

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCC No. E009 OF 2022**

**JACKSON OYWERI MATUNDURA (Suing as personal representative and administrator of the estate of KEREBI MATUNDURA) .....**  
**PLAINTIFF**

**AND**

**SAMWEL OMWERI MATUNDURA .....**  
**1<sup>ST</sup> DEFENDANT**

**JANET BOSIBORI OMWANGE .....**  
**2<sup>ND</sup> DEFENDANT**

**SAMUEL MOKAYA NYAMORAMBO ..... 3<sup>RD</sup>**  
**DEFENDANT**

**LAND REGISTRAR, NYAMIRA COUNTY ..... 4<sup>TH</sup>**  
**DEFENDANT**

**THE ESTATE OF THE LATE JOSHUA OMWANGE**  
**NYAMORAMBO .....**  
**5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff moved the Court through Plaintiff dated 24<sup>th</sup> November 2022 which was later replaced with Amended Plaintiff amended on 12<sup>th</sup> October 2023.
2. The Plaintiff averred in the Amended Plaintiff that he was the legal administrator and personal representative of the estate of Kerebi Matundura (deceased) who passed away on 1<sup>st</sup> July 2000 and who was the registered proprietor of land parcel number Central Kitutu/Bogetaorio/706 (the suit property). That

the suit property was later registered in the name of the 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo (since deceased) on 6<sup>th</sup> November 2008 without undertaking succession and that on 8<sup>th</sup> April 2009, the suit property was closed upon subdivision into parcel numbers Central Kitutu/Bogetaorio/2458 to 2464.

3. The Plaintiff further averred that the transfers and subdivisions were unlawful and fraudulent since no succession was conducted. The Plaintiff therefore sought judgment as follows:

- a. A declaration that the transfer of all that parcel of land known as Central Kitutu/Bogetaorio/706 from the name of Kerebi Matundura (deceased) to the 1<sup>st</sup> Defendant and one Joshua Omwange Nyamorambo (now deceased) and the subsequent subdivisions was fraudulent, unlawful, null and void.*
- b. A declaration that the closure of the title known as Central Kitutu/Bogetaorio/706 and the creation of title numbers Central Kitutu/Bogetaorio/2458-2464 was unprocedural, unlawful and therefore a nullity ab initio.*
- c. An order directing the Land Registrar Kisii County to cancel all the entries arising out of the sub-division of all that parcel of land known as Central Kitutu/Bogetaorio/706.*

*d. General Damages for unlawful sub-division and/or conversion.*

*e. Interests on (f) (sic) above at court rates.*

*f. Costs of this suit be borne by the Defendant.*

*g. Such further and/or other relief as the Honourable Court may deem fit and expedient so to grant.*

4. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants filed Statement of Defence dated 22<sup>nd</sup> December 2023 in which they averred that they were the legal beneficiaries of the estate of Kerebi Matundura whose land was alleged to have been registered in the name of 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo (deceased) on 6<sup>th</sup> November 2008 following an arrangement at a meeting held on 12<sup>th</sup> December 2008. They further averred that the Plaintiff was present during the arrangement to have the title deeds taken out for the respective family members. In conclusion, they urged the Court to dismiss the Plaintiff's suit with costs.

5. The Plaintiff filed Reply to Defence dated 20<sup>th</sup> January 2024 through which he joined issue with the Defendants on their defence and reiterated the averments in his Plaint. The matter was later scheduled for hearing.

6. The Plaintiff testified as PW1 and adopted his statement dated 24<sup>th</sup> November 2022 as his evidence-in-chief. He testified that Kerebi Matundura (deceased) was his mother, that she died in

July 2000 and that she was the registered proprietor of land parcel number Central Kitutu/Bogetaorio/706 (the suit property). He added that no succession proceedings had ever been filed in respect of his mother's estate and that in April 2022, neighbours encroached onto the suit property which the 1<sup>st</sup> and 3<sup>rd</sup> Defendants had already subdivided into parcel numbers Central Kitutu/Bogetaorio/2458 to 2464 and registered in their names.

