



REPUBLIC OF KENYA



KENYA LAW
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**Mwangada (Miscellaneous Civil Application E023 of 2025)
[2025] KEELC 8127 (KLR) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8127 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E023 OF 2025
JA MOGENI, J
NOVEMBER 24, 2025
IN THE MATTER OF AN APPLICATION FOR ORDERS
COMPELLING THE TRANSFER OF LAND TO THE APPLICANT
AND
IN THE MATTER OF THE LAND REGISTRATION ACT, 2012
IN THE MATTER OF
CHRISPUS NGOLO MWANGADA EX PARTE APPLICANT**

RULING

1. What is before Court for determination is an Ex parte Notice of Motion dated 24/03/2025 seeking the following reliefs:
 1. That this Honorable Court be pleased to grant an Order pursuant to Section 8 of the [Land Control Act](#), Cap 302 Laws of Kenya that the time for an application for the [Land Control Act](#) Consent for the subdivision and transfer of land as is required by Section 6 of the said Act, be extended for ninety (90) days from the date of the Order to be made thereon.
 2. That this Honourable Court be pleased to order that the Registrar do sign any forms for the Land Control Board Consent in the event that the Vendor declines to execute the same within thirty (30) days of the order herein.
2. The Application is predicated on the grounds that, the omission to make the application was due to inadvertence and is not of a nature to prejudice the parties hereto. At the same time the vendor misrepresented to the Ex parte Applicant that he was going to undertake the process once the title to the property was issued.
3. That the Applicant entered into a valid Sale Agreement with the deceased, fully paid the purchase price and took possession of the property in 1989 and having taken possession and remaining on



it uninterrupted he relied on the vendor's representation to believe the transfer process was being undertaken in good faith.

4. However, the Vendor Samuel Kipkoech Maritim passed on before effecting the transfer despite having received full purchase price and the Applicant having taken possession in accordance with the Sale Agreement.
5. The Ex parte Applicant states that he engaged the family of the deceased who have willfully, neglected, failed and/or refused to effect transfer and also the Green Card a copy of which he attached marked as CNM-3 show that the title was issued in the deceased's name.
6. I note that the application is undefended because it is a Miscellaneous Ex parte Application.
7. The Court has considered the application and would wish to upfront point out that an Ex parte application cannot be used to extend the time for obtaining Land Control Board (LCB) Consent under Section 8 of the [Land Control Act](#) in circumstances such as what is at hand in the instant matter. The death of the Vendor before consent is obtained and transfer completed complicates the matter, making a what the Ex parte Applicant considers as a simple Ex parte application an inappropriate legal action to take.
8. In the matter at hand, the Vendor's death means the Sale Agreement is incomplete/voidable. The reason being that a deceased person cannot legally transfer land. This means that the transaction the Ex parte Applicant is seeking has to become part of the Deceased's Estate and any prior agreement is considered void or incomplete until the legal succession process is finalized.
9. This is because the Land Control Board consent application form will require involvement of both parties' signatures, ID copies, KRA pins, and passport photos of both the buyer and the seller (or their legal representatives). An Ex parte application (made by one party without the other present or notified) would not meet these requirements.
10. It is therefore of foremost importance that the deceased, Samuel Kipkoech Maritim who is the Vendor's Estate must go through the succession process under the [Law of Succession Act](#). A personal representative (administrator or executor) must be appointed by the Court. This representative is the only person who can legally deal with the deceased's land and attend the LCB meeting and not a random person picked by the Ex parte Applicant in this case one Caleb Maritim. Indeed, as indicated the Respondents who are not enjoined in this application have disowned the transaction the said Caleb Maritim signed.
11. Section 8(1) of the [Land Control Act](#) allows the High Court (read ELC) to extend the six-month period for "sufficient reason". The Court will only determine if there is sufficient reason after hearing from all interested parties (the buyer and the vendor's estate/heirs), meaning it cannot be an Ex parte application.

