



Cherunya & 3 others (Suing as the Legal Representative of the Estate of Kiptalam Arap Cherunya - Deceased) v Cherunya; Kithinji (Interested Party) (Environment and Land Case 15 of 2023) [2025] KEELC 7656 (KLR) (5 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7656 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 15 OF 2023
CK NZILI, J
NOVEMBER 5, 2025**

BETWEEN

**SAMMY KIPKORIR CHERUNYA 1ST PLAINTIFF
JOHN KIPTALAM CHERUNYA 2ND PLAINTIFF
JAMES KIPLELE CHERUNYA 3RD PLAINTIFF
GRACE CHERUNYA 4TH PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIPTALAM
ARAP CHERUNYA - DECEASED**

AND

MICHAEL KIPSANG CHERUNYA DEFENDANT

AND

HELENA KITHINJI INTERESTED PARTY

JUDGMENT

1. The plaintiffs suing as the legal representatives of the estate of Kiptalam Arap Cherunya, approached this court through a further amended plaint dated 5/3/2025. They sought:
 - a. Declaration that the defendant's acquisition and consequent registration of Title No. Trans Nzoia/Mito Mbili/2 was fraudulent, unprocedural, illegal, null, and void.
 - b. Declaration that the suit land belongs to the estate of the late Kiptalam Arap Cherunya.
 - (c) Cancellation and revocation of the title to the suit land and the rectification of the register to reflect the name of the deceased.



2. The contention by the plaintiffs is that the deceased lawfully acquired the suit land measuring 26.5 Ha for value, hence constitutes the estate of their father, as per letters of administration obtained in Eldoret Succession Cause No. 29 of 2014.
3. The plaintiffs averred that during the pendency of the succession cause, the defendant in an attempt to deprive the legitimate beneficiaries to the estate, their entitlement and inheritance fraudulently and illegally transferred the suit land into his name, without any authority or consent of the beneficiaries by forging the signatures of the original owner John Kithinji in 2020, yet he had passed on on 20/10/1982, hence acquiring an illegal title.
4. The plaintiffs averred that the defendant has refused to surrender the land forming part of the estate, and has instead threatened to illegally subdivide and dispose of it to third parties, to the prejudice of the estate.
5. The defendant opposed the suit through a statement of defence dated 11/12/2023. He denied that the suit land was purchased from John Kithinji by the late Kiptalam Cherunya, or that it formed part of the estate of the deceased. The defendant denied that the plaintiffs had the capacity to file the suit on behalf of John Kithinji, who was the registered owner before the transfer to the defendant.
6. Further, the defendant averred that he was a legitimate owner of the suit land, having acquired the same for value from John Kithinji, the registered owner, who then transferred the suit land to him.
7. With leave of court, the plaintiff joined Helena Kithinji, the legal representative of the estate of John Kithinji, as an interested party. She filed a statement of defence dated 30/5/2025, admitting that the late Kiptalam Arap Cherunya had lawfully purchased and paid for the suit land from her late husband and hence belonged to his estate.
8. The interested party averred that all the transfer and completion documents, including the discharge of charge, were still in the name of the original owner, John Kithinji, and in the custody of the Ministry of Lands and Physical Planning.
9. The interested party averred that the deceased did not enter into any other contract of sale over the suit land, including with the defendant herein, contrary to the statement of defence dated 17/12/2023. The interested party further averred that, upon the sale of land to the late Kiptalam Arap Cherunya, the beneficiaries of the late John Kithinji had no other dealings whatsoever over the suit property.
10. At the hearing, Atieno Nyanga, testified as PW1, the County Land Adjudication & Settlement Officer, Trans Nzoia, told the court that Plot No. 2 Mito Mbili Settlement Scheme was allocated to Mr John Kithinji in 1976, who accepted the allocation on 1/12/1976 and was to pay Kshs. 77,089/=, as an outright purchase, which he cleared.
11. PW1 said that the office records have nothing to show privity of contract between the allottee and Mr Kiptalam Cherunya. PW1 said that in 1983, the office received a letter dated 12/4/1977 from Mr. Cherunya, stating that he had bought the land at Kshs. 300,000/=. PW1 said that the office also received Kshs. 50,000/= on behalf of the allottee from Mr. Cherunya, on 23/1/1996, who cleared all the premiums, subsequent to which a discharge of charge and a transfer were prepared in favour of John Kithinji, dated 20/11/2001, which are yet to be executed.
12. Again, PW1 said that the office was notified that John Kithinji had passed on, through a letter by the D.O., dated 15/7/1986. The beneficiaries were advised to file a succession cause. PW1 produced the letter dated 23/2/2021, as P. Exhibit. No. (5), charge dated 1/12/1976 as P. Exhibit. No. (6), acknowledgment dated 12/4/1977 as P. Exhibit No. (7), receipt dated 23/1/1990 as P. Exhibit. No. (8), receipt dated 7/2/2021 as P. Exhibit. No. 9(a), receipt dated 7/2/2021 as P. Exhibit. No. 9(b), letter



