

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC L OS NO. E062 OF 2025

**IN THE MATTER OF AN APPLICATION FOR VESTING
ORDERS BY KYULE MUTANGILI**

KYULE MUTANGILI

APPLICANT

VERSUS

THE REGISTRAR OF TITLES 1ST

RESPONDENT

JEROME MWATHI KAUMBULU 2ND

RESPONDENT

AND

**IN THE MATTER OF TITLE NUMBER: NAIROBI BLOCK
49/45 (FORMERLY LAND REFERENCE NUMBER LR
36/VII/302)**

ELC L OS NO. E062 OF 2025

Judgment

JUDGEMENT

1. What is before Court for determination is the Applicant's Originating Summons dated the 30th September, 2025 brought pursuant to Order 37 Rule 3 and 7 of the Civil Procedure Rules, where the Applicant seeks the following Orders:

1) Spent

2) That an Order directing the Registrar of Titles to reconstruct the Land Register and/or the Deed File and/or the Folio restoring the details of Land Known as NAIROBI BLOCK 49/45 (formerly Land Reference Number 36/VII/302).

3) That the Deputy Registrar of this Honourable Court to Execute the Transfer Forms/Documents to effect Registration/Transfer to KYULE MUTANGILI in the event of non - availability of the 2nd Respondent.

4) That the interests in all that property known as Land Reference Number NAIROBI BLOCK 49/45

**(formerly Land Reference Number 36/VII/302)
BE VESTED and/or REGISTERED in the name of
KYULE MUTANGILI.**

5) That this Honourable Court be pleased to issue any other orders in the circumstances for ends of Justice on the part of the Applicant as it may deem fit.

6) Costs of the Application be provided for.

2. The application is premised on grounds on its face and the supporting affidavit of KYULE MUTANGILI. The Applicant explains that he purchased property known as Land Reference Number NAIROBI BLOCK 49/45 (formerly Land Reference Number 36/VII/302), hereinafter referred to as the 'suit land', from the 2nd Respondent vide a Sale Agreement dated the 17th April, 1997. He confirms that the 2nd Respondent sold the suit land to him on behalf of other family members on the strength of an ASSENT dated 5th November, 1991 and he paid the full purchase price of Kshs. 7,500,000/=.

He avers that after the sale, the 2nd Respondent

executed a Deed of Indenture which was intended to convey the suit land to him. He avers that after execution of the Conveyance Documents, the Kaumbulu family relocated to the United States of America and he has since lost contact with them. He states that he retained the Conveyance Deeds on the erroneous but honest belief that they were legal title documents to his property but he was advised by his advocates on record that they were not in his name. He further states that his Advocates informed him that upon visiting the Land Registry Nairobi, they found the Volume Register but the Folio bearing the property registration was torn/ripped off by unknown persons hence missing and efforts to trace the same has not borne fruit. He insists that he has been in possession and occupation of the suit land uninterrupted for the last 28 years. He reiterates that efforts to effect the Transfer/ Registration in his name has been unsuccessful owing to the missing Folio coupled with the non availability of the seller.

3. The Respondents despite being duly served have failed to enter appearance nor file a Defence.

Analysis and Determination

4. Upon consideration of the Originating Summons, supporting affidavit and annexures, the only issue for determination is whether a Vesting Order should issue in respect to the suit land and if the Land Registrar can be ordered to reconstruct the Land Register.
5. This Court takes judicial notice of the fact that the Applicant herein had previously filed **Nairobi ELC OS 125 of 2024 Mutangili Kyule vs Registrar of Titles**, which the Court stumbled upon while visiting the Kenya Law Website. I note the fulcrum of the dispute in **Nairobi ELC OS 125 of 2024** revolved around seeking a vesting order in respect to the suit land. Justice Jackline Mogeni vide her judgement delivered on the 13th February, 2025 dismissed the suit where she

declined to issue the said Vesting Order. I wish to reproduce an excerpt from the said Judgement:

'This matter was commenced by way of an Originating Summons dated 25/03/2024 in which Kyule Mutangili, the Applicant is seeking for Orders that a Vesting Order do issue in his favour in respect of all that parcel of land known as NAIROBI BLOCK 49/45 (formerly Land Reference Number 36/VII/302); that the Deputy Registrar of this Court be authorized to execute the transfer Forms/Documents to effect registration/Transfer to the Applicant..... I note that there is no evidence presented to support the claim of payment of Kshs. 7,500,000/- no bank document nor receipt, no bank transfer or anything that can support the claim of payment of this kind of money in 1997. At that time this was a lot of money and I assume it could have been withdrawn and carried in suit case or bag. Even it was the down payment of Kshs. 5,330,000/-. The sale agreement at paragraph 11 states that the purchaser shall pay stamp duty. The Plaintiff did not present any evidence of payment of the said

stamp duty. Further the documents produced are blurred and black meaning I cannot read and decipher what information is contained therein. I therefore cannot speak with certainty that whereas the suit is undefended the Plaintiff and the Applicant of the Originating Summons is speaking from a point of truth or that what he is alleging is a fact on the ground. Further, from the copy of the indenture presented it is now emerging that said Jerome Mwathi Kaumbulu was an administrator together with Bertha May Kaumbulu but that Bertha and other beneficiaries of the suit property gave Jerome the Power of Attorney. Again as I said earlier the Power of Attorney was not produced to support this claim and neither was the Confirmation of Grant appointing the two as joint administrators presented alongside the rest of the documents. Needless to say that the Plaintiff conveniently did not sue Jerome Mwathi Kaumbulu who is the one who sold him the suit property and chose to take the easy route out of telling the Court at paragraph 6 that he lost contact since the family relocated to the United States. Now in this era of

globalization, the United States is reachable via plane, Ship, telephone, email, among other modes of communication. Nothing would have been harder than suing the said Jerome and serving him through substituted service through a mode of communication that is international in nature which modes are known to the Plaintiff. I think I have said enough to already show that the Originating Summons has no legal leg to stand on that would facilitate granting of a vesting order. In the circumstances, and for the reasons I have given and set out above, it follows that Vesting Order cannot issue in the circumstances of this case. Accordingly, I dismiss the Originating Summons dated 25/03/2024'.

6. I note the Applicant filed the instant suit on 30th September, 2025, where he has now sued the vendor and the Chief Land Registrar but still seeks the Vesting Order over **NAIROBI BLOCK 49/45 (formerly Land Reference Number 36/VII/302)**. Further, he had relied on the documents that he has produced in the previous suit. The Applicant failed to

divulge to this Court that he had filed a previous suit seeking Vesting orders but the said suit had been heard on merit and dismissed.

7. Section 7 of the **Civil Procedure Act**, stipulates that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them can claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

8. The Supreme Court of Kenya in the case of **John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others**

(Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), held that:

'Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision.'

9. From the facts before court and the Case which I have highlighted, while relying on the legal provisions cited above and decisions quoted, I find that the parties herein and in the previous suit were the same, except that the Applicant has now added the vendor as the 2nd Respondent. Further, that the parties were litigating under the same title and the previous suit was heard and determined by a Court of competent jurisdiction.
10. I opine that if the Applicant was aggrieved by the aforementioned decision, he should have appealed instead of filing the instant suit. To my mind, I find an element of dishonesty on the part of the Applicant for failing to inform Court that he had previously filed another suit over the same subject matter. Further, this amounts to forum shopping. It is my considered view that litigants owe an element of honesty and good faith and should inform Court if they had previously filed a suit in respect to the same subject matter. In the foregoing, I find this suit is res judicata **Nairobi ELC OS**

125 of 2024 and that the Applicant is hence not entitled to the Orders as sought.

11. I hence proceed to dismiss this suit.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
15TH DAY OF JANUARY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Munyasya for Applicant

Court Assistant: Joan