7. The Plaintiff further testified that it was his deceased mother's family together with the Defendants who were living on the suit property as of the date of his testimony and that the Defendants are his uncles. He stated that he did not attend a meeting held on 12<sup>th</sup> August 2008 and that they had never applied for letters of administration in respect of his deceased mother's estate.
8. The Plaintiff produced copies of the following documents as his exhibits: Limited Grant of Letters of Administration Ad Litem, title in respect of the suit property, green card in in respect of the suit property, chief's letter dated 26<sup>th</sup> May 2022, and Certificate of Death in respect of Kerebi Matundura (deceased).
9. George Kariuki Maina, the Land Registrar Nyamira (PW2) testified that Kerebi Matundura (deceased) was registered as proprietor of the suit property on 18<sup>th</sup> September 1975 through transmission and that a transfer by way of transmission in

favour of the 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo was registered on 6<sup>th</sup> November 2008. He added that he was unable to trace the instruments used to effect the transmission of 6<sup>th</sup> November 2008.

10.PW2 testified further that he inquired and was unable to trace any entry in the presentation book to show that such instruments were ever submitted to the land registry. He also stated that the title in respect of the suit property was closed on 8<sup>th</sup> April 2009 upon its subdivision and that again, he was unable to locate instruments supporting the subdivision. He further stated that in the absence of proof of formal succession, the transfers were illegal and unprocedural.

11.The Plaintiff's case was then closed.

12.On 25<sup>th</sup> June 2025, the Plaintiff withdrew the case against the 4<sup>th</sup> Defendant with no orders as to costs.

13.Samwel Omweri Matundura, the 1<sup>st</sup> Defendant, testified as DW1. He stated that he was 75 years old and that the Plaintiff is his younger brother with whom he had lived on the suit from birth to the date of his testimony. He adopted his witness statement dated 22<sup>nd</sup> December 2023 as his evidence-in-chief and produced a copy of minutes dated 12<sup>th</sup> December 2008. He further stated that no succession proceedings were filed in respect of their deceased mother's estate.

14.The Defence case was then closed.

15. Directions were thereafter given for filing and exchange of written submissions. The Plaintiff filed submissions dated 17<sup>th</sup> October 2025 while the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants filed submissions dated 13<sup>th</sup> October 2025.

16. Counsel for the Plaintiff submitted on the following four issues: whether the Plaintiff proved his case to the required standard; whether the Plaintiff proved fraud on the part of the Defendants; whether the Plaintiff is entitled to the reliefs sought and costs.

17. On the first issue, Counsel for the Plaintiff submitted that the Plaintiff had adduced evidence proving that the suit parcel was registered in the name of his deceased mother Kerebi Matundura on 18<sup>th</sup> September 1975 and that upon her demise on 1<sup>st</sup> July 2000, no succession proceedings had been filed in respect of her estate. He cited **Sections 107, 109 and 112** of the **Evidence Act** on burden of proof and the case of **Ngugi vs. Kimunio (ELC Case No. E006 of 2023) [2024] KEELC 1518 KLR** in which the case of **Miller vs. Minister of Pensions [1942] 2 ALL ER 372** was cited in explaining the standard of proof in civil cases being on a balance of probabilities. Counsel submitted that the Defendants did not tender any evidence to disprove the Plaintiff's averments and that the Plaintiff had in the circumstances proved his case.

18. On the second issue, Counsel referred to the definition of "fraud" in Black's Law Dictionary as well as the obiter dictum

of the Court of Appeal in the case of **Mas Construction Limited vs. Sheikh & 6 Others** [2025] KECA 349 KLR where it was appreciated that there were few unscrupulous officers who engaged in fraudulent dealings in land registries that led to long drawn cases. Counsel further submitted that **Section 26 (1) of the Land Registration Act 2012** provided that a title obtained through fraud and misrepresentation could not be protected and cited the cases of **Elijah Makori Nyang'wara vs. Stephen Mungai Njuguna & Another** [2013] eKLR and **Virjay Morjaria vs. Nansingh Madhusing Darbar & Another** [2000] eKLR in support of his arguments.

19. Counsel for the Plaintiff also submitted that the Plaintiff had tendered sufficient evidence to prove fraud on the part of the Defendants who caused illegal transfer and subdivision of the suit property without following due process and that the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants were not the legal beneficiaries of the deceased Kerebi Matundura under the Law of Succession Act.

20. Counsel urged the Court to declare the transfers illegal and restore the suit parcel to the estate of Kerebi Matundura. To this end, Counsel relied on the case of **Lawrence P. Mukiri vs. Attorney General and 4 others** [2013] eKLR where the Court held that rectification of a register could be effected by cancelling or amending it if there was evidence of fraud.

