



Kasimu (Suing as the legal representative of the Estate of John Kasimu Kilatya) v Wambua & 4 others (Environment and Land Case 2 of 2023) [2025] KEELC 18382 (KLR) (16 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 2 OF 2023
NA MATHEKA, J
DECEMBER 16, 2025**

BETWEEN

ROBERT MUTIWA KASIMU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOHN KASIMU KILATYA) PLAINTIFF

AND

**FRNACIS MAINGI WAMBUA 1ST DEFENDANT
LUKAS MUTUNE WAMBUA 2ND DEFENDANT
JACKSON MAWEU WAMBUA 3RD DEFENDANT
NDUNGWA WAMBUA 4TH DEFENDANT
NDUKI WAMBUA MASAI 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff avers that at all times relevant to this suit he was the owner of land number Kalama/Kiitini/420 measuring 3.8 hectares and upon registration on 12th September, 2000 he was issued with a title deed on 18th September, 2000. The Plaintiff had bought the land from Makau Nzioka and Kimeu Muli on the 23rd July, 1982 for Kshs. 15,000/=.
2. That the 1st Defendant sometimes 2002 representing his family, the Defendants and acting on his behalf filed Machakos Land Disputes Tribunal Case No. 150 of 2002 and after the hearing the Tribunal awarded the land to the Defendants and ordered the cancelation of the Plaintiff's title deed which was later done and re-issued in the names of the 1st and 2nd Defendants on the 23rd April, 2008. That the Defendants caused the decision of the Tribunal to be adopted in Machakos Misc. Civil Application No.118 of 2002 and they used the order issued therein to cancel the Plaintiff's title and the same was issued in the names of the 1st, 2nd and 3rd Defendants. The Plaintiff filed Judicial Review Application



Number 158 of 2002 Machakos High Court to quash the Tribunal's illegal award but the application was dismissed on a technicality. The Plaintiff appealed to the Court of Appeal in Nairobi Civil Appeal No. 220 of 2015 and the court allowed the appeal on 29th September, 2017, set aside the High Court Ruling, quashed illegal Tribunals' award and awarded the Plaintiff his land.

3. The Defendants who had entered into the suit land pursuant to the Tribunals' illegal award have continued to occupy the Plaintiff's land despite being aware of the Court of Appeal Judgment and continue to carry on destruction on the land to the detriment of the Plaintiff. That the Defendants have declined to relinquish the title deed to the suit land to have it issued in the names of the Plaintiff and in terms of the Court of Appeal Judgment and thus continues to hold it illegally. That in view of the Court of Appeal Judgment, the Defendants are illegal trespassers who ought to be evicted to give Plaintiff vacant possession.
4. The Plaintiff prays for Judgment against the Defendants for:
 - a. A declaration that the Plaintiff is the legal owner of land number Kalama/Kiitini/420 in terms of the Judgment in Nairobi Court of Appeal in Civil Appeal No. 220 of 2015.
 - b. An order canceling the title deed held and issued in the names of Francis Maingi Wambua, Lukas Mutune, Jackson Maweu Wambua pursuant to court order issued in Machakos Misc. Civil Application No. 118 of 2002 and the same to be issued in the name of the Plaintiff.
 - c. An order that the Deputy Registrar do execute the relevant documents to effect transfer.
 - d. An order of eviction do issue against the Defendants and the same to be executed by a court bailiff and/or a licensed auctioneer and the Officer Commanding Station (OCS) Machakos do provide security during the exercise.
 - e. Cost of the suit and interest.
 - f. Any other and/or further relief that this Honourable Court deems fit to grant.
5. The Defendants state that Land Parcel No. Kalama/Kiitini/420 is their family/ ancestral land having been inherited by Wambua Masai - deceased, from the 1st to 5th Defendants forefathers; who is the father of the 1st to the 4th Defendants and the husband of the 5th Defendant who passed away in or about the year 1971. The Defendants state that the said Wambua Masai - Deceased met his demise long before the Land Adjudication process begun; the said adjudication process having commenced in or about the year 1978. The Defendants further state that consequently, upon the demise of the said Wambua Masai - Deceased, the suit property Land Parcel No. Kalama/Kiitini/420, during the adjudication process, was registered in the name of Kimeu Muli and Makau Nzioka to hold in trust for the family of Wambua Masai - Deceased. The Defendants further state that the said Kimeu Muli and Makau Nzioka had at the time relocated to Shimba Hills in Kwale in or about the year 1965 or thereabouts, the said registration having been sanctioned to be effected in their names by the Defendants herein along with family elders in their absence and with their consent.
6. The Defendants state that the Plaintiff herein, who is their neighbour, after having learnt of the said registration in the names of Kimeu Muli and Makau Nzioka, traveled from Kalama to Shimba Hills where he met the said Kimeu Muli and Makau Nzioka and purchased the suit property secretly from them without the knowledge and/or consent of the Defendants herein in whose favour the suit property was registered in the names of Kimeu Muli and Makau Nzioka to hold in trust for the family of Wambua Masai - Deceased. Promptly on the strength of the said unauthorized purchase, the Defendants state that the Plaintiff secretly brought the said Kimeu Muli and Makau Nzioka to the Land Control Board for the appropriate consent to transfer. The Defendants state that they learnt



