



Ndunda & another (Suing as the Administrators of the Estate of George Mulwa Ndunda (Deceased)) v Chepkwony & 4 others (Environment and Land Case E267 of 2021) [2026] KEELC 163 (KLR) (26 January 2026) (Judgment)

Neutral citation: [2026] KEELC 163 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E267 OF 2021
CG MBOGO, J
JANUARY 26, 2026**

BETWEEN

**CATHERINE NDINDA NDUNDA 1ST PLAINTIFF
PROFESSOR JOSEPH KAMUYA MAITHA 2ND PLAINTIFF
SUING AS THE ADMINISTRATORS OF THE ESTATE OF GEORGE MULWA
NDUNDA (DECEASED)**

AND

**JONATHAN K CHEPKWONY 1ST DEFENDANT
GEOFFREY OCHIENG OWENO 2ND DEFENDANT
THE CHIEF LAND REGISTRAR 3RD DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT
THE NAIROBI CITY COUNTY GOVERNMENT 5TH DEFENDANT**

JUDGMENT

1. The plaintiffs filed the amended plaint dated 26th November 2024, and pray for judgment against the defendants for:-
 - i. A declaration that the issuance of title in favour of the 1st and 2nd defendants is illegal and infringes on the property rights of the plaintiffs in their capacity as the joint administrators of the estate of the late George Mulwa Ndunda.
 - ii. An order of permanent injunction restraining the 1st, 2nd, 3rd and 5th defendants from alienating, transferring or disposing off the suit property namely plot no. UNS Plot No. 8 Jamhuri Estate (subsequently assigned as L.R. No. 209/10185).



- iii. An order of eviction of the first and second defendants from plot no. UNS Plot No. 8 Jamhuri Estate (subsequently assigned as L.R. No. 209/10185) and vacant possession be granted to the plaintiffs.
 - iv. An order revoking the allocation of plot no. UNS. Plot No. 8 Jamhuri estate (subsequently assigned as L.R No. 209/10185) to the first and second defendants.
 - v. An order for the cancellation of the certificate issued to the first and second defendants as well as the cancellation of all entries made in the register pertaining to the transfer of the leasehold interest in plot no. UNS Plot no. 8 Jamhuri estate (subsequently assigned as L.R. No. 209/10185 to the first and second defendants.
 - vi. Upon cancellation of the certificate of lease issued to the 1st and 2nd defendants an order do issue to the 3rd defendant to rectify the register and issue a title document in the property in favour of the plaintiffs.
 - vii. General damages for trespass.
 - viii. Costs and interest.
2. In the amended plaint, the plaintiffs pleaded that at all material times, the late George Mulwa Ndunda, the 1st plaintiff's husband was the lawful allottee of the property known as UNS Plot No. 8 Jamhuri estate subsequently assigned L.R. No. 209/10185- the suit property, and that he enjoyed quiet possession. Further, that upon the death of her husband, the 1st plaintiff made several attempts to have the title deed but she was informed that the relevant file was misplaced which prompted her to make a formal complaint. That all this while, she was enjoying quiet possession of the suit property while paying the land rates to the 5th defendant.
 3. The plaintiffs pleaded that in October, 2020, she was informed by the 3rd defendant that the suit property could not be traced in its records, and upon making further enquiry with the 5th defendant, she was informed that the suit property had been registered in the names of the 1st and 2nd defendants and a certificate of lease issued on 20th May, 2020. It was further pleaded that the 1st plaintiff never sold or caused the suit property to be sold to the 1st and 2nd defendants, and thus the registration of the suit property in the joint names of the 1st and 2nd defendants is illegal.
 4. The plaintiffs pleaded particulars of fraud and illegality as follows:-
 - a. Illegal issuance of a title in favour of the 1st and 2nd defendants by the 3rd defendant.
 - b. Illegal alteration, amendment and/ or change of entries in the land register to indicate the 1st and 2nd defendants as owners thereof.
 - c. Failure by the third defendant to act with due care and diligence to prevent the commission of fraudulent activities on the suit property and its related title documents and land register entries.
 5. The plaintiffs further pleaded that the defendants have breached the laid down procedures contained in the [Land Act](#) as well as the [Land Registration Act](#), and as a result, the deceased's right to property has been infringed and his estate has suffered irreparable loss and damage.
 6. The 1st and 2nd defendants were served via substituted service, but they did not enter appearance, and neither did they file their defence.