- dated 26/7/1982 as P. Exhibit. No. (10), letter dated 14/12/1982 as P. Exhibit. No. (11), letter dated 18/9/2011 as P. Exhibit. No. (12). A Gazette Notice No. 46 dated 25/3/1983 showing the late John Kithinji passed on on 20/10/1982 and was subject to Nairobi HC Succession Cause No. 150 of 1983, whose administrator is the interested party.
13. PW1 said that the suit property could not be conveyed without the confirmed grant of letters of administration, so that the discharge of the charge and transfer form could reflect the legal administrator.
 14. PW1 said that the confirmed grant in favour of the legal administrator was not availed at their office. PW1 said that by 2020, the owner of the land was deceased and therefore, it was impossible for him to have attended a land control board meeting, signed a land control board application, or consent and or appear before an advocate to sign the transfer form.
 15. Further, PW1 said that the office record did not reflect any agreement between the deceased and the defendant. PW1 said that she was the custodian of the discharge of charge and the transfer form, and the registration of the land in favour of the allottee.
 16. PW1 said that the Settlement Fund Trustees would not give or transfer the land to anybody, save to the bona fide allottee. PW1 said that the office had not obtained the death certificate of the allottee, save for the letter by the D.O., regarding the death. PW1 said that plaintiff's exhibits receipts No. 8, 9, and 10 show the person who had paid the money as the deceased; otherwise, no one filed an objection against the transfer to the late John Kithinji from being effected.
 17. PW1 said that the green card was opened on 24/11/1983 in the name of the Settlement Fund Trustees, and by 2017, the property came into the name of John Kithinji. Since the discharge of charge and the transfer had been issued in 2001 and due to the massive issuance of titles in 2017 or thereabout, PW1 said that they were instructed to release all the discharges of charge and transfers for the land registrar to prepare title deeds in favour of the allottees, who had already completed payments of their plots. PW1 said that there was a waiver of registration fees at the time. PW1 insisted that the transfer of the land to the defendant was irregular.
 18. Sammy K. Cherunya testified as PW2. He relied on a witness statement dated 15/11/2023 as his evidence-in-chief and produced a grant of letters of administration dated 30/8/2017 as P. Exhibit. No. (1), summons for confirmation of grant dated 25/2/2020 as P. Exhibit. No. (2), a copy of the title deed for L.R. No. Trans Nzoia/Mitombili/Scheme/2 dated 20/2/2022 as P. Exhibit No. (3), gazette notice as P. Exhibit. No. (4), a copy of the green card dated 17/3/2022 as P. Exhibit. No. (13), transfer form dated 20/2/2020 as P. Exhibit. No. (14), land control board application form dated 12/2/2022 as P. Exhibit. No. (15), and a land control board consent dated 7/2/2022 as P. Exhibit. No. (16).
 19. PW2 said that the grant is jointly issued and that the suit land was never registered under the name of their late father.
 20. PW2 said that he was not a party to an agreement dated 12/7/1977 between his late father and John Kithinji, which he produced as P. Exhibit No. (10). PW2 said that he also managed to retrieve the gazette notice from the Kenya National Archives, Nairobi, regarding the death of the initial allottee now represented by the interested party in this suit, as the legal representative of his estate.
 21. Though the defendant was ably represented at the hearing, he did not attend court to testify in support of his statement of defence. His advocate Mukabane opted to close the defence because his client was not present and had not filed any witness statement; it was marked as closed.



22. Hellena Kithinji, the interested party, testified as DW1. She relied on a witness statement dated 30/5/2025 as her evidence in chief, confirming that her late husband died on 20/10/1982 after having sold the suit land to the late Cherunya, who had paid him the purchase price. DW1 confirmed the evidence of PW1 and PW2 that the suit property was yet to be transferred to the estate of the late Cherunya. DW1 denied any transaction between her late husband over the suit land with the defendant. She said that the late husband could not have revived a party to any sale agreement, the land control board application, the land control board consent, and the transfer allegedly entered into with the defendant in 2020.
23. DW1 termed it ridiculous for the defendant to allege that any valid sale, transfer before an advocate, and registration occurred in October 2020 involving her late husband. DW1 said that dead people do not sign documents.
24. The plaintiffs rely on written submissions dated 16/10/2025, submitted that the actions of the defendant were fraudulent, illegal, criminal, and amounted to intermeddling with the estate of the deceased, contrary to Section 45 of the Law of Succession Act. Reliance is placed on Alice Chemutai Too -vs- Nickson Kipkurui Korir & Others [2015] eKLR and Section 26 of the Land Registration Act.
25. The defendant relies on written submissions dated 16/10/2025. It is submitted that the deceased John Kithinji had no title to sell and transfer by 12/4/1977, since the land belonged to the government. Reliance is placed on Daniel Kiprugut -vs- Rebecca Chepkurgat Maina [2019] eKLR.
26. The defendant submitted that the suit is based on an illegal contract, which should be dismissed. Reliance is placed on Athi Highway Developers Ltd -vs- West End Butchery Ltd & Others [2015] eKLR.
27. The defendant submitted that the plaintiff lacks locus standi to complain or sue on behalf of the interested party or his estate, for title had not passed to the deceased before he passed on in 1982; otherwise, the land was in the name of Settlement Fund Trustees, who transferred it to him in 2017.
28. The defendant submitted that there is no compliance with the Birth and Deaths Registration Act, Cap 149, to prove the alleged death of the late John Kithinji; otherwise, the plaintiffs have not proved that the allottee died by way of a certificate of death or a notification of death. Reliance is placed on Law Society of Kenya -vs- Commissioner of Lands & Others Nakuru HC Civil Case No. 464 of 2000, on locus standi and also Miroro Nyarumi & Others [2023] KELC 21533 [KLR], Mutai -vs- Serem & Others [2024] KEELC 4149 [KLR], St. Thomas Academy Ltd -vs- Githumu Kangema Ltd & Others [2024] KEELC 21533, Kanyoro -vs- Madowo & Others [2024] KEHC 12253, Gikandu -vs- Kang'ata [2023] KEELC 22421, and Ngolepus -vs- Lonapa & Another [2022] KEELC 2687.
29. The court has carefully gone through the pleadings, evidence tendered, and the written submissions. The issues calling for my determination are:
 - a. If the plaintiffs have the capacity to sue the defendant.
 - b. If the plaintiffs have proved that the defendant fraudulently, illegally, and unprocedurally obtained title to the suit land.
 - c. If the plaintiffs are entitled to the reliefs sought.
 - d. What is the order as to costs?
30. The plaintiffs bring the suit as joint legal representatives of the estate of the late Kiptalam Arap Cherunya, following leave to do so pursuant to a ruling dated 21/11/2024. In support, the plaintiffs



produced a grant of letters of administration intestate, dated 30/8/2017, together with a summons to confirm the grant dated 24/2/2020, listing the defendant as one of the children of the estate of the deceased, whose assets are plot No. 1 Mito Mbili.

31. The plaintiffs' capacity to sue has been challenged by the defendant, that they could not bring the suit on behalf of the estate of John Kithinji against him. The duties of personal legal representatives, as spelt out in Section 83 of the *Law of Succession Act*, include collecting and securing the properties of the deceased. Choses in action refer to rights that are not tangible but can be enforced by legal action for debts or assets owed to the estate.
32. A personal representative has a duty to enforce by suit or otherwise, any cause of action which, by virtue of any law, survives the deceased or arises out of his death for his estate is bestowed upon a legal representative under Sections 79 and 82 (a)(b) and (c) of the *Law of Succession Act*.
33. In *Troustik Union International and another -vs- Jane Mbeyu & Another*, Nairobi CACA. No. 145 of 1991, the court held that there is no legal right that is without an owner, so it is vested in a person or entity.
34. The court said that as soon as a grant is obtained, the right or estate vests automatically and by the force of the grant when the administrator is appointed. Section 2(1) of the *Law Reform Act* Cap 21 defines what causes of action subsist in a deceased.
35. In *Karl Wehner Claasen -vs- Commissioner of Land & Others* [2019] KECA 766 I [KLR], the court held that there are some causes of action which die with the deceased and others which survive the deceased or arise out of his death. The court said a chose in action means a right to bring proceedings in court for recovery of some money or for the infliction of a wrong or the non-performance of a contract.
36. In this suit, the plaintiffs are seeking to enforce the right to the suit property, which by the time the seller and the purchaser died had not vested in either of them under the law, but was already in the possession or use of the deceased. The interested party in her statement of defence and evidence before the court has confirmed that the suit land had been sold to the deceased by her late husband and that all that was remaining was to effect the transfers.
37. PW1, in her testimony, has produced documents confirming that at the time the deceased seller died, the suit property had not been discharged in his favour and the allocating authority had been notified of his death by the area District Officer, to which they were waiting for the production of letters of grant to effect the transfer.
38. The defendant wants the court to find that the plaintiffs have no right to enforce in favour of both the deceased seller and the deceased purchaser, for the suit property had not vested in any of them at the time of their death, for it was government land.
39. To start with, parties are bound by their pleadings. Though the issue of the capacity to sue had been pleaded in the statement of defence dated 11/12/2023, evidence to sustain it was not tendered. Section 82(a) of the *Law of Succession Act* provides, as indicated above, that the plaintiffs can enforce choses in action by virtue of any law that survives the deceased.
40. The governing law on land belonging to settlement schemes when the cause of action arose was the Agriculture Act, Cap 318, repealed. It had established the Settlement Fund Trustees under Section 167. PW1 has confirmed that the suit property had not been discharged until 2017 or thereabout. PW1 said that their rights were clear, that the two deceased persons had expressed their intention to transfer the land. Legal recognition of the allottee through registration of title under his name, going



by the copy of the register, occurred on 5/7/2017. The entry in the copy of records in favour of the Settlement Fund Trustees occurred on 24/11/1983, long after the allottee had passed on.