21. Counsel further cited the case of **Municipal Council of Eldoret vs. Titus Gatitu Njau [2020] eKLR** where the Court of Appeal defined trespass as being a violation of a person's right to possession and submitted that the Court should award damages for trespass. Relying on the case of **Duncan Nderitu Ndegwa vs. KPLC Ltd & Another [2013] eKLR**, Counsel urged the Court to award KShs 500,000 as general damages for trespass. In conclusion, Counsel submitted that the Plaintiff had proved his case.

22. On the other hand, Counsel for the Defendants submitted on several issues including whether the decision to pursue and acquire the title from the estate of Kerebi Matundura was informed by minutes of the meeting held by the family where the Plaintiff was present and agreed on the subsequent resolution to obtain title directly from the land registry in Nyamira. They submitted that the Plaintiff was present at the meeting of 12<sup>th</sup> December 2008 and also obtained a title hence was a partaker of the flawed process.

23. Counsel submitted that the Court ought to find that the Plaintiff wilfully participated in the alleged flawed and fraudulent process, that he had come to Court with unclean hands and was therefore undeserving of the remedies he sought. Counsel cited the equity maxim of "*he who comes to equity must do equity*" in that regard.

24. It was further submitted that the 2<sup>nd</sup> Defendant had been improperly joined in this suit since although she was the widow of Joshua Omwange Nyamorambo (deceased), she had never obtained letters of administration in respect of her deceased husband's estate. In conclusion, the Defendants submitted thus:

*It is also our humble submission that you may be pleased your lordship to make a finding that the present title numbers be nullified and reverted to the names of the original owner the late KEREBI MATUNDURA since the parties belong to the same ancestry so as to bolster and promote a cordial relationship and coexistence the way they have done for the last over 70 years or so and we do so humbly submit.*

25. I have carefully considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether fraud and/or illegality have been established and whether the reliefs sought should issue.

26. The Plaintiff pleaded at paragraphs 8 and 9 of the Amended Plaintiff that the transfers and subdivisions were tainted by an unlawful process (read illegality) and fraud.

27. The rights and protection accorded to a registered proprietor of land are elaborately spelt out in the law. Such a proprietor is

entitled to the rights, privileges, and benefits specified under **Article 40** of the **Constitution** which secures protection of right to property and **Sections 24** and **26** of the **Land Registration Act**. Pursuant to **Section 26** of the **Land Registration Act**, the Court is obligated to accept the proprietor's certificates of title as *prima facie* evidence of proprietorship, unless the provisos under **Section 26 (1) (a)** or **(b)** are established.

28. **Section 24** of the **Land Registration Act** provides as follows:

***Subject to this Act—***

***(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and***

***(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.***

29. Pursuant to **Section 26** of the **Land Registration Act**, the Court is obligated to accept certificates of title as *prima facie* evidence of proprietorship, unless the provisos under **Section 26 (1) (a)** or **(b)** are established. The only grounds upon which titles can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title was acquired illegally, un-procedurally or through a corrupt scheme.

30. By definition, fraud entails conduct which leads another to act to his detriment or to suffer a loss. The authors of **Black's Law Dictionary 10th Edition** define fraud to mean "A *knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment*". By way of further elaboration, the authors quote the following extract from **John Willard, A Treatise on Equity Jurisprudence 147 (Platt Potter ed., 1879)**:

***"Fraud has been defined to be, any kind of artifice by which another is deceived. Hence, all surprise, trick, cunning, dissembling, and other unfair way that is used to cheat any one, is to be considered as fraud."***

31. Concerning the Plaintiff's allegations of illegality and fraud, suffice it to restate that fraud is a serious allegation. A party alleging fraud must plead it, particularise it, and strictly prove it to standard higher than the usual one in civil cases of proof

on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See **Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR** and **John Mbogua Getao v Simon Parkoyiet Mokare & 4 others [2017] eKLR**. In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. See **Kinyanjui Kamau v George Kamau Njoroge [2015] eKLR**.

