

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC NO. E008 OF 2025

SELESTINE CHEPKEMOI
MUTAI (Suing as the legal administrator Ad-Litem
of the Estate of ERASTUS K.
LANGAT
(DECEASED)PLAINTIFF

VERSUS

SAMWEL KIPROTICH TOWETT.....1ST
DEFENDANT
JOHN KIMUTAI MIBEI.....2ND
DEFENDANT
JOHN KIPTULWA KIRUI.....3RD DEFENDANT
JOSEPH KENEI.....4TH DEFENDANT
JOSIAH KOECH.....5TH
DEFENDANT
JANE TAPRANDICH CHUMO.....6TH DEFENDANT
SARAH CHERUIYOT.....7TH DEFENDANT
REGISTRAR OF LANDS NAKURU.....8TH DEFENDANT
DISTRICT LAND & ADJUDICATION
OFFICER, NAKURU.....9TH DEFENDANT
DISTRICT SURVEYOR NAKURU.....10TH DEFENDANT

JUDGMENT

1. By an Amended Complaint dated 4th November, 2025, the Plaintiff sued the Defendants seeking the following orders:
 - a) *Cancellation of all title deeds issued on Boma 85 Plot No. 365 now apparently subdivided land parcels nos. Nakuru/Olenguruone/Cheptuech/Plot No. 596, 595, 593, 592, 665, 243, 591, 594, 598, 589, 242, 709 and 708 which is now further subdivided into 831 and 830 in the names of all persons other than the Plaintiff.*

- b) *A declaration that the suit land herein Boma 85 Plot No. 365 now apparently subdivided into individual land parcels No. 596, 595, 593, 592, 665, 243, 591, 665, 243, 591, 594, 598, 589, 242, 709 and 708 which is now further subdivided into 831 and 830 belong to the Plaintiff.*
- c) *Costs of the suit and interests.*
- d) *Any other and or further relief as the Honourable Court may deem fit and just to grant.*

2. The 8th, 9th and 10th Defendants filed a Statement of Defence dated 7th April, 2025, where they denied the contents of the Plaint and averred that if any transactions took place, it was due to misrepresentation of facts and fraud on the part of the 1st to 7th Defendants.
3. The 1st to 7th Defendants neither entered appearance nor filed any documents despite service.

PLAINTIFF'S CASE

4. PW1, Selestine Chepkurui Mutai, adopted her witness statement dated 5th February, 2025, as her evidence in chief and produced her list of documents dated 4th February, 2025, as PEX No. 1 to 20. She testified that she is the wife of the late Erastus K. Langat, from the Ogiek community, who was relocated from Tindiret forest to Olenguruone Settlement Scheme which was subdivided into Bomas. She further stated that her husband had been licensed by the government to reside at Boma No. 85 and issued with license No. 759 on 25th November, 1961

5. It was PW1's evidence that on 13th January, 1963, her late husband was licensed to occupy Plot No. 365, whereby he was required to pay Kshs. 24/= annually, and that they lived on the parcel. Further, in 1974, the process of adjudication commenced and the surveyors assured them that they would get their titles but when they inquired at the District Commissioner's office, they were surprised to notice that the acreage in the title deed showed 9 acres instead of 70 acres. PW1 further testified that her husband filed an objection as they continued to live on the suit parcel, but people including the 1st Defendant came to the suit parcel claiming it belonged to them.
6. PW1 stated that the 1st Defendant filed a case at the Olenguruone Land Disputes Tribunal and an appeal at the Rift Valley Land Dispute Appeals Committee, and later her husband filed an appeal at the High Court in Nakuru which appeal was dismissed for want of prosecution. She added that the OCS demolished the houses in the suit parcel.
7. It was PW1's testimony that her late husband filed an application in Molo being **PMCC Land Dispute No. 3 of 2012**, to set aside the eviction order. She stated that the court lacked the jurisdiction to issue such orders and he later filed Nakuru HCC No. 253 of 2013, against the Defendants claiming that they had fraudulently obtained the title deed to their land and they were being threatened for eviction, but the suit was dismissed for want of jurisdiction and that her husband died before the conclusion of the matter. She further stated that she revived the appeal which was then determined in her favour.
8. According to PW1, the 1st Defendant committed fraudulent activities, and stated she is the owner of the entire 70 acres which the deceased paid for and

obtained under license No. 759 Plot No. 356, and resides on the suit land with her entire family.

9. It was PW1's evidence that the Land Disputes Tribunal did not have the jurisdiction to deal with the issue of ownership and cancellation of title deeds, the same was done vide the judgment in Nakuru HCA No. 142 of 2007. It was further her testimony that although she got a favourable judgment, the court could not nullify the same due to lack of jurisdiction hence, the filing of the present suit. The Land Adjudication and Settlement Officer, the Surveyor and the Land Registrar unlawfully subdivided their land into several portions and issued the same to third parties. Further that they only had titles for 4 portions of the suit land and that the remaining 10 portions have been fraudulently registered to unknown persons.