41. Legal rights in favor of the estate of the interested party could therefore be enforced against the estate of John Kithinji. See *Koringura & Another -vs- Simatwa* [2025] KEELC 7055 [KLR] (15th October 2025) (Judgment).
42. In *Mwinyihaji -vs- Mwebeyu & another* (Civil Appeal E075 of 2022) [2025] KECA 868 (KLR) (23 May 2025) (Judgment), the court held that an allotment letter becomes operative only after its terms and conditions are complied with.
43. In *Torino Enterprises Ltd -vs- Attorney General* [2023] KESC 79 [KLR], the court held that it is the act of registration that confers a transferable title to the registered proprietor and not the possession of an allotment letter.
44. The perfection of the discharge of charge arose during the lifetime of the late Kiptalam Arap Cherunya, as shown by the exhibits produced by the plaintiffs through PW1. It is he and not the defendant who paid into the account of the original allottee held with the Settlement Fund Trustees. Therefore, the plaintiffs in law are properly before the court as holders of the letter of administration to complain on behalf of the estate that the entries to the register in favour of the defendant on 20/2/2020, yet they were the bona fide holders of letters of administration with effect from 30/8/2017, were illegal and irregular. See *Koringura & Another -vs- Simatwa* (supra).
45. Fraud or illegality must be specifically pleaded under Order 2 Rule 4 of the Civil Procedure Rules. The plaintiffs have pleaded the particulars of fraud and illegality in paragraph 6 of the further amended plaint dated 5/3/2025. Fraud under Black's Law Dictionary, 9th Edition, is defined as misrepresentation or concealment of facts to mislead another to act to his detriment.
46. In this suit, the plaintiffs plead that the defendant misrepresented himself and acquired the title deed for the suit land when he was not a legal representative, with a view to defrauding the estate. Further, it is pleaded that the papers used to obtain the title, including the application for land control board consent, the land control board consent, and the transfer form, were forgeries since the seller and the purchaser had long passed on in 1982 and 2013, as per the death certificate and the Kenya Gazette.
47. The interested party has also confirmed in her statement of defence, witness statement, and the evidence in chief that her deceased husband passed on in 1982 before effecting the transfer, and therefore, he was not the maker of any of the documents used by the defendant to acquire the title deed dated 20/2/2020.
48. DW1 confirmed that she is the holder of the letters of administration for the estate of John Kithinji pursuant to Nairobi Succession Cause No. 150 of 1983 as gazetted in the Kenya Gazette of 25/3/1983.
49. Section 85 of the *Evidence Act* provides that the production of a copy of a gazette containing any written law or any notice purporting to be made in pursuance of any written law, printed by the Government Printers, shall be prima facie evidence in all courts.
50. The defendant submits that, in the absence of a death certificate or a notification of the death of the late John Kithinji, the court should not rely on the plaintiffs' mere assertion that the transfer instruments were not executed by the deceased, John Kithinji. The Gazette Notice states that the late John Kithinji passed on 20/10/1982 and that the proposed legal administrator is Hellena Kithinji.
51. A fact is proved when a court believes it to exist or considers its existence so probable that it acts on a presumption that it exists. The court has heard from the horse's mouth: DW1, that her husband passed



on on 20/10/1982. The court has seen that there was publication of that death in a Kenya Gazette. Under Section 107 of the Evidence Act, he who alleges must prove. It is the defendant who is alleging a contrary fact. The burden of disproving the fact of death is on the defendant. Unfortunately, the defendant failed to testify as to the contents of his statement of defence. The said contents remain mere statements.

52. It is the defendant who wants the court to believe that the transfer instruments that he used were duly executed by the deceased in 2020, while there is contrary, undisputed evidence from his wife that he died in 1982. The opinion of the relationship between the interested party and the late John Kithinji by the court is governed by Sections 53 and 54 of the Evidence Act. The court does not require a certificate of death or a notification of death to form an opinion that there was a marriage or relationship between the deceased and the interested party, for her to have been appointed the sole legal representative of the estate of the deceased. Such facts are to be judicially noticed under Sections 59 and 60 of the Evidence Act.
53. When a land title is under attack, it is not enough to waive the instrument of title without tendering evidence to show that the same was acquired regularly, procedurally, and lawfully. See *Munyu Maina -vs- Hiram Gathiha Maina* [2013] KECA 94 (KLR), *Dr. Arap Ngok -vs- Moijjo Ole Keiwua*, CA No. 60 of 1997, and *Alice Chemutai Too -vs- Naikuni Kipkurui Korir* (supra).
54. Fraud must be proved through tangible and cogent evidence. It cannot be inferred from the pleadings. See *Athi Highway Developers Ltd -vs- West End Butchery* (supra).
55. In *Kemboi -vs- Macharia & Others* Civil Appeal 17 of 2020 [2025] KECA 1665 [KLR] (21st October 2025) (Judgment), the court cited *Dina Management Ltd -vs- County Government of Mombasa & Others* [2023] KESC 30 [KLR] and *Munyu Maina -vs- Hiram Gathiha Maina* (supra), that when a title is under challenge, a party must show that the acquisition was legal, formal, and free of any encumbrances. The court found that the record brought by the appellant had critical deficiencies in the appellant's root of title, raising serious questions on how the allotment letter came to be issued in his favour. The court held that where the initial acquisition of title is unlawful, as held in *Dina Management Ltd -vs- County Government of Mombasa* (supra), all subsequent transfers, even to innocent purchasers, are void.
56. The court held that, given the fundamental defects in the root of title, the appellant could not claim protection under Section 26 of the Land Registration Act. Further, the court held that a certificate of title cannot cure an unlawful allocation process; otherwise, a title is merely the end product of a process, and where the process is tainted, whether through procedural irregularity, fraud, or illegality, the resultant title is void, for no right can flow from nothing.
57. The defendant in this matter failed to file any list of witnesses, statements, or documents or call any evidence to support the contents of his statement of defence that he was a bona fide purchaser of and a lawful transferee for value, from the late John Kithinji.
58. The defendant pleaded that he had obtained the title lawfully and was lawfully holding a protected title. The defendant relies on written submissions dated 16/10/2025 to attack the plaintiffs' case in various ways, as captured in the summary of the submissions above. Written submissions cannot replace pleadings or evidence. See *Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & another* [2014] KECA 642 (KLR).
59. The plaintiffs have produced evidence that the defendant was not the legal representative of the estate at the time he purported to obtain registration of the title under his name. PW1, as the allocating authority to the suit land, confirmed that the late John Kithinji passed on and that they were notified



