



**Mima v Mima & 2 others (Environment and Land Appeal E028 of 2023)
[2025] KEELC 7302 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7302 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E028 OF 2023
A NYUKURI, J
OCTOBER 15, 2025**

BETWEEN

FRED REUBEN MIMA APPELLANT

AND

JONES BERENETA MIMA 1ST RESPONDENT

THOMAS SHIMANYULA LEVI 2ND RESPONDENT

JOYCE PACILISHA SHIMANYULA 3RD RESPONDENT

JUDGMENT

1. This appeal filed by Fred Reuben Mima challenged the Judgement of Hon. R.S Kipng'eno (Principal Magistrate) delivered on 24th November 2023 in Butali PM ELC Case No. 34 of 2019. In the impugned Judgement, the learned trial magistrate found that there had been no fraud in the registration of parcel Nos. North Kabras/ Kivaywa/ 1950 and 1955 in the names of the 1st and 3rd respondents respectively and dismissed the appellant's claim.

Background

2. In a plaint dated 1st July 2019 Fred Reuben Mima suing as administrator of the estate of his father the late Reuben Mima Kongoni, sued Jones Berneta Mima his stepmother, Thomas Shimanyula Levi and Joyce Shimanyula contending that parcel Nos. N/Kabras/Kivaywa/1950 and 1955 which belonged to his late father Reuben Mima Kongoni were fraudulently transferred to the defendants.
3. In a defence dated 27th September 2019, the 1st defendant denied obtaining registration of the suit property through fraud and averred that the same was transferred to her by the deceased while he was still alive. No defence was filed by the other defendants.



4. The case proceeded to trial and was heard by way of viva voce evidence. The plaintiff presented one witness while the 1st defendant presented two witnesses.

Plaintiffs evidence

5. PWI was Fred Reuben Mimo the plaintiff. He adopted his witness statement dated 1/7/2019 as his evidence in chief and produced documents filed as P-Exhibit 1 and 2. His testimony was that he was the son of the late Reuben Mima Kongoni and the 1st defendant was his stepmother. That the deceased had parcel No. North/ Kabras / Kivaywa/ 273 measuring 2.6 hectares which he subdivided on 29/1/2013 creating eight parcels of land being parcel Nos. 1950-1957. That at his demise on 10/8/2014 all the eight parcels were in the name of the deceased save parcel Nos. 1950 and 1955. That the 1st defendant fraudulently transferred the said parcel No. 1950 into her name on 23/12/2016 when the deceased was not alive. That the 2nd defendant purportedly to have obtained parcel No. 1955 from the deceased when it is the 1st defendant who sold him the land. That the 3rd defendant received parcel No. 1955 from the 2nd defendant knowing that it was fraudulently obtained.
6. On cross examination, he stated that the 1st defendant was his father's third wife and that together with his father she was blessed with six children. That when his father died in 2014, he had distributed his land among his benefices. That his father had not transferred the land. That there were buyers of the land but did not produce sale agreements. That when he conducted succession, he realized two titles were not in his father's name so he reported to the police. That marked the close of the plaintiff's case.

1st defendant's evidence

7. DW1 was Jones Bereneta Mima the 1st defendant. She adopted her witness statement dated 12/10/2019 as her evidence in chief. Her testimony was that she was the deceased's third wife having been married to him in 1978 while the plaintiff was a son of the deceased's second wife. That before his death, the deceased was the registered proprietor of parcel No. N.Kabras/ Kivaywa/273 measuring 2.6 hectares. That before he died, he subdivided it into eight parcels being parcel Nos. 1950 - 1957. That before he passed on, he transferred all the parcels to the buyers, his children and the 1st defendant.
8. She further stated that the deceased appeared before the land control board at Matete and consented to the land being given to the 1st defendant and executed transfer documents to vest parcel No. 1950 into her name. That her husband got sick immediately and later died and that this delayed her from obtaining title immediately. That after burial she got funds to enable her obtain registration of the suit property. She denied acting fraudulently in obtaining title.
9. On cross examination, she stated that the Title deed was issued on 23/12/2016 but that documents were lodged on 21/1/2013 as she had no money to pay for stamp duty. That she got the money for title and stamp duty in 2016. That her late husband had been sickly and drained financially. That the signature on the mutation she produced belonged to the deceased. That the dates on the mutation form were 24/1/2013; 25/1/2013 and 21/1/2013. That the suit property was subdivided into eight parcels and that the green card showed that the title was duly transferred to the beneficiaries who processed those titles. That she did not know the 3rd defendant. That the deceased died in 2014. That marked the close of the defence case.
10. Upon considering the pleadings, evidence and submissions the trial court found that it was the deceased who subdivided his title into eight parcels. That it was the deceased who transferred the land to the defendant. That the deceased obtained consent to transfer all the eight parcels. That the plaintiff only contested parcel Nos. 1950 and 1955 and not the other six parcels that went through the same process.



