



**Nyete & another (Suing as Administrators of the Estate of the Late Joel Nyete)
v Macakiage; Ndolo & 2 others (Third party) (Environment and Land Case
E003 of 2023) [2025] KEELC 7614 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7614 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE E003 OF 2023
EO OBAGA, J
NOVEMBER 6, 2025**

BETWEEN

SAMUEL MWANGANGI NYETE 1ST PLAINTIFF

ABRAHAM MUTUNGA NYETE 2ND PLAINTIFF

SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE JOEL NYETE

AND

TOM ONYANGO MACAKIAGE DEFENDANT

AND

DAVID NDOLO THIRD PARTY

JEREMIAH SIMBA THIRD PARTY

ESTHER MUTHIKE NDAMBUKI THIRD PARTY

JUDGMENT

1. The Plaintiffs brought this suit against the Defendant claiming the following reliefs:
 - a. An order of certiorari calling into this court property title No. Konza South/Konza South/Block 5/113 and any title issued as result of subdivision including property title numbers Konza South/Konza South Block 5 (Konza)/6725 – 6804 and revoking them hereof.
 - b. An order of this court directing the Land Registrar, Makueni Lands Registry to register the property title numbers Konza South/Konza South Block 5 (Konza)/113 in the names of the Plaintiffs.
 - c. Damages



- d. Interest on (c) above from 12th October, 2018.
- e. Costs of this suit.
2. The Plaintiffs are the administrators of the estate of their late father Joel Nyete Musau who died on 20th October, 2007 (deceased). The deceased was a member of Konza Ranching and Farming Cooperative Society Limited. He was allocated an agricultural plot No. 211 which was later fraudulently registered as Konza South/Konza South Block 5 (Konza)/113 which was subsequently subdivided into Konza South/Konza South Block 5 (Konza)/6725 to 6804.
3. The administrators of the estate of the deceased applied for grant of letters of administration vide Machakos High Court Succession Cause No. 964 of 2012. They obtained a grant on 31st January, 2013. The grant was confirmed on 19th October, 2016.
4. The administrators then visited the offices of Konza Ranching and Farming Cooperative Society Limited with a view to identify the properties owned by the deceased. They were informed that title to Konza South/Konza South Block 5 (Konza)/113 had been processed in the name of the deceased and had been collected. The administrators went back home where they had a family meeting. All the family members denied ever selling the land to anyone. It was also established that the deceased had not sold the land during his lifetime.
5. The administrators went and reported the matter at Kilome Police Station and later at Makueni Police Station. The Land Registrar at Makueni informed the administrators that Konza South/Konza South Block 5 (Konza) 113 had been subdivided into Konza South/Konza South Block 5(Konza)/6725 to 6804. They were given a copy of the green card.
6. The administrators found out that the subdivision had been done by the Defendant who had fenced the land and was cultivating it. They engaged the Defendant whom they asked to return the land but he refused to do so prompting them to file this suit for recovery of the land.
7. A copy of the green card showed that title for Konza South/Konza South Block 5 (Konza)/113 (suit property) was registered in the deceased's name on 24th May, 2017. Title was issued in the deceased's name on 7th July, 2017. The suit property was transferred to the Defendant on 12th October, 2018 and title issued on the same day. On 10th February, 2020 title to the suit property was closed on subdivision and it resulted to Konza South/Konza South Block 5 (Konza)/6725to 6804.
8. In the defence filed by the Defendant, he admitted that the person who posed as the deceased during the sale of the suit property to him was actually David Ndolo the first third party and that even the thumbprint on the sale agreement was David Ndolo's. The deceased had passed on on 20th July, 2007 and there is no way he would have been involved in the sale. The fraud was executed by Jeremiah Simba the 2nd third party the son of David Ndolo with assistance of Esther Muthike Ndambuki the 3rd third party in whose account the Defendant deposited the purchase price.
9. The Defendant brought third party proceedings against David Ndolo, Jeremiah Simba and Esther Muthike Ndambuki who entered appearance and filed defences but during the hearing, their lawyer applied for striking out of the suit against them. There was no opposition from the Plaintiffs' counsel. The case against the third parties was struck out. The Defendant did not adduce any evidence as he did not appear during the hearing.
10. I have considered the submissions filed by the Plaintiff. The plaintiffs produced grant of letters of administration in respect of the estate of the deceased as exhibit 1, the certificate of confirmation as exhibit 2, the death certificate as exhibit 3. They produced the occurrence book report from Makueni



Police Station as exhibit 4, green card as exhibit 5, allotment letter for plot 211 as exhibit 6 and ballot for pot 211 as exhibit 7.

11. There is no doubt that the deceased was member No. 1590 at Konza Ranching and Farming Cooperative Society Limited. By issue of the membership, he was allocated plot 211 measuring 10.8 acres. This is the plot which was registered as Konza South/Konza South Block 5(Konza)/113. The registration was done on 24th May, 2017 and title issued on 7th July, 2017. This registration and processing of title was not done by the administrators of the estate as the deceased had already died.
12. The transfer was allegedly signed by the deceased on 21st September, 2018. An application for consent of the Land Control Board was made in 2018 and consent given on 27th September, 2018. The application for consent was allegedly made by the deceased. The sale agreement was allegedly made by the deceased and Esther Muthike Ndambuki on 21st September, 2018. As admitted by the Defendant, the thumbprint on the sale agreement was made by David Ndolo and not the deceased.
13. The fraud has been admitted by the Defendant. It is therefore clear that the title was fraudulently procured and transferred to the Defendant who went ahead to subdivide the suit property into 80 sub-plots. When the Defendant was asked to surrender the land back to the administrators of the estate of the deceased, he refused to do so despite being aware that the land belonged to the deceased and that those who purported to transfer it to him were fraudsters.
14. I therefore find that the Plaintiffs have proved that the suit property was fraudulently registered and transferred to the Defendant who went ahead to subdivide it. The Defendant is still occupying the subdivisions. The Plaintiffs are therefore entitled to general damages for trespass. In the case of Ajit Bhogal –vs- Kenya Power & Lighting Co. Ltd (2020) KEELC 449 (KLR) it was held as follows:

“It is trite law that where trespass is proved, a party need not prove that he/she suffered any specific damage or loss to be awarded damages.”
15. The Defendant entered the suit property in October, 2018. He subdivided the suit property in February, 2020. The Plaintiffs have been kept out of their land since then as the Defendant has fenced the 10.8 acres land. The Plaintiffs have been kept off their land for seven years. Doing the best I can, I award general damages in the sum of Kshs.2,000,000/=.
16. I therefore enter judgment for the Plaintiffs against the Defendant in the following terms:
 - a. An order that title number Konza South/Konza South Block 5 (Konza) 113 together with the resultant subdivisions being Konza South/Konza South Block 5 (Konza)/6725 to 6804 are hereby cancelled.
 - b. An order is given directing the Land Registrar, Makueni to register title number Konza South / Konza South Block 5 (Konza)/113 in the name of the Plaintiffs.
 - c. General damages of Kenya shillings two million (2,000,000/=).
 - d. Interest on (c) above at court rates from the date of this suit until payment in full.
 - e. Costs of this suit.

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HON. E. O. OBAGA
JUDGE



JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF NOVEMBER, 2025.

In The Presence Of:

Ms. Mutua for Mr. Kioo for Plaintiff.

Court assistant - Mueni