about the said transfer after it was effected which prompted the institution of the tribunal proceedings in Land Tribunal Case No. 150 of 2002, wherein a finding was made to the effect that the portion purportedly sold to the plaintiff herein was sold (by Kimeu Muli and Makau Nzioka) without the consent of the family members. That Maingi Wambua (the first Defendant herein) was and has been settled on the said portion of land since his birth. That consequently, the Plaintiff was refunded any monies he paid for the illegal purchase by the said Kimeu Muli and Makau Nzioka and the title issued in his name was effectively cancelled and another title issued in the names of the 1st, 2nd and 3rd Defendants.

7. The Defendants pray by way of Counter-claim for orders;
 - i. A declaration be and is hereby issued that Land Parcel No. Kalama/Kiitini/420 was registered in the name of Kimeu Muli and Makau Nzioka to hold in trust for the family of Wambua Masai - Deceased.
 - ii. A declaration be and is hereby issued that the sale and transfer of Land Parcel No. Kalama/Kiitini/420 to the Plaintiff was illegal for want of consent and/or involvement of the family of Wambua Masai -Deceased.
 - iii. A declaration be and is hereby issued that Land Parcel No. Kalama/ Kiitini/420 belongs to the Defendants having been registered in the name of Kimeu Muli and Makau Nzioka to hold in trust for the family of Wambua Masai - Deceased.
 - iv. A declaration be and is hereby issued that the title to Land Parcel No. Kalama/Kiitini/420 and issued to the 1st, 2nd and 3rd Defendants is legal and valid.
 - v. Alternatively, an order do issue that the Defendants have acquired title to the said Land Parcel No. Kalama/Kiitini/420 by reason of adverse possession.
 - vi. That a permanent injunction do issue restraining the Plaintiff, his agents, servants, assigns or any other person/entity claiming authority from the Plaintiff from entering, cultivating, building, developing or in any other way interfering with the Defendants quiet possession and use of Land Parcel No. Kalama/Kiitini/420.
 - vii. Costs of the Suit and Counter-claim.
8. The court has considered the pleadings, evidence presented before it, submissions made as well as the authorities relied upon by the parties. The issues for determination are:
 - a. Who is the lawful proprietor of the land parcel known as Kalama/Kiithini/420?
 - b. What orders should this court issue?
9. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24(a) of the [Land Registration Act](#) provides as follows;

“Subject to this Act, 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.”
10. Section 26 (1) of the [Land Registration Act](#) states as follows;

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute



and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

11. The Court of Appeal in *Munyu Maina vs Hiram Gathiha Maina* (2013) eKLR held that;

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant’s testimony.”