PLAINTIFF'S SUBMISSIONS

10. Counsel for the Plaintiff filed submissions dated 23rd January, 2026, and reiterated the Plaintiff's evidence and stated that the same was uncontroverted and that Plaintiff had proved her case against the Defendants to the required standard.
11. Counsel further submitted that the Plaintiff has been in occupation of the suit land since 1941, where they were initial licensees and later allottees, after which upon adjudication, they were to be issued with title deeds. It was counsel's submission that the Plaintiff stated that titles in respect of Plot Nos. 242, 709, 708, now subdivided into 830 and 831, should not be cancelled as they were issued to family members and the church.
12. Mr. Gai relied on Article 40 of the Constitution and urged the court to grant the orders as prayed in the Plaint with costs.

ANALYSIS AND DETERMINATION

13. The issues for determination are as to whether the Plaintiff has proved her case on a balance of probabilities and whether she is entitled to the orders sought in her amended plaint.
14. It is the Plaintiff's case that she has been in occupation of the suit property by virtue of her deceased husband Erastus K. Langat who had been allocated the same through the adjudication process.
15. It was her case that they were entitled to a total of 70 acres of the suit parcel but only acquired title deeds to 4 portions amounting to 9 acres with 10 portions being issued to the Defendants. She stated that the Defendants took advantage of her husband's absence and illegally procured title deeds, which were then issued to third parties.
16. The Plaintiff's evidence was uncontroverted, as the Defendants were duly served but they did not enter appearance, apart from the 8th, 9th and 10th Defendants who filed a Statement of Defence dated 7th April, 2025, and denied the contents of the Plaint, and averred that if any transactions that took place, it was due to misrepresentation of facts and fraud on the part of the 1st to 7th Defendants.
17. It does not follow that if the Plaintiff's evidence is uncontroverted her claim has to be allowed as prayed, as she still bears the burden of proof of her case on a

balance of probabilities as was held in the case of **Caroget Investment Limited V Aster Holdings Limited & 4 others** [2019] KECA 79 (KLR), that:

“Put differently, a claimant will succeed on the strength of his own case and not on the weakness of the opponent’s case, save to add that the standard of proof in a case for declaration of title is on a preponderance of evidence.”

18. In the case of **Gwer & 5 others V Kenya Medical Research Institute & 3 others** [2020] KESC 66 (KLR), where the court highlighted the law as pertains to burden and standard of proof in civil matters and how the burden is to be discharged. It held as follows:

“Section 108 of the Evidence Act provides that the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

This Court in Raila Odinga & others v Independent Electoral & Boundaries Commission & others, Petition No 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:...a petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden...” In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this

threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.”

19. It is not in dispute that the Plaintiff produced documentary evidence, which showed how her late husband was allocated the suit land. She produced the licenses for plot 85 and 365 and notice of objection when the deceased realized that the process of adjudication was flawed resulting in him not being issued with the title deed for the 70 acres. The Defendants did not tender any evidence to controvert the Plaintiff’s evidence.
20. Notably, the court in Nakuru HCCA 142 of 2007 delivered its judgment on 17th October, 2024, where it set aside the decision by the Rift Valley Province Land Disputes Appeals Committee dated 5th June, 2007 which had found in favour of the Defendants.
21. In the case of **Funzi Development Ltd & Others V County Council of Kwale, Mombasa Civil Appeal No. 252 of 2005 [2014] eKLR** the court held that:

“a registered proprietor acquires an absolute and indefeasible title if the allocation was legal, proper and regular and that a court cannot on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”
22. **Section 80 (1)** of the **Land Registration Act** provides that:

“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.”

23. The Plaintiff had urged the court not to cancel titles in respect of Plot Nos. 242, 709, 708, now subdivided into 830 and 831 as they were issued to family members and the church.
24. I have considered the pleadings, the evidence adduced by the plaintiff together with the documents produced and find that the Plaintiff has proved her case on a balance of probabilities and is therefore entitled to the orders sought in the plaint.
25. The court issues the following specific orders:
 - a) ***An order is hereby issued directing the Land Registrar to cancel all title deeds issued on Boma 85 Plot No. 365 now apparently subdivided land parcels nos. Nakuru/Olenguruone/Cheptuech/Plot No. 596, 595, 593, 592, 665, 243, 591, 594, 598, 589, in the names of all persons other than the Plaintiff.***
 - b) ***A declaration is hereby issued that the suit land herein Boma 85 Plot No. 365 now apparently subdivided into individual land parcels Nos. 596, 595, 593, 592, 665, 243, 591, 665, 243, 591, 594, 598, 589, belong to the Plaintiff.***
 - c) ***Costs of the suit and interests awarded to the Plaintiff.***

DATED, SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE