

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ELCLC NO. E002 OF 2024

PETER MWAMBANGA MWAMBEO.....
....PLAINTIFF

=VERSUS=

JEFFERSON MWAUISWA MWAMBEO
....DEFENDANT

JUDGMENT

1. It is presumably so that **Joseck Mwambeo Mwaviswa (deceased)** the patriarch of the **'Mwambeo'** family never imagined that his sons would in their later years fail to agree on the ownership of his property to the extent that the said dispute would find its way to court.
2. Family disputes over land often present some of the most delicate matters before the courts. The present dispute concerns Land Parcel **No. Mbololo/Tausa/962** measuring approximately **22.41 hectares**. The dispute is between two brothers, **Peter Mwambanga Mwambeo (the Plaintiff)** and **Jefferson Mwaviswa Mwambeo (the Defendant)**, both sons of the **Joseck Mwambeo Mwaviswa (deceased)**.

3. **Joseph Mwambeo Mwaviswa** the patriarch of the **'Mwambeo'** family had two wives, the 1st wife being **Wali Rina Mwambeo (deceased)** who was the mother to the Defendant herein while the 2nd wife **Norah Mkandoo Mwambeo (deceased)** who was the mother to the Plaintiff herein.
4. When this suit was initially instituted, parties were referred to the Court Annexed Mediation pursuant to **VOI MEDIATION NO. VOI /MED/005 OF 2025** which was unsuccessful. They were unable to reach a settlement and hence necessitating the matter to proceed to its logically conclusion before this Court.
5. The Plaintiffs seeks the following reliefs in his Plaint dated 11th November 2024;
- 1) A declaration that the Defendant procured the registration of the title deed to the suit property through corrupt, illegal and fraudulent means.**
 - 2) An order directed to the Land Registrar directing him/her to cancel the title deed held by the Defendant and forthwith rectify the register relating to Land Parcel No.**

Mbololo/Tausa and in so reflecting the deceased one JOSECK MWABEO MWAVISA as the duly registered proprietor

3) Any other order that this Honourable Court deems fit to grant to meet the ends of justice.

6. The suit was contested by the Defendant and who filed his respective pleadings.

The Plaintiffs' case

7. It was the plaintiff's case that their father was the registered owner of the suite parcel and that his father died leaving behind the said property. Upon the death of his father, the defendant maliciously swore an affidavit claiming that he was the only son of the deceased **Joseck Mwambeo Mwaviswa** and was entitled to inherit the estate of the deceased.

8. According to the Plaintiff, the defendant went on and procured the title of the suit property through corrupt, illegal and fraudulent means. Particulars of illegality and fraud were pleaded at paragraph six of the plaint to include the following:

- i) The Defendant colluded with the chief and concealed material facts that the Defendant is the only beneficiary to the deceased.
- ii) The Defendant colluded with the Land Registrar and processed a title deed to the suit property from the name of the deceased to himself without following the right procedure of succession.
- iii) The Defendant colluded with the Land Registrar and rectified the register without Letters of Administration and Certificate of Confirmed grant.

9. It was also averred that later the plaintiff learned that the suit property had changed hands to his brother who is the defendant herein, without their express consent and permission.

10. It was also stated that the value of the property is approximately Kenya Shillings 55,000,000.

11. During trial, 4 witness testified on behalf of the Plaintiff. The Land Registrar, **Siema Mwanguni** testified as **PW1**. She stated that. The register in respect to this property was opened on 2nd February 2005. It was in the

name of Joseck Mwambeo Mwaviswa. The title was issued on 8th of August 2006. There is an entry for 29th of September 2023 in the names of Jefferson Mwaviswa Mwambeo. There was also another entry number 4 which is in respect to a succession matter.

12. She also stated that Joseck Mwambeo Mwaviswa was the initial owner of the suit parcel as per the details in the green card. She was not able to get the succession documents that no complaint was received during the registration process. She produced a certified copy of the green card has P Exhibit No. 1

13. **Thomas Chonga Mwawasi** testified as **PW2**. He adopted and relied on his witness statement dated 12th of May 2025 in his evidence in chief. He stated that both the Plaintiff and the defendant are his uncles and they are fighting over his grandfather's land. That both parties had been given their land separately. The suit parcel used to be previously used as a grazing area and that he is aware that the land is currently registered in the names of the defendant.

14. On cross examination he stated that the two families have never had any conflict or disputes over the said land.

His late grandfather had several properties. The land had not been shared amongst the brothers. The first wife had seven children. Others passed away. The plaintiff is from the second wife, while the defendant is from the first wife. The defendant is the only son from the first wife. There is a portion that was sold. It was sought by the defendant. He sold the place that is on the highway. The plaintiff has not sold his portion. His late grandfather had showed each of his wives where they would stay before he passed away. He also stated that there was nobody staying on the portion that was sold. He also stated that it is not true that the suit parcel belongs to the defendant.

15. The Plaintiff **Peter Mwambanga Mwambeo** testified as PW3. He adopted and relied on his witness statements dated 11th November 2024 and 12th May 2025. It was his testimony that the defendant is his brother. He stated that the land belonged to all of them. The said land has never been allocated to any person. The defendant is the one who caused the land to be registered in his name and the certificate of title confirms that the land was registered in the defendant's name. He further

stated that the title should be cancelled and the land to revert back to the name of their father.

16. He also produced the plaintiff's bundle of documents dated 11th of December 2024 in his Evidence in chief. He also produced a copy of the letter dated 10th of May 2024.

17. When cross examined, he stated that there was no title for this portion in dispute. All the titles were in the names of their father. They have other properties that were given to them and they have titles. The property in dispute does not belong to the defendant. He has not sold any portion. The defendant had sold his portion.

