

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E001 OF 2024 (O.S)

STEPHEN KAMAU MUNGAI

APPLICANT

VERSUS

JOSEPH MATHU MUNGAI.....1ST RESPONDENT

LAND REGISTRAR GATUNDU.....2ND RESPONDENT

JUDGMENT

1. The Applicant commenced this suit by way of Originating Summons dated 14th June 2024 seeking the following orders:

a) That this honourable court do issue an order directing the Land Registrar, Gatundu to rectify the register in respect to land title number Ngenda/Gatukuyu/T.457/8 also referred to as Plot No. 8 Gatukuyu by cancelling the registration of Leah Waithiira Mungai as the registered proprietor and in lieu thereof replace the same with that of George Mungai Alias George Mungai Ngiria (deceased) in this case as the registered proprietor.

b) That the costs of this application be provided for.

2. The Originating Summons was supported by the Applicant's affidavit sworn on even date together with the annexures thereto. In order to put the matter into perspective, it is necessary to give a brief background of the facts.

3. The Applicant is the son and administrator of the estate of George Mungai Ngira alias George Mungai Ngiria (deceased) who died on 8th August 1985. Together with other family members, the Applicant applied for a Grant of Letters of Administration vide Thika CM Succession Cause No. 180 of 1985. The amended Certificate of Confirmation of Grant was issued on 12th March 2019.
4. The deceased was the owner of land parcel no. Ngenda/Gatukuyu/T.457/8 also referred to as Plot No. 8 Gatukuyu and upon his demise , one of his widows, Leah Waithira Mungai transferred the suit property to herself on 7.5.1991.
5. In its ruling dated 8th February 2020 in the Succession Cause, the court held that the suit property formed part of the estate of the deceased. It is against this background that the Applicant wishes to have the title in the name of Leah Waithira Mungai cancelled and a title issued in the name of George Mungai Ngira alias George Mungai Ngiria.
6. Although both Respondents were served with the Originating Summons, the 1st Respondent did not file any response.
7. On the other hand, the 2nd Respondent filed a Replying affidavit sworn by Faith Mutei , the Land Registrar, Gatundu Land Registry on 30th January 2025. In the said affidavit she deponed that according to the green card, the register for land parcel number Ngenda/Gatukuyu/T.457/8 was opened on 7th May 1991 in the name

of the Government of Kenya. That on the same day a Certificate of Lease was issued in the name of Leah Waithira Mungai as the lessor. That there is no record indicating that the late George Mungai Ngira was the registered owner of the suit property.

8. She further deponed that land parcel No. Ngenda/Mangu/112 plot no. 8 Gatukuyu market which is listed in the Certificate of Confirmation of Grant is different from land parcel number Ngenda/Gatukuyu/T.457/8 and they are not related in any way.
9. That land parcel no. Ngenda/Mangu/112 was initially registered in the name of George Mungai Ngira before it was transferred to various individuals without any dispute.
10. The parties agreed to canvass the matter by way of written submissions and both the applicant and the 2nd Respondent filed their submissions which I have carefully read and considered.

APPLICANT'S SUBMISSIONS

11. In her submissions, learned counsel for the Applicant submitted that since the 1st Respondent did not file any response to the Originating Summons, the same was unopposed in respect of the 1st Respondent and it ought to be allowed.
12. It was her submission that the court has jurisdiction to direct the Land Registrar to cancel the name of Leah Waithira Mungai from the Land Register and reinstate the name of George Mungai Ngira alias George Mungai Ngiria as the registered owner of the suit property.

13. She relied on section 80 of the Land Registration Act which provides that the court may order rectification of the register by directing that any registration be cancelled or amended if it satisfied that any registration was obtained made or omitted by fraud or mistake.
15. She submitted that in its ruling in the succession matter, the court declined to allow an application similar to the one before this court on the ground that the prayer was substantial and could not be issued through an application.
16. It was her contention that in view of the ruling in the succession matter, land parcel number Ngenda/Gatukuyu/T.457/8 forms part of the deceased's estate and the land register does not accurately reflect the true ownership of the said parcel, hence the need to have the same rectified.

2ND RESPONDENT'S SUBMISSIONS

17. In her submissions learned counsel for the 2nd Respondent identified two issues for determination; the first one is whether Leah Waithira Mungai is the lawful registered sole proprietor of the suit land being land parcel number Ngenda/Gatukuyu/T.457/8. The second one is whether the Land Registrar should cancel Leah Withira Mungai's name from the land register and reinstate George Mungai Ngira (deceased) as the registered proprietor.
18. On the first issue, counsel submitted that it was not in dispute that Leah Waithira Mungai is the registered proprietor of the suit

property as reflected in the land register maintained at Gatundu Land Registry.

19. The 2nd Respondent in her Replying Affidavit averred that the said property was transferred to the 1st Respondent as lessee on 29th January 1991 in accordance with the documentation presented to them which were presumed to be valid.
20. She submitted that Section 24 (s) of the Land Registration Act was clear that 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.
21. She further relied on section 26(1) of the Land registration Act which provides that 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 shall not be subject to challenge except on the on the grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
22. It was her submission that that the Applicant had not produced any material to demonstrate that the registration of Leah Waithira Munga was procured through fraud, misrepresentation or through a corrupt scheme. She submitted that the burden of proof lay on the Applicant to prove that Leah procured the said title fraudulently and

in the absence of such proof Leah's title stands protected under the law.