7. The 3rd and 4th defendants filed their statement of defence dated 17th January, 2022. The 3rd and 4th defendants denied the contents of the plaint and put the plaintiffs to strict proof. They stated that the 1st plaintiff has never been registered as the owner of the suit property. They further pleaded that if there was any registration that was effected on the suit property, the same was done procedurally and in compliance with the laid down procedure. More importantly, the 3rd and 4th defendants denied the particulars of fraud.
8. The 5th defendant filed its statement of defence dated 28th September, 2021. The 5th defendant pleaded that it is a stranger to the allegations made by the plaintiffs and stated that at no time was it notified or made aware of the alleged ownership of the suit property by the plaintiffs and the registration of the same by the 1st and 2nd defendants. The 5th defendant stated that it is not mandated nor does it have the authority to deal or allocate national government land. Further, that it has never been made aware of the complaint to the National Land Commission.
9. The 5th defendant pleaded that the plaintiffs' claim is devoid of truth and fact, and a fabrication to mislead this court, as it is not practical for an individual to own specific land that belongs to both the national government and the county government at the same time. Further, that it has never engaged in any fraudulent dealings, and has never concerned itself nor bothered by the plaintiffs selling any parcel of land. The particulars of fraud and illegality were denied.
10. This matter proceeded for hearing on 29th April, 2025. Catherine Ndinda Ndunda (PW1) adopted her witness statement dated 14th July, 2021 as her evidence in chief. She informed the court that she is an administrator of the estate of the late George Mulwa Ndunda and that the 2nd defendant is her brother in law who is married to her sister. She further produced the list of documents as P. Exhibits Nos. 1, 2 and 3 respectively.
11. PW1 testified that vide the letter dated 19th March, 1982 her late husband was the owner of plot no. 8 which was unsurveyed in Jamhuri estate as seen in the allotment letter. She stated that her late husband paid the requisite fees, and following his demise, she continued to pay rates and fees as required. Further, that her late husband died on 31st July, 1990 and by the time of his death, he had not been issued with a title deed. PW1 went on to state that she wrote a letter complaining about the delay in obtaining a title deed but the National Land Commission did not respond. Further, that she carried out a search and found that the suit property had been allocated to Jonathan Chepkwony and Geoffrey Ochieng Owino (the 1st and 2nd defendants).
12. PW1 testified that she was not given any explanation why the two were issued with a title whereas her late husband had met all the requisite conditions. PW1 identified the letter of acceptance dated 18th June, 1982, receipts for fees, allotment and survey. She further recognized the request for regularization of LR. 209/10185 by Magdalene Njeri and Remmintone Mulwa, and a letter confirming that the suit property had been allocated to her husband.
13. PW1 testified that she did not receive the response from the National Land Commission, and that according to the statement by Mr. Patroba, the allottee being her late husband had paid rates for the plot up to 2014. That in effect, Mr. Patroba said that the property belongs to her late husband. Further, she testified that the title held by the 1st and 2nd defendants was a result of collusion, that the same cannot be genuine, and it ought to be cancelled and a proper title issued. PW1 stated that there are people carrying out business on the suit property who claim to have leased it from the 1st and 2nd defendants which is without her permission. She prayed for an order of injunction, eviction and compensation for eviction.



14. There being no cross-examination for this witness, the learned counsel rested the plaintiffs' case.
15. On 29th July, 2025 when this matter came up for defence hearing, the 3rd and 4th defendants and their advocate were not present in court. The learned counsel for the 5th defendant informed the court that he had intended not to call any witness as the case is between the 3rd and 4th defendants. For this reason, the 3rd and 4th defendants' case was deemed closed.
16. The plaintiff filed her written submissions dated 16th September, 2025. The 5th defendant filed its written submissions dated 26th September, 2025. I have carefully analyzed and considered the pleadings, the evidence tendered as well as the written submissions filed by the respective parties. The issue for determination is whether the suit has merit.
17. The plaintiffs in this case pleaded that the 1st plaintiff's late husband, George Mulwa Ndunda, was the lawful allottee of the suit property having been issued with a letter of allotment sometime in the year 1982. The plaintiffs maintained that through collusion with the 3rd and 4th and 5th defendants, the estate of her late husband was deprived of their right to land and thus seeks the intervention of this court. While PW1 stated that her husband died in the year 1990, the evidence supplied indicates that he passed on in the year 1988.
18. The 3rd and 4th defendants denied the allegations made by the plaintiffs and stated that if at all there was any title that was issued, the same was issued in accordance with the law. While their defence was marked as closed for failure to prosecute the same, it is worth noting that the witness statement filed by Mr. Patroba admitted that indeed the suit property belongs to the estate of the deceased. This goes to confirm the testimony by PW1 that indeed the dispute began when she sought to have the certificate of lease issued and owing to numerous enquiries, she later discovered that the title was issued to the 1st and 2nd defendants.
19. The 5th defendant chose not to call any witness. Instead, it strongly argued that the dispute is between the plaintiffs and the 3rd and 4th defendants. The 5th defendant argued that no cause of action exists against it, and it was wrongly sued. However, the 5th defendant also argued that the plaintiffs did not prove the allegations of fraud as alleged for failure to provide a report from the Directorate of Criminal Investigations.
20. I have perused the documents produced by PW1, and indeed the deceased was allotted the suit property. The deceased, and subsequently PW1 paid rates to the 5th defendant, a fact which the 5th defendant has not denied.
21. The 1st and 2nd defendants did not enter appearance and neither did they file their defence, and as far as the case against the 1st and 2nd defendants is concerned, the evidence and testimony of PW1 remains uncontroverted.
22. As stated earlier, the instant suit remains largely unchallenged to the extent that no contrary evidence was supplied to counter the plaintiffs' claim. More importantly, a cursory look at the documents filed by the 3rd and 4th defendants does not provide any details to show how the 1st and 2nd defendants were issued with a title deed. One can only conclude that the title held by the 1st and 2nd defendants was only acquired through fraudulent means.



23. In the case of *Munyu Maina Vs Hiram Gathiha Maina*, Civil Appeal No 239 of 2009, the Court of Appeal held that:-

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

24. The above authority is clear that while a certificate of title in this case a certificate of lease demonstrates proof of ownership, such ownership of title can be challenged through investigation of its root thereof. The ownership of the suit property by the deceased began with a letter of allotment, subsequent payments of the rates and rent. It follows therefore that according to the records held by the 3rd defendant, the deceased’s estate was entitled to ownership of the suit property as there is no indication of any sale having taken place.

25. Moreso, I note that the suit property has already been registered and having found that the defendants have not provided any evidence to the contrary, the remedy at this stage would require a rectification of the register to reflect the correct ownership of the suit property.

26. Section 80 of the *Land Registration Act* provides that:-

“(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, 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.”

27. From the above, it is my finding that the certificate of lease registered in the names of the 1st and 2nd defendants was done through fraudulent means, and the same deserves to be cancelled. I also find that the plaintiffs have proved their case on a balance of probabilities, and thus the amended plaint dated 26th November, 2024 has merit, and it is allowed in the following terms:-

- i. A declaration is hereby issued that the issuance of the certificate of title in favour of the 1st and 2nd defendants is illegal and infringes on the property rights of the plaintiffs in their capacity as the joint administrators of the estate of the late George Mulwa Ndunda.
- ii. An order of permanent injunction is hereby issued restraining the 1st, 2nd, 3rd and 5th defendants from alienating, transferring, disposing off or dealing in any manner whatsoever with the suit property namely plot no. UNS Plot No. 8 Jamhuri Estate (subsequently assigned as L.R. No. 209/10185).
- iii. The 1st and 2nd defendants are hereby ordered to vacate the suit property known as plot no. UNS Plot No. 8 Jamhuri Estate (subsequently assigned as L.R. No. 209/10185) within 90 days from the date hereof failure to which eviction orders shall issue.
- iv. An order for the cancellation of the certificate of lease registered in the names of the 1st and 2nd defendants is hereby issued as well as the cancellation of all entries made in the register



pertaining to the transfer of the leasehold interest in plot no. UNS Plot no. 8 Jamhuri estate (subsequently assigned as L.R. No. 209/10185.

- v. Pursuant to order iv above, an order of rectification is hereby issued directing the 3rd defendant to rectify the register and issue a certificate of lease to the plaintiffs as the joint administrators of the estate of the late George Mulwa Ndunda.
- vi. The plaintiffs are awarded the costs of this suit, and the same is to be borne by the 1st, 2nd and 3rd defendants jointly.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 26TH DAY OF JANUARY, 2026.

HON. MBOGO C.G.

JUDGE

26/01/2026.

In the presence of:

Ms. Vena Aron - Court assistant

Ms. Titus holding brief for Mr. Michuki for the Plaintiff

No appearance for the Defendant