32. The Court of Appeal stated in **John Mbogua Getao v Simon Parkoyiet Mokare & 4 others** (supra):

***The standard or burden of proof where fraud is alleged in civil matters has been held in decided cases to be of higher than the ordinary standard of balance of probabilities... Indeed, allegations of fraud are of serious nature that may carry with them penal consequences that may further infringe on a person's right to liberty hence the insistence that fraud ought to be specifically pleaded, with particulars thereof, and proved. It would be foolhardy for the appellant to dismiss allegations carrying such far reaching consequences as merely procedural. In Emfil Ltd vs. Registrar of Titles Mombasa (supra), this Court pronounced itself as follows on the issue:-***

***“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded***

***and proved on a higher standard than the ordinary standard of balance of probabilities. Although Article 159 enjoins the court to administer substantial justice without undue regard to procedural technicalities, Article 159 does not allow the respondents to totally ignore the rules of evidence.”***

33.The Plaintiff pleaded particulars of fraud at paragraph 9 of the Amended Plaintiff to include causing the suit property to be subdivided without succession and causing the suit property to be transferred to people who are not lawful beneficiaries of the deceased.

34.There is no dispute that Kerebi Matundura (deceased) passed away on 1<sup>st</sup> July 2000, as confirmed by the copy of certificate of death that was produced in evidence. It is also not contested that the deceased was registered as proprietor of land parcel number Central Kitutu/Bogetaorio/706 (the suit property) on 18<sup>th</sup> September 1975 and remained proprietor until 6<sup>th</sup> November 2008 when the 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo were registered as joint proprietors through transmission.

35.Later, on 8<sup>th</sup> April 2009, the register in respect of the suit property was closed upon subdivision of the suit property into parcel numbers Central Kitutu/Bogetaorio/2458 to 2464. All this is manifest from the testimony of the Land Registrar and

the certified copy of the register which was produced. The register shows that the transfer of 6<sup>th</sup> November 2008 was registered as entry number 6 in the proprietorship section of the said register while the closure and subdivision of 8<sup>th</sup> April 2009 was registered as entry number 7 in the proprietorship section of the register.

36. Thus, on 6<sup>th</sup> November 2008 when the 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo were registered as joint proprietors of the suit property, the deceased was dead and had been dead for over 8 years. Nevertheless, the suit property remained registered in the deceased's name until 6<sup>th</sup> November 2008.

37. Administration of estates of deceased persons is governed by the **Law of Succession Act. Section 2 (1)** of the said statute provides:

***Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.***

38. Further, **Section 3 (1)** of the Act defines "free property", in relation to a deceased person to mean "*the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death.*" Thus, the suit property constituted free property of the deceased as of 1<sup>st</sup> July 2000 when she died and up to 6<sup>th</sup> November 2008.

39. **Section 45** of the **Law of Succession Act** prohibits dealing with any free property of a deceased person without following provisions of the Act. It provides:

***(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.***

40. There is ample case law on the effect of the foregoing provisions. In **Odera v Were (Civil Appeal E041 of 2024) [2025] KECA 1284 (KLR) (11 July 2025) (Judgment)**, the Court of Appeal held thus:

***The effect of the above provision of the law is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without such authority is guilty of intermeddling which is a criminal offence.***

***Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. At page 973 of the Black's Law Dictionary, 11<sup>th</sup> Edition, the definition of the word 'intermeddler' makes reference to an***

***officious intermeddler whose definition is provided for at page 1310 as follows: “Someone who confers a benefit on another without being requested or having a legal duty to do so, and who therefore has no legal grounds to demand restitution for the benefit conferred.” ...***

***From the provisions of section 45 of the Act and from the aforementioned persuasive decision of the High Court, intermeddling occurs where administrators or any person interested in the estate of a deceased person as a beneficiary or otherwise, deals with the said estate without any lawful authority and in a manner as to diminish such an estate.***

41. In an earlier decision in **Kiragu & 2 others v Kiragu & 7 others** (Civil Appeal E471 of 2021) [2024] KECA 1600 (KLR) (8 November 2024) (Judgment), the Court of Appeal held:

***What then constitutes intermeddling? Gikonyo, J. in the decision Benson Mutuma Muriungi vs C.E.O. Kenya Police Sacco & another (supra) stated thus: “There is no specific definition of the term intermeddling provided in the Law of Succession Act. The Act simply prohibits taking possession of or disposing of, or otherwise***