12. PW1, the Plaintiff has led evidence that on or about the 23rd July 1982 his father bought the suit land from Makau Nzyoki and Kimeu Muli who were the legal and registered owners for Kshs. 15,000/= the father took possession and the sellers moved to Shimba Hills where they had bought land. That his father worked abroad for some time and upon his return was issued with a title deed on the 18th September 2000.
13. 1st Defendant sometimes 2002 representing his family, the Defendants and acting on his behalf filed Machakos Land Disputes Tribunal Case No. 150 of 2002 and after the hearing the Tribunal awarded the land to the Defendants and ordered the cancelation of the Plaintiff’s title deed. That the Defendants caused the decision of the Tribunal to be adopted in Machakos Misc. Civil Application No.118 of 2002 and they used the order issued therein to cancel the Plaintiff’s title and the same was issued in the names of the 1st, 2nd and 3rd Defendants. The Plaintiff eventually appealed to the Court of Appeal in Nairobi Civil Appeal No. 220 of 2015 and the court allowed the appeal on 29th September, 2017, set aside the High Court Ruling, quashed illegal Tribunals’ award and awarded the Plaintiff his land. PW2 Joseph Mutunga confirms that he was the person who wrote the sale agreement and witnessed the transaction. That the larger family was present. That the 5th Defendant died and was buried elsewhere and not on the suit land.
14. The 1st Defendant submitted the Plaintiff herein, who is their neighbour purchased the suit property secretly from Kimeu Muli and Makau Nzioka without the knowledge and/or consent of the Defendants herein in whose favour the suit property was registered in the names of Kimeu Muli and Makau Nzioka to hold in trust for the family of Wambua Masai - Deceased.
15. It is not in dispute that the Plaintiff purchased the suit land from Kimeu Muli and Makau Nzioka who were the registered owners. The court of Appeal found that the Tribunal had no jurisdiction to determine title to land and cancel titles and quashed their orders. I find no evidence before me that Land Parcel No. Kalama/Kiitini/420 was registered in the name of Kimeu Muli and Makau Nzioka to hold in trust for the family of Wambua Masai - Deceased.
16. Section 26 of the *Land Registration Act* which guarantees the concept of indefeasibility of title does not extend to any property that has been found to have been unlawfully acquired. The Court of Appeal



in Attorney General vs Torino Enterprises Limited (Civil Application 84 of 2012) (2022) KECA 78 (KLR) (4 February 2022) (Judgment) held that;

“We have considered the provisions of section 26 of the Land Registration Act (repealed) in light of the provisions of Article 40 of the Constitution which guarantees protection of right to property and it is our considered view that the concept of indefeasibility of title is subject to Article 40 (6) of the Constitution which states that: “The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.” Guided by the provisions of Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that title to the suit land was unlawfully acquired. See Denis Noel Mukhulo & Another v. Elizabeth Murungari & Another [2018] eKLR.”

17. I find that the Plaintiff has established that he is the legitimate proprietor of the suit property by being a bona fide purchaser and hence entitled to part of the said orders in the plaint.

18. Section 80 of the Land Registration Act provides as follows;

“ 80.

- (1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- (2). The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

19. This section gives the court powers to order for rectification of a register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake. The Defendants have failed to prove their counter claim on a balance of probabilities and I dismiss it with costs. I find that the Plaintiff has proved his case of a balance of probabilities and I grant the following orders;

1. An order canceling the title deed for Land Parcel No. Kalama/Kiitini/420 held and issued in the names of Francis Maingi Wambua, Lukas Mutune, Jackson Maweu Wambua pursuant to court order issued in Machakos Misc. Civil Application No. 118 of 2002 and the same to be issued in the name of the Plaintiff.
2. An order that the Deputy Registrar do execute the relevant documents to effect transfer within the next 90 days upon service of this order.
3. The Defendants to vacate the suit property Land Parcel No. Kalama/Kiitini/420 within the next 90 days after service of this order and in default eviction order to issue.
4. Costs of the suit to be borne by the Defendants.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 16TH DAY OF DECEMBER 2025.



N.A. MATHEKA
JUDGE