Determination

12. A person can only lawfully deal with the estate of a deceased person pursuant to a Grant of Representation made to him under the [Law of Succession Act](#). In this regard, the jurisdiction of the Court to protect the estate of a deceased person is set out in Section 45 of the [Law of Succession Act](#) as follows:-

“ 45. No intermeddling with property of deceased person



- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- (2) Any person who contravenes the provisions of this section shall —
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

13. The validity of transactions relating to agricultural land is to be determined in accordance with the provisions of the *Land Control Act* Cap. 302 which requires the consent of the Land Control Board of the particular area to validate the transaction. Section 6 of the *Land Control Act* provides for the consent of the Land Control Board for dealings in agricultural land, declaring as null and void for all purposes transactions which do not have the consent of the Land Control Board:

“6. Transactions affecting agricultural land

- (1) Each of the following transactions that is to say—
 - (a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
 - (b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 (L.N. 516/1961) for the time being apply; (c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area, is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.”



14. Under Section 7 of the Act, an aggrieved party may recover the money paid under the illegal contract only but the contract is otherwise void for all purposes in terms of Section 6 (1) of the Act, aforesaid:

“7. Recovery of consideration

If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to Section 22.”

15. There was no dispute that the land the subject of these proceedings was agricultural land. For all the transactions for the sale of land between the Ex parte Applicant and the deceased, the sale was vitiated by the lack of consent of the Land Control Board by virtue of Section 6 (1) of the Land Control Act. (See HCCC No. 2137 of 1999 Nairobi, Pius Mutinda Kithome v. Onesmus Musyoka Mbali, per Githinji, J as he then was). As submitted by the Counsel for the administrators, the provision for the consent of the Land Board does not make any exceptions with regard to the registered proprietor. The exception only relates to transmission of land without subdivision thereof and to Government land under Section 6 (3) which provides as that-

“(3) This section does not apply to—

- (a) the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or
- (b) a transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.”

16. Although there was a Sale Agreement dated 30/05/1989 the transfer was not done and the parties did not obtain a Land Control Board Consent. Unfortunately, the deceased passed on before the transfer was done.

17. Any transactions between the Ex parte Applicant with any of the beneficiaries of the estate of the deceased entered into before the Grant of Letters of Administration to them and before the Confirmed Grant, the contracts of sale are invalid for offending the provisions of Section 45 and 82 of the Law of Succession Act. Even if the sale transactions were by the administrators, the dealings with immovable property of the Estate are restricted by the provisions on the powers and duties of the personal representatives under Section 82 (b) Proviso (ii), which provides that:

“(ii) no immovable property shall be sold before confirmation of the grant.”

18. The persuasive authority of Wakiaga J. in Stephen Waweru Ng’ang’a v. Kimani Ng’ang’a, Nyeri HC P&A No. 1 of 2011 would be relevant in a claim against the beneficiaries who sold their interest so that they should not defraud the innocent purchasers of their money. The transactions would also be subject to Section 7 of the Land Control Act for the refund of the purchase price under the void contracts of sale.

19. Accordingly, the deceased Vendor's family or next of kin must file for Succession in the High Court to obtain a Grant of Letters of Administration (if there is no will) or Grant of Probate (if there is a



will). Once the Grant is confirmed, the appointed legal representative has the authority to step into the Vendor's shoes and deal with the land transaction.

20. For purposes of making an application for extension a joint application for extension may be expedient (if needed). If the six-month statutory period from the date of the original Sale Agreement has lapsed, the appointed administrator and the Vendor (in this case the administrator of the estate of the deceased) would then jointly apply for an extension of time under Section 8 of the *Land Control Act*. The application needs to provide sufficient reason for the delay.
21. It is upon obtaining the Court extension (or if the original period had not expired), the buyer or in this case the Ex parte Applicant and the administrator of the estate of the Vendor who is deceased) would apply jointly to the LCB for consent to the transaction and subdivision. It is when the LCB consent is granted, that the transfer can be completed and registered in the Ex parte Applicant's name.
22. Accordingly, for the reasons set out above, the Ex parte Application dated 24/03/2025 is dismissed. Costs in the Cause.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24TH DAY OF NOVEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Ms. Achieng holding brief for Mr. Mwagambo for Exparte Applicant

Mr. Melita – Court Assistant