***intermeddling with, any free property of a deceased person by any person unless with the express authority of the Act, any other written law or a grant of representation under the Act. But in my understanding, the use of wide and general terms such as; “for any purpose” and/or “otherwise intermeddle with” in the Act portends that the category of the offensive acts which would amount to intermeddling is not heretically closed or limited to taking possession and disposing of the property of the deceased. I would include in that category such acts as; taking possession, or occupation of, disposing of, transferring, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with existing lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act or any other written law. I do not pretend to close the list either or make it exhaustive. The list could be long. However, any act or acts which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law.”***

***48. We fully adopt that definition. What we deduce from the provisions of section 45 of the***

***Act and from the aforementioned decision of the High Court is that intermeddling occurs where administrators or any person interested in the estate of a deceased person as a beneficiary or otherwise, deals with the said estate without any lawful authority and in a manner as to diminish such an estate.***

42. The Plaintiff's case is that the transfer of 6<sup>th</sup> November 2008 was effected without any grant of representation having been issued in respect of the deceased's estate. In fact, the Plaintiff contends that besides the letters of administration *ad litem* issued to him on 25<sup>th</sup> July 2022 for purposes of filing this suit, no grant of representation has been issued in respect of the deceased's estate.

43. The 1<sup>st</sup> Defendant, who testified as the sole witness in respect of the Defence case conceded that no grant of representation has been issued in respect of the deceased's estate. The Land Registrar (PW2) also confirmed in his testimony that he was unable to locate any documents to support the transfer of 6<sup>th</sup> November 2008. Needless to emphasise, one such document would be grant of representation in respect of the deceased's estate.

44. The Defendant have attempted to justify their conduct by relying on minutes of a meeting held on 12<sup>th</sup> December 2008 at which they claim that the Plaintiff agreed to dealings in the

suit property. In that regard, I note that the Plaintiff had no capacity to sanitize unlawful dealings. Secondly, the meeting took place on 12<sup>th</sup> December 2008, long after the transfer of 6<sup>th</sup> November 2008.

45. In view of the violation of **Section 45** of the **Law of Succession Act**, the transfer of 6<sup>th</sup> November 2008 is manifestly unlawful and a fraud on the deceased's estate. The 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo actively participated in the fraud and illegality. I am satisfied that fraud and illegality have been established.

46. As the Courts have severally stated, title to land is the end product of a process and pursuant to **Article 40 (6)** of the **Constitution**, the protection of the right to property does not extend to property found to have been unlawfully acquired. An illegally acquired title is a nullity and confers no legal estate. See **Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)**.

47. It follows therefore that the 1<sup>st</sup> Defendant's and Joshua Omwange Nyamorambo's title to the suit property was null and void from the onset. In those circumstances, they could not validly subdivide the suit property or confer valid title in respect of any of the subdivisions either on themselves or on other persons. In realisation of all this, the Defendants have urged the Court in their final submission to nullify the

subdivisions and revert the suit property to the estate of the deceased.

48. In view of the foregoing, I find merit in the Plaintiff's case. He is entitled to the orders sought at prayers a to c of the Amended Plaint. Regarding the prayer for general damages for unlawful subdivision or conversion, I am not persuaded to grant it considering that the 1<sup>st</sup> Defendant is a son of the deceased and a potential beneficiary of the estate.

49. In the result, I make the following orders:

**a) A declaration is hereby made that the transfer of all that parcel of land known as Central Kitutu/Bogetaorio/706 from the name of Kerebi Matundura (deceased) to the 1<sup>st</sup> Defendant and Joshua Omwange Nyamorambo and the subsequent subdivisions were fraudulent, unlawful, null and void.**

**b) A declaration is hereby made that the closure of the title known as Central Kitutu/Bogetaorio/706 and the creation of title numbers Central Kitutu/Bogetaorio/2458 to 2464 was unprocedural, unlawful and therefore a nullity ab initio.**

**c) The Land Registrar Nyamira County is hereby ordered to cancel entries numbers 6 and 7 dated 6<sup>th</sup> November 2008 and 8<sup>th</sup> April 2009, respectively,**

**in the proprietorship section of the register of the parcel of land known as Central Kitutu/Bogetaorio/706.**

**d)In view of the family relationship between the parties, I order that each party shall bear own costs of the suit.**

**Dated, signed, and delivered at Nyamira, this 3<sup>rd</sup> day of December 2025.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:

Mr Ochoki holding brief for Ms Chepkorir for the Plaintiff

No appearance for the Defendants

Court Assistant: B Kerubo