- by the area D.O. in 1986, hence could not release the discharge of charge and the transfer in favour of anyone else except the holder of the legal grant of letters of administration.
60. PW1 confirmed that the original discharge of charge and the transfer were still held by her at their offices. PW1 also confirmed that she did not execute any transfer form in favour of the plaintiffs generally and, in particular, to the defendant as alleged by him. The law is that when a title is under challenge, a party should prove its legality without a break in the chain of acquisition.
 61. Uttering false documents purporting to have been signed by a deceased person is what the defendant did to obtain the title on 20/2/2020. The defendant knew that he was not the holder of letters of administration, but his siblings were, with effect from 2017. The defendant did not involve PW1 and DW1 in obtaining the title deed. There is no evidence that the defendant paid any consideration to acquire the title from the Settlement Fund Trustees or the allottee.
 62. In the Administrators of the Estate of Letoire ole Ntirori (Deceased) & 9 others -vs- Mwangi & 25 others (Civil Appeal E620 of 2024) [2025] KECA 1585 (KLR) (3 October 2025) (Judgment), the court, based on the wisdom of the transaction, said the respondents could not get away with allegation of fraud, unproved to the required standards and unsubstantiated even on a lower burden of proof.
 63. Just like in this case, the defendant has merely invoked indefeasibility of his title without more. The defendant was given a chance to ventilate his defence by filing a list of witnesses, statements, and documents, and to attend the hearing. See Union Insurance Co. of (K) Ltd -vs- Ramzan Abdul Dhanji, Nairobi Civil Appl. No. 170 of 1998.
 64. In Zehrabanu Janmohammed (Suing as the Executrix of the Estate of F. H. Janmohamed) & Another vs. Nathaniel K. Lagat & 4 Others (Petition 24 (E027) of 2022, consolidated with Petition 17 (E021) of 2022, the Supreme Court said that the responsibility to prove the legitimacy of title is not only limited to the party whose title is being challenged, but also extends to the party claiming infringement of his property rights to prove he is entitled, warranting the attendant constitutional protection sought.
 65. The failure of the defendant to attend court and offer testimony by way of filed documents under Order 7 Rule 5 of the Civil Procedure in support of his statement of defence, and to produce the paper trail that he used to obtain the title as lawful, regular, procedural, and free of any encumbrances, left breaks in his title acquisition.
 66. The upshot is that I find the plaintiffs have proved their claim to the required standards. The court proceeds, under Section 80 of the [Land Registration Act](#), to invalidate the title held by the defendant. The title register shall revert to its position as of 5/7/2017, for the estate of the late John Kithinji to regularise it, in favour of the estate of the late Kiptalam Arap Cherunya. Costs of the suit to the plaintiffs.
 67. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF NOVEMBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant – Dennis

Mr. Kibii for the plaintiff present



Khisa for Mukabane for the defendant

Interested party absent

