



Manyonge v Secretary BOG Murumba Primary School (Environment and Land Case 34 of 2012) [2025] KEELC 8223 (KLR) (27 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE 34 OF 2012
EC CHERONO, J
NOVEMBER 27, 2025**

BETWEEN

BEATRICE NEKESA MANYONGE PLAINTIFF

AND

THE SECRETARY BOG MURUMBA PRIMARY SCHOOL DEFENDANT

JUDGMENT

Background

1. By an amended plaint dated the 02/03/2023, the Plaintiff seeks judgement against the Defendant for an order of eviction and demolition of structures erected on land parcel no. Ndivisi/Mihuu/2400(hereinafter referred to 'the suit land') or in the alternative compensation of the land at the current market value plus costs and interests of the suit. She averred that she is the sole registered owner of suit land. That the Defendant, without any colour of right entered into the suit land and constructed classrooms where classes are ongoing. That the Defendant had sometime in 2010 promised to pay the value of the land to her father but they failed. That her father, one Hussein Sifuma Murumba later transferred the land to her.
2. The Defendants filed an amended statement of defence and counter-claim dated 28/11/2024 in which they averred that the school was established in 1982 after the said Hussein Sifuma Murumba and his brothers donated 4 acres of land and construction materials for the creation of the school. They therefore denied trespassing onto the suit land and further averred that the Plaintiff obtained registration of the suit land fraudulently and set out particulars of fraud against her. It was further averred that the classrooms were built between 2006 and 2007 during the lifetime of the said Hussein Sifuna Murumba. They further filed a counterclaim against the Plaintiff, alleging that the title to the suit land was fraudulently acquired, and sought dismissal of the Plaintiff's case, cancellation of the Plaintiff's title and registration of the property in their own name.



3. The Plaintiff filed a reply to defence and counter-claim dated 03/02/2025 denying the averments therein and urged the court to dismiss the counter-claim with costs.

Evidence by parties.

4. The suit proceeded by way of viva voce evidence.
5. The Plaintiff Beatrice Manyonge testified as PW1. She adopted her witness statement dated 07/08/2012 as her evidence in chief and produced into evidence her list of documents dated 03/08/2012 which contains 2 items as P-Exhibit 1 and 2. She further stated that her father did not donate the suit land and that she obtained her title during her fathers' lifetime. It was further her evidence that her father who died in 2011 did not sue the school or write a complaint during his lifetime. It was her evidence that the school did not start in the suit land.
6. DW1 was Joseph Masinde Wamalwa who testified that he was the former secretary of the school management committee. He adopted his witness statement filed on 14/04/2014. He produced in evidence his list of documents dated 14/08/2013, comprising fourteen (14) items, and formally produced D-Exhibit 5, while the remaining documents were marked for identification. He produced a further list of documents dated 06/10/2015 which contains seven (7) items and produced items no. 2,3 & 4 as DExhibit 2,3& 4. That the school was constructed in 1982 after the registered owner Hussein Sifuma Murumba transferred it to them and wherein they built ECD Classes, latrines, kitchen, fish ponds and a tree nursery. He testified that there was no agreement that the school was to purchase the land. In cross examination, he testified that his testimony was as per the schools record. That the school got one (1) acre from the Plaintiff's father and three (3) acres from his brother namely Mukhwana.
7. Moses Sifuma Murumba testified as DW2 and adopted his witness statement filed on 28/08/2013. He testified that he is the elder son of Hussein Sifuma Murumba. He confirmed that his father transferred one (1) acre of land to the school and that there was no agreement to sale or pay. In cross examination he testified that he accompanied his father to the land control board where land parcel 321 was subdivided into plot no.2397,2398,2399 and 2400.
8. DW3 Erick Lumukuli Wanambasi adopted his witness statement filed on 28/08/2013. He testified that Hussein Murumba was his uncle who donated one (1) acre to the school which was commenced in 1982 following a family meeting.
9. DW4 Geoffrey Musali adopted his witness statement filed on 28/08/2013. He testified that he is the former chairman of the school. He reiterated the evidence as stated by the other defence witnesses.

Submissions.

10. Thereafter directions were taken for parties to file submissions.
11. The Plaintiff filed submissions dated 12/08/2025 where she submitted that she is the registered owner of the suit land. She relied on the provisions of Section 24 of the *Land Registration Act, 2012*. It was further submitted that the Defendants despite pleading fraud against her, they had not proven the same to the required standard i.e under Section 107 and 109 of the Law of *Evidence Act*. She relied inter alia in the cases of *Ratila Gordhanbhai Patel Vs. Lalji Makanji*[1957] E.A And *Ladys Wanjine Ngacha Vs. Teresa Chepsaat & 4 Others*[2013] eKLR. It was further submitted that that the Defendants are not entitled to the orders sought in the counter-claim and that the Plaintiffs claim ought to be allowed as prayed and with costs in accordance with Section 26 of the LRA.



12. The Defendant on its part filed submissions dated 30/09/2024 where it was submitted that the Plaintiff filed this current suit 30 years after the land was donated to the Defendants and by dint of Section 7 of the *Limitation of Actions Act* the suit is time barred and ought to be struck out. It was further submitted that the suit land was donated in 1982 and a school established in the name of the the Murumba's who donated the suit land. That during his lifetime the donor's lifetime he did not complain that the suit land was occupying his land. It was further submitted that despite claiming ownership, the Plaintiff did not produce any document supporting how the said title was obtained despite the claim of fraud having been raised.
13. It was argued that the suit land which was subdivided from parcel no. Ndivisi/Mihuu/321 to Ndivisi/Mihuu/2397 transferred to Mosses and John Murumba, Ndivisi/Mihuu/2398 to Hussein Sifuma Murumba, Ndivisi/Mihuu/2399 to Phanice Khakasa Onyango and Ndivisi/Mihuu/2400 to the Defendant School. That due to delays, the suit land was not registered in the name of the Defendant and remained in the name of Hussein Sifuma Murumba. It was argued that having been in occupation of the suit land for over 42 years without any complaints from the initial registered owner, the Defendant ought to be registered as the owner of the suit land. They relied on Section 30 of the LRA on overriding interests of a person in actual possession and invited the court to look at the decision in *Munyu Maina vs. Hiram Gathiha Maina* (2013) eKLR. They urged the court to allow their counter claim with costs.

Analysis and determination.

14. The above constitutes a summary of the pleadings, the available evidence and exhibits produced, the rival written submissions, and the cited authorities, all of which this court has carefully reviewed and considered. This court has also considered the relevant provisions of the law and proceeds to render its determination by answering the singular issue on who is entitled to the suit land?
15. In this case, the Plaintiff is the registered proprietor of the suit land whereas the Defendant is in possession and occupation thereof. The Plaintiff's claim against the Defendant is based on alleged trespass, while the Defendant has lodged a counterclaim seeking cancellation of the Plaintiff's title.
16. Trespass is described under Section 5(1) of the *Trespass Act* as where a person who enters into or upon property in the possession or occupation of another with an intention to commit an offense or intimidate, insult or annoy any person lawfully in possession or occupation of such property, commits a tort of trespass. In the case of *M'Mukanya -vs- M'Mbijiwe* [1984] eKLR the court stated that trespass is a violation of the right to possession, and a plaintiff must prove that he has the right to immediate and exclusive possession of the land, which is different from ownership. In *Mwangi -vs- Njaria* (Civil Suit E015 of 2021) [2022] KEELC 13564 [KLR] (19th October 2022) (Judgment), the court observed that what underlies the issue of trespass is ownership of the land.
17. As highlighted above, the Plaintiffs claim rested on the fact that she holds the certificate of title of the suit land. The legal framework on legitimacy of title documents is governed by Sections 24, 25 and 26 of the *Land Registration Act*. Section 24(a) thereof recognizes the registered owner as the absolute owner of land. This absolute right is limited by Section 25 which provides that land shall be held by the registered proprietor together with all other privileges appurtenant thereto but subject to charges, leases, encumbrances, restrictions, liabilities, rights and interests as stipulated in Section 28. Section 26 states courts shall prima facie deem the registered owner as the proprietor. However, this right is not absolute and a title can be challenged on grounds of fraud, misrepresentation or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.



