



**Akuma v Ontita & another (Environment and Land Petition
5 of 2019) [2025] KEELC 7244 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7244 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND PETITION 5 OF 2019**

M SILA, J

OCTOBER 21, 2025

BETWEEN

JAMES OMARE AKUMA PETITIONER

AND

PASKARIA MOIGE ONTITA 1ST RESPONDENT

LAND REGISTRAR, KISII COUNTY 2ND RESPONDENT

JUDGMENT

1. This suit was commenced vide a petition which was filed on 16 July 2019. The petition was subsequently amended on 5 December 2019. The case of the petitioner is that he is the registered proprietor of the land parcel Central Kitutu/Mwamanwa/2720 which resulted from a subdivision of the land parcel Central Kitutu/Mwamanwa/34 (parcel No.34). It is averred that this parcel No. 34 was registered in the name of one William Akuma who died in 1995 (the deceased). The petitioner is one of the four sons of the deceased and he avers that his father had demarcated the land to his four sons before his death. It is contended that the 1st respondent through Kisii High Court Succession Cause No. 209 of 2000, of which the petitioner was not a party, obtained an order to have the land parcel No. 34 subdivided into two portions. The petitioner pleads that the estate of the deceased is administered by one Joseph Mose Akuma vide Kisii High Court Succession Case No. 227 of 2000 and that the said Joseph transferred the suit land to the petitioner in February 2018. The petitioner avers that vide a letter of May 2019, the 2nd respondent (Land Registrar, Kisii) wrote to say that he has cancelled the title of the petitioner pursuant to a court order issued in Kisii High Court Succession Cause No. 209 of 2000. The petitioner contends that the order relied upon by the 2nd respondent does not relate to the land parcel No. 2720 and that he was not party to issue of the said order. He thus asks for the following orders :

- a. That the purported cancellation of the title Central Kitutu/Mwamanwa/2720 is illegal, null and void.



- b. That pending the hearing and determination of this petition, the respondents, their agents and/or servants be restrained from in any way dealing with or interfering with land parcel Central Kitutu/Mwamanwa/2720 whose boundaries are delineated on the ground.
 - c. Costs of this petition.
 - d. Any other or further relief as the court may deem fit to grant.
2. The 1st respondent filed a replying affidavit to oppose the motion. She deposed that she is daughter of Nicholas Nyangeri and Maria Kemunto Nyangeri (both deceased). She elaborated that Nicholas Nyangeri was a brother of William Akuma. She deposed that her father died before adjudication and that during adjudication, the land parcel No. 34 got registered in name of William Akuma but he held half of it in trust for the estate of her late father. She deposed that William Akuma died before he surrendered this half portion to her mother. Her mother died and she obtained a grant to represent her estate vide Kisii High Court Succession Cause No. 107 of 1999. She also applied for a grant in respect of the estate of the late William Akuma vide Kisii High Court Succession Cause No. 209 of 2000. She deposed that after she had filed this case, one of the sons of William Akuma by name of Joseph Mose Akuma, proceeded to file another succession case in respect of the estate of the late William Akuma, being the case Kisii High Court Succession Cause No. 227 of 2000 and obtained a grant. She averred that Joseph Mose Akuma without having obtained a confirmation of the grant, unlawfully caused the land parcel No. 34 to be registered in his name. She has further averred that the dispute relating to the succession matter of William Akuma was referred to arbitration by the court to the District Officer, Mosoch, and an award was made that she gets half the land parcel No. 34. She avers that Joseph Mose Akuma filed an application to set aside this award but the application was dismissed. He then filed an appeal to the Court of Appeal which was dismissed in a judgment delivered on 29 July 2011. She avers that despite this, Joseph Akuma secretly applied to subdivide the land parcel No. 34 into the portions No. 2718, 2719 and 2720. She avers that she took the judgment of the Court of Appeal to the Land Registrar, who upon perusal, called Joseph Mose Akuma to attend, but he refused, and after listening to her, he cancelled the subdivisions. She has added that she has applied to execute the decree of court. She avers that if he was aggrieved by the actions of the Land Registrar, the petitioner ought to have filed a Judicial Review application.
3. The 2nd respondent filed a replying affidavit sworn by Charles Ayienda, the Kisii County Land Registrar. He has given a history of the suit land. He has deposed that William Akuma was the first registered proprietor of the land parcel No. 34, measuring approximately 6 acres. On 28 March 1994, a restriction was registered by one Catherine Nyangeri. On 12 June 2001, Joseph Mose Akuma, lodged documents claiming that he has undertaken succession as a result of which the restriction was removed and he got registered as proprietor. Mr. Ayienda deposes that his perusal of the file does not show any confirmed grant in favour of the said Joseph Mose Akuma and he therefore got himself registered as proprietor of the land parcel No. 34 through fraud. On 10 November 2017, Joseph Mose Akuma subdivided the parcel No. 34 into three portions i.e parcel No. 2718, 2719 and 2720, which according to him, was illegally done. Mr. Ayienda does not see any substance in the petition and urges that it be dismissed.
4. I directed that the petition be argued by way of written submissions and I have taken note of the submissions filed by Mr. G.J.M Masese, learned counsel for the petitioner, and Mr. Momanyi Aunga, learned counsel for the 1st respondent. I have also gone through the material filed and the annexures thereto.
5. I discern that the land parcel No. 34 was indeed registered in the name of William Akuma. He died in 1995. I see that the 1st respondent filed Kisii High Court Succession Cause No. 209 of 2000 and



applied to represent his estate. One Joseph Mose Akuma, a brother of the petitioner, also filed a separate cause of his own, being Kisii High Court Succession Cause No. 227 of 2000. He obtained a grant, but before it could be confirmed, Joseph Mose Akuma caused himself to be registered as proprietor of the land parcel No. 34 on 12 June 2001. His registration was entered as Entry No. 5 in the register of the land parcel No. 34. The issue that arose in the succession case of William Akuma was whether the 1st respondent was entitled to a share of his estate as comprised in this land parcel No. 34. This dispute was referred to arbitration before the District Officer, Mosochi, by the High Court, and an award was made holding that the 1st respondent is entitled to half share of the land parcel No. 34. The award was adopted by the High Court on 18 July 2003. Aggrieved, Joseph Mose Akuma filed an appeal to the Court of Appeal, being the case Kisumu Court of Appeal, Civil Appeal No. 91 of 2005. The appeal was heard and judgment delivered on 29 July 2011. The Court of Appeal dismissed the appeal, meaning that the position remained that the 1st respondent was entitled to half share of the land parcel No. 34. It would appear that despite the award, its adoption by the High Court, and the judgment of the Court of Appeal, Joseph Mose nevertheless proceeded to cause the land parcel No. 34 to be subdivided into three portions, registered as parcels No. 2718, 2719 and 2720. He registered the subdivisions on 15 February 2018 and they were entered as entry No. 6 in the register of the land parcel No. 34. I see that on 19 September 2018, the Land Registrar cancelled this entry No. 6 i.e cancelled the subdivisions and it is this that the petitioner is aggrieved about.

6. In the meantime, I observe that there have been developments on the two succession matters i.e Kisii High Court Succession Cause No. 209 of 2000 and Kisii High Court Succession Cause No. 227 of 2000. Through a ruling delivered on 23 April 2020, the High Court (Ougo J) ordered a consolidation of the two suits and directed that proceedings continue within Succession Cause No. 209 of 2000. The court also revoked the grant issued to Joseph Mose Akuma on 2 May 2001 in Succession Cause No. 227 of 2000. Significantly, in that ruling, the Court made the following order which was order No. (iv) in the ruling :
 - (iv) Kisii County Land Registrar shall cancel entry No. 5 in the register of land parcel title No. Central Kitutu/Mwamanwa/34 and reinstate the name of the late William Akuma in the register.
7. The net effect of this order was to nullify any subdivision made in respect of the land parcel No. 34. In essence that order nullified the titles No. 2718, 2719 and 2720. These orders were made in light of the fact that there was already judgment in favour of the 1st respondent for half of the suit land and thus Joseph Mose Akuma could not have legally subdivided the land parcel No.34 into three portions and transfer them to himself and his brothers in disregard of the order that half share of the parcel No. 34 should belong to the 1st respondent.
8. The petitioner may question that the Land Registrar had no power to unilaterally cancel his title to the land parcel No. 2720. However, it will be an academic exercise, and moot, for me to interrogate the Land Registrar's decision. This is because the High Court, through the orders made on 23 April 2020 effectively nullified the title of the petitioner by making the order that the land reverts back to the title No. 34 in name of William Akuma. With that order, it cannot now be contended that the title No. 2720 exists any more. I cannot make orders over a title that has already been nullified by another court and which no longer exists. I would have thought that in light of the orders of the High Court, the petitioner would have seen for himself that there is no longer any substratum in his case and withdraw it but he did not.
9. The only choice I have is to proceed to dismiss this petition, and it is hereby dismissed, with costs to the respondents.



10. Orders accordingly.

DATED AND DELIVERED THIS 21 DAY OF OCTOBER 2025.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. G.J.M Masese for the petitioner

Mr. Momanyi Aunga for the 1st respondent

Mr. Denis Wabwire for the 2nd respondent

Court Assistant – Michael Oyuko