23. As to whether the Land Registrar should cancel Leah's title, counsel submitted that the court could only invoke its powers under section 80 of the Land Registration Act if it was satisfied that the registration was obtained, made or omitted by fraud or mistake.
24. She relied on the case of **Republic v The Registrar of titles Mombasa & 2 Others Ex-Parte Emfil Ltd [2012] eKLR** where it was held that the Registrar could only cancel a title by dint of a court order.
25. She submitted that the Land Registrar had no adjudicatory power to investigate family disputes or determine succession rights and that the Land register entered the changes in the register based on the documents presented to them.
26. Relying on the case of **Joslyn Werunga Ototi v Joseph Wafula Mbuvi, [2018]** where the court held that allegations of fraud must be strictly proved to standard beyond a mere balance of probabilities, it was counsel's contention that the Applicant had failed to prove fraud against the 1st Respondent. There was therefore no legal basis upon which the court could cancel the registration of the 1st Respondent as the holder of an indefeasible title.

ANALYSIS AND DETERMINATION

27. Having considered the Originating Summons, Supporting Affidavit and the 2nd Respondent's Replying Affidavit as well as the rival submissions on record the issues that fall for determination are threefold:

- i) Whether Leah Waithira Mungai is the lawful registered proprietor of land parcel number Ngenda/Gatukuyu/T.457/8.*
- ii) Whether the said registration was obtained by way of fraud.*
- iii) Whether the Land Registrar should cancel Leah Waithira Mungai's name from the land register and reinstate George Mungai Ngira (deceased) as the registered proprietor.*

28. According to the copy of the excerpt of the land register annexed to the Applicant's Supporting Affidavit as exhibit "SKM 2", Leah Waithira Mungai is the registered proprietor of the suit property. This was corroborated by the 2nd Respondent in the Replying Affidavit sworn by the Land Registrar.

29. The question that follows is whether the said registration was obtained by way of fraud.

30. In his supporting affidavit the Applicant averred that the deceased was the owner of the suit property and that when he died, Leah Waithira Mungai transferred the suit property to herself. She further contends that in the succession case, the court found that that the suit property forms part of the estate of the deceased.

31. I have perused the said ruling annexed to the Applicant's supporting affidavit as exhibit "SKM 3" and the court observed at page 2 of the ruling as follows:

"This is a Succession Court. To determine if or not the title should be cancelled, the court would have to go into the issue of if or not the same was obtained fraudulently. It is an issue that has to be determined by this court"

The court further observed as follows:

"The Respondent has raised the issue of ownership of land parcel number Ngenda Gatukuya/T.457/8 also referred to as plot no. 8 Gatukuya. I reiterate my findings in my ruling dated 24/9/2019 on the ownership of the said land. I repeat that the said parcel of land forms part of the deceased's estate".

32. The court however noted that it could not grant the prayer for rectification of the register by cancelling the registration of Leah Waithira Mungai as the registered proprietor as the prayer was substantive in nature and it could not be issued through an application.
33. What is not clear is how the court had earlier arrived at the finding the suit property belonged to the deceased since the magistrate admitted in his ruling that he had only dealt with applications.
34. In the instant suit, the Applicant has prayed that the court issues an order directing the Land Registrar, Gatundu to rectify the register in respect to land title number Ngenda/Gatukuyu/T.457/8 also referred to as Plot No. 8 Gatukuyu by cancelling the

registration of Leah Waithira Mungai as the registered proprietor and in lieu thereof replace the same with that of George Mungai Alias George Mungai Ngiria (deceased) in this case as the registered proprietor.

Section 80 of the Land Registration Act provides as follows:

S. 80 Rectification by order of the court

(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"

35. The Applicant has merely stated without any proof, that that the deceased was the owner of the suit property and that when he died, Leah Waithira Mungai who is one of his widows transferred the suit property to her name.
36. The excerpt of the green card annexed to the Applicant's supporting affidavit shows that Leah was registered as the owner of the suit property on 7.5.1991. However, there is no indication that the suit property was transferred from the name of the deceased or that it was ever registered in his name. This was confirmed by the Land Registrar in her Replying affidavit where she explained that the register for the suit property was opened on 7th May 1991 in the name of the Government of Kenya and on the

same date, the property was transferred to Leah Waithira Mungai as the lessee and the County Council of Kiambu as the lessor.

37. There is therefore no evidence that the registration of Leah Waithira Mungai as the proprietor of the suit property was obtained by fraud or mistake to warrant rectification of the register.
38. The Applicant neither pleaded nor proved any fraud as required by the law and relevant authorities. See the case of **R.G Patel v Lalji Makanji [1957] E.A 314** cited in the case of **Joslyn Werunga Ototi v Joseph Wafula Mbuvi, [2018]** where the court held as follows:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”

39. In the circumstances, it is my finding that the Applicant has failed to prove her case to the required standard and it is hereby dismissed. Considering the circumstances of this case, each party shall bear their own costs.

Dated, signed and delivered virtually at Thika this 21st day of January 2026.

J. M ONYANGO
JUDGE

In the presence of:

1. Ms. Wambui for the Applicant
2. No appearance for the 1st Respondent

3. Miss Mwangi for Mr. Motari for the 2nd Respondent

Court Assistant: Hinga

ORIGINAL