The trial court further found that there could be discrepancies but that the same were in regard to the form and not substance of the transaction and noted that the deceased's family was polygamous but that it was the deceased who initiated the transfer process. On that basis, the trial court dismissed the plaintiff's case.

11. Aggrieved by the findings of the trial court, the appellant herein appealed against the trial court Judgement vide a Memorandum of Appeal dated 30/10/2023 citing the following four grounds of appeal;
 - a. That the learned Magistrate erred in law and fact in holding that the Appellant had not proved his case on a balance of probability.
 - b. That the learned Magistrate erred in law on holding the deceased commenced the process of sub-division and transfer of land without the production of necessary documents used to execute the transactions.
 - c. That the learned Magistrate erred in law on holding that the discrepancies in the Respondents evidence did not amount to a reason as to why the Respondents defence was to fail.
 - d. The Judgement is against the weight of the evidence adduced in court.
12. The appellant sought orders that the appeal be allowed and the appellants claim in the lower court be allowed with costs.
13. The appeal was disposed by way of written submissions. On record are submissions filed by the appellant dated 8th April 2024 and those filed by the 1st respondent dated 6th May 2024.

Appellant's submissions

14. The appellant relied on provisions of section 45 of the [Law of Succession Act](#) and the case of Re Estate of Benson Maingio Mulwa (Deceased) (2021) e KLR and argued that in dealing with property belonging to a deceased person without having grant of letters of administration, the respondents were guilty of intermeddling with a deceased person's property.
15. He submitted that since the deceased passed on in 2016 and the 1st respondent was registered as proprietor of parcel No. 1950 in 2014, she was guilty of intermeddling with the estate. He maintained that the respondents did not comply with provisions of section 3 of the [Law of Contract Act](#). He argued that section 26 of the [Land Registration Act](#) confers true ownership only where acquisition is not by fraud, misrepresentation, illegality, want of procedure or through corruption.

1st respondent's submissions

16. Counsel for the 1st respondent argued that the deceased having transferred the suit property to the respondent, it did not form part of the deceased's estate. Counsel referred to minutes of 6th March 2014 produced by the appellant which showed that the deceased obtained consent to transfer parcel No. 1950 to the 1st respondent. Counsel argued that the appellant did not provide evidence to show that he was administrator of the deceased's estate. Counsel argued that the appellant's grievance was that the deceased chose to transfer land to the 1st respondent and not to the other wives.
17. On the question of fraud, counsel submitted that the appellant failed to prove fraud. Counsel relied on the case of Kinyanjui Kamau v George Kamau [2015] e KLR for the proposition that fraud must be specifically pleaded and strictly proved. Counsel argued that the appeal was not brought in good faith



as the appellant did not question the process of transfer in favour of his own mother but questioned that of the 1st respondent.

Analysis and determination

18. The court has carefully considered the grounds of appeal, parties' rival submissions and the entire trial court record. The role of this court as a first appellate court is to rehear the dispute. It therefore must re-analyze the evidence on record and make its own independent conclusions. This position was stated in the case of *Selle & Another v Associated Motion Boat Co. Ltd & Others* (1968) EA 123.
19. The appeal before me raises two issues;
 - a. Whether the trial court was right in finding that the transfer process to the respondents was commenced by the deceased.
 - b. Whether the trial court was right in concluding that the discrepancies in the transactions in favour of the respondents were in form and not on substance and therefore did not prove fraud.
20. It is not disputed that the 1st and 3rd respondents are the registered proprietors of parcel Nos. 1950 and 1955 respectively. The appellant accused the respondents of obtaining their respective titles by fraud. Article 40 (1) and (6) of *the Constitution* of Kenya 2010 limits legal protection for the right to acquire and own property to property that is lawfully acquired. Regarding registered property, section 26 of the *Land Registration Act* provides for conclusiveness of title as follows;

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner 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.”
21. Therefore, registration of a person as proprietor of a land vests in them absolute and indefeasible ownership, unless it is proved that they acquired the title by fraud, misrepresentation, illegality, want of procedure or through a corrupt scheme.
22. In the case of *Munyu Maina v Hiram Gathiha Maina*, Civil Appeal No239 of 2009, the Court of Appeal held that;

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”
23. Therefore, where a party alleges fraud, they must specifically plead the particulars thereof and strictly prove the same. The standard proof of fraud is slightly higher than the standard required in ordinary civil cases of the balance of probability but slightly lower than the standard of proof required in



criminal cases of beyond reasonable doubt. In the case of Kinyanjui Kamau –vs George Kamau [2015] e KLR the court expressed itself as follows:-

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”