18. In this case, there is no contention that the Plaintiff is the registered owner of the suit land and all rights thereto apply to her. It is also not in contention that the Defendants are in occupation of the suit land. The question that behoves this court is the question that behoves this Court is whether the Defendants' occupation of the suit land, which they claim was donated to them, is lawful, and if such donation, if proved, constitutes a valid basis to challenge the Plaintiff's registered title. See the case of *Munyu Maina v. Hiram Gathiha* (2013) eKLR and *Elijah Makeri Nyang'wara v Stephen Mungai Njuguna & Another* [2013] eKLR. These authorities underscore that registration does not cure illegality, and a registered proprietor must, when the root of title is questioned, prove that the title was acquired procedurally, lawfully, and free of fraud or misrepresentation.
19. It is trite law that fraud must not only be specifically pleaded, but the particulars thereof must be distinctly proved. In *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, Tunoi JA. The evidence by the Defendants is to the effect that the Hussein Sifuma Murumba donated the suit land to them as a gift in the year 2002 a property they had been in occupation of since 1982 and where the school had been established. That the said donor visited the Land Control Board and consented to the transfer of the land and a letter of consent was subsequently issued. That due to bureaucracies in the institution they did not obtain a title for the said land. That it was not until recently that they discovered that the Plaintiff had upon the demise of the said donor, registered the land in her name.
20. From the evidence on record, it emerges that the Plaintiff only became the registered owner of the suit land in the year 2011. It has been alleged that her registration as proprietor only took place upon the demise of the donor. From the forgoing and despite her title being challenged, the plaintiff did not prove at what point she obtained title to the suit land and whether through transfer or through transmission. She has simply produced a title which from forgoing paragraphs, this court has affirmed the jurisprudence that a title is the end product of a process. In the quest to assert her ownership, the plaintiff has completely failed to present any evidence surrounding the circumstances of her registration. She has equally failed to disprove the Dependents evidence.
21. While the Plaintiff does not dispute that the suit land was donated to the Respondent, the allegation that the Defendants failed to fulfil a purported promise to pay an "asante" for the donation remains unsubstantiated, as no evidence has been adduced to prove that such a promise was ever made.
22. The totality of the evidence demonstrates that the Plaintiff has failed to establish that she lawfully acquired title to the suit Land. Conversely, the Defendants have discharged their burden of proof by showing that the Plaintiff's title was procured through fraudulent means. Consequently, the Defendants have made out a case warranting cancellation of the Plaintiff's title and registration of the suit land in their names.
23. The evidence on record clearly shows that the Defendants have proved that the suit land was donated to them as a gift. Testimony and supporting evidence demonstrate that they took possession of the land upon the said donation and have remained in continuous, open, and uninterrupted occupation since 1982. It is trite that a valid gift may be perfected by clear intention and possession by the donee. The Defendants long-standing possession, coupled with the credible evidence of donation, establishes their beneficial interest in the property. In the circumstances, this Court is satisfied that the Defendants have proved their entitlement to the suit land and therefore ought to be registered as the lawful proprietors thereof.
24. Accordingly, the Plaintiff's case is hereby dismissed with costs. The Defendants' counterclaim is merited and is hereby allowed as prayed, with costs to the Defendants.
25. It is so ordered.



DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF NOVEMBER, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Tarus for the Respondents.

M/S Wakasa H/B for Mr Murunga for the Applicant.

Bett C/A.

