knowledge or authority, prompting her to place a caution to safeguard the property. PW2 corroborated PW1's testimony supporting the prayer for cancellation of the unlawful subdivisions and restoration of the title.
22. The Defendant, despite service, failed to enter appearance or adduce evidence to rebut the Plaintiffs' claims or explain the circumstances under which the subdivision was effected. In the absence of any contrary evidence, the Plaintiffs' testimony stands uncontroverted. The Court is satisfied that the subdivision as reflected in the Defendant's records was carried out irregularly and without the consent or knowledge of the lawful proprietors, and that the Plaintiffs continue to suffer prejudice as a result.
23. Consequently, the Court finds that the Plaintiffs have established their entitlement to the declaratory and restorative reliefs sought. The subdivision of Land Parcel No. Kajiado/Kitengela/3915 into parcels



31455 to 31471 as reflected in the Defendant's records is hereby declared null and void. The Defendant is ordered to cancel all resultant titles and rectify its records by reconstructing the green card and title of Land Parcel No. Kajiado/Kitengela/3915 in the names of the Plaintiffs as the last lawful entries.

24. Accordingly, the Court enters judgment in favour of the Plaintiffs against the Defendant as follows:

1. It is hereby declared that the subdivision of Land Parcel Number Kajiado/Kitengela/3915, as reflected in the Defendant's official records and resulting in the creation of parcel numbers 31455, 31456, 31457, 31458, 31459, 31460, 31461, 31462, 31463, 31464, 31465, 31466, 31467, 31468, 31469, 31470, and 31471, is null and void.
2. The Defendant is directed to forthwith cancel all the said resultant titles in its official land records.
3. The Defendant shall rectify and reconstruct the green card and title deed of Land Parcel Number Kajiado/Kitengela/3915 to reflect the Plaintiffs, Jayne Mbuthia and Lucy Wangari, as the registered proprietors as per the last lawful entries prior to the irregular subdivision.
4. For avoidance of doubt, all entries, subdivisions, or transactions founded on the impugned subdivisions stand cancelled.
5. The Plaintiffs are awarded the reliefs sought in the plaint to the extent specified above.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Nyaga for the plaintiffs

No appearance for the defendants.

Court assistant- Edwin

**M.D. MWANGI**

**JUDGE**