24. In the instant case, the appellant alleged fraud on the part of the respondents and particularized the same as follows; that the 1st respondent purported that the deceased disposed parcel No. 1950 on 26/12/2016 when the deceased had long been dead; that the 2nd defendant obtained registration of parcel No. 1955 supposedly on the basis that the 1st respondent sold it to him; that the 2nd respondent got registered as proprietor of the suit property without due process and that the 3rd respondent got registered as owner of parcel No. 1955 without a sale agreement and consent from the land control board.
25. Therefore, regarding the registration of parcel No. 1950, the only accusation levelled on the 1st respondent was that she was registered as owner of the said parcel in 2016 when the deceased died in 2014. Looking at the evidence, it is not disputed that the late Reuben Mima Kongoni died in 2014. It is also not disputed that registration of the suit property in the 1st respondent’s name occurred in 2016. The 1st respondent testified that the process of transfer began in 2013 when the deceased obtained consent from the Land Control Board and applied for transfer of parcel No. 1950 to her and that on the same date he executed the land transfer forms. That he fell sick shortly thereafter and subsequently died. She stated that she took time to get the required funds to complete the transfer process.
26. It is trite that transfer of agricultural land, like in this case, is a process which begins with obtaining consent from the Land Control Board to transfer followed with execution of transfer documents. Those transfer documents together with the consent are lodged at the lands office and certain levies paid, before the registration of transfer is done. That being the case, there is nothing fraudulent about an owner executing a transfer instrument and passing on, before that instrument is registered at the lands office. There ought to be other evidence showing fraud.
27. In the case before me, the appellant produced minutes dated 6th March 2014, where the late Reuben Mima Kongoni applied for consent for transfer of parcel Nos. 1950 and 1955 in favour of the 1st respondent and one Muchika Kubwa. On the same date, the deceased also applied for consent to transfer parcel Nos. 1954, 1956 and 1957 to Eliud Matsanza; Paul Temba Muyitsi and Reuben Shinoko Tsimango respectively. The appellant has not contested the correctness or authenticity of the minutes which showed that the consent application of the deceased was allowed. It was the appellant who produced these minutes. The appellant did not contest the consents for the other three parcels which were applied by the deceased and granted on 6th March 2014. In his particulars of fraud against the respondents he does not contest the authenticity of the consents to transfer parcel Nos. 1950 and 1955 to the people stated in the minutes. In that regard it is clear that the deceased obtained consent for the transfer of the two parcels while he was alive in 2013. The fact that the deceased signed transfer instruments on the date he obtained consent as stated by the respondent was not contested. All that the appellant is unhappy with is that registration happened in 2016 after the deceased had died in 2014.



28. The 1st respondent explained that the delay was due to the fact that her husband fell ill and passed on which meant that she needed time to get money for registration. This evidence was not controverted or challenged in any manner in cross examination. For this court, this evidence is a credible explanation of what transpired, and I have no reason to doubt the 1st respondent. I therefore find and hold that indeed the deceased commenced the transfer process but died before registration of the transfer, which the land control board had sanctioned on the deceased's application.
29. The issue of discrepancies arose in regard to the dates in the mutation form presented by the 1st respondent in respect of the subdivision of parcel No. 273. That is the parcel that was subdivided into 8 parcels including the disputed parcels. Both the plaintiff and the defence show that there was no dispute that it was the deceased that lawfully caused the subdivision of parcel No. 273. That being the case, the contents of the mutation, in my view is immaterial. Even if there was no mutation presented in court, the legality of the subdivision of parcel No. 273 is not in contention and therefore the presentation of the mutation by the respondent was superfluous and of no consequence to the question raised in the plaintiff. In that regard therefore, I agree with the trial court that discrepancies in the mutation were not anything to infer fraud on the part of the 1st respondent.
30. Regarding the 2nd and 3rd respondents, the appellant accused them that they got registered as owners of the suit property without a sale agreement and consent of the land control board and that they purported to have purchased the land from the 1st respondent. In her evidence, the 1st respondent stated that she did not know the 2nd and 3rd respondents. From the minutes of the land control board produced by the appellant, the deceased applied for consent to transfer parcel No. 1955 on 6th March 2014 in favour of one Muchika Kubwa. That person was not sued by the appellant and there is no evidence that the said title was registered in the name of the 1st respondent before being transferred to the 2nd and 3rd respondents. The register presented in evidence shows that parcel No 1955 was registered in the name of the deceased on 29th January 2013, on 24th July 2014, it was transferred to Thomas Shimanyula Levi and on 15th March 2017 it was transferred to Joyce Pacilisha Shimanyula, who are the 2nd and 3rd respondents respectively. Since Reuben Mima died on 10th August 2014, after the 2nd respondent was already the registered proprietor, I do not find any evidence of fraud. The only person who had capacity to complain about this transfer is Muchika Kubwa and not any other person, including the estate of the deceased, since the deceased had already obtained consent to transfer the land to the said person, hence the same did not belong to the deceased or his estate.
31. For those reasons, I agree with the findings of the trial court that no fraud was proved against the respondents. I therefore find and hold that this appeal lacks merit and the same is hereby dismissed with costs to the respondents.
32. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 15TH DAY OF OCTOBER, 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Wekesa holding brief for Mr. Makokha for the 1st respondent The appellant in person

No appearance for 2nd and 3rd respondents



Court Assistant: Delphine.