18. When re-examined, he stated that the land belongs to their father. The land was registered in the defendant's name without their consent or information. Nobody gave the defendant the land. Each of them has his own separate land. He has come to court seeking justice.

19. **Bernard Mwandagha Mwawiswa** testified as **PW4**. He relied on his witness statement dated 12th of May 2025 in his evidence in chief. He stated that the plaintiff is a cousin to his father. It was his testimony that the land belongs to the deceased Joseck Mwawiswa.

20. On cross examination, he stated that he might know all the properties that belong to the deceased. He also does not know all the properties that belong to the plaintiff and the defendant. He does not know if the first wife had any title to the property. All the wives were staying at the same place. He does not know if the defendant had been given the disputed plot.
21. When re-examined he stated that he does not know if the first wife had been given the disputed property. The suit property belongs to the deceased.

The Defendant's case

22. The Defendant filed a statement of defence dated 23rd January 2025.
23. The Defendant denied maliciously swearing an affidavit to prove the legitimate relationship of his late father. It was averred that he was rightfully entitled to the suit property as the son of the first wife to the deceased.
24. It was also averred that the Plaintiff has not disclosed that his share of the property is with his mother who was the second wife to the deceased and that the instant suit is meant to disinherit and dispossesses the family of the first wife the said property.

25. The Defendant also denied the particulars of fraud that were pleaded by the Plaintiff.
26. During trial, 3 witnesses testified on behalf of the defendant.
27. The Defendant testified as **DW1**. He adopted and relied on his witness statement dated 14th April 2025 in his evidence in chief.
28. It was his testimony that he has the title to the property the same as registered in his name and he currently utilizing the land.
29. He also stated that his father passed away when they were using the land and his sisters allowed him to have title to the land in his name. He also stated that his father had about 5 different parcels of the land and that his father showed him the suit land before he passed away.
30. On cross examination, he stated that the plaintiff is his brother. The land was previously registered in his father' name. That the process of acquiring land is lengthy, all the due process was followed before the land was registered in his name. He did not acquire the land illegally. The title deed could not have been issued if the process was tainted with illegality and fraud. He also

stated that he was compensated by the SDG and the consent from his sisters was obtained.

31. **Mwasi Mbela** testified as **DW2**. He adopted and relied on his statement dated 15th April 2025 in his evidence in chief. It was his testimony that the land belongs to the Defendant and that he has never seen the Plaintiff on the said land.

32. When cross examined, he stated his property is just 1 km away from the Defendant. He used to work with B.A.T before he retired and would occasionally come home when on leave or to attend a funeral.

33. He reiterated that he has never seen the Plaintiff on the land. He has only seen the Defendant utilizing the same. The land used to serve as a grazing field and also was used for farming. He also stated that the land previously belonged to the Defendant's father.

34. Ambrose Nyange testified as DW3. He equally relied on his witness statement dated 10th May 2025 in his evidence in chief.

35. It was his testimony that the Plaintiff and the Defendant are his nephews. The Plaintiff is from the second wife and the Defendant stays in the suit property.

36. When cross examined, he stated that the suit property was being used for farming and grazing. The titles came out in the 1990s, he retired in 2006, he did not know all the details about the property. The Defendant has been using the land. The Defendant's son is also currently using the land. The land initially belonged to the Joseck Mwambeo.

37. When re-examined he stated that each of the wives to the deceased had been shown their portion.

The Plaintiff's submissions

38. The Plaintiff filed written submissions dated 13th February 2026. Counsel submitted on the following issues;

i) Whether the registration of the suit property to the Defendant was lawful and procedural.

ii) Whether the title deed held by the Defendant is valid and indefeasible.

iii) Whether the Plaintiff is entitled to the reliefs sought.

39. It was submitted that the provisions of Section 82 of the Law of Succession Act ought to have been followed before the property was transferred to the defendant. The defendant never produced any letters of administration of

final grant to this court and as such the defendant is guilty of his actions. The testimony of the Land Registrar. Showed that the land was registered in the year 2006 in the name of the deceased and the title deed issued. While the deceased had died in 1998.

40. It was submitted that the land was therefore fraudulently registered in the names of the defendant. Succession documents were never supplied with and as such documents the property of the deceased cannot be transferred to a party without following the succession process.

41. On whether the title deed held by the defendant is valid and indivisible. It was submitted that as man is his history so is a title to its roots.

42. It was argued that **Section 26 of the Land Registration Act** provides the title is prima facie proof of ownership save for where there is a case of fraud or misrepresentation in the acquisition of the process.

43. It was contended that in this case, the registration is not absolute as the defendant failed to prove its lawful acquisition.

44. In respect to the reliefs sought, it was argued that the Plaintiffs entitled to the reliefs sought. Because the defendant fraudulently, illegally and procedurally procured registration of the land in his name. The certificate of title ought to be cancelled and he should also bear the costs of the suit.

The Defendant's submissions

45. The defendant filed written submissions dated 4th of March 2026. The defendant submitted on the following issue singular issue; whether the defendant is the absolute and indivisible owner of the suit property?

46. It was submitted that the Land Registrar had testified that the defendant is the absolute and lawful owner of the suit property. The title was duly issued in the name of the defendant on 29th September 2023 and further that at the time of the transfer succession proceedings had been duly commenced. The requisite statutory documents, including Form LR6 and from LR57, were properly lodged at the Land Registry to effect the transmission.

47. It was also submitted that no objection was raised during the transfer process and registration of the same to the names of the defendant and as such the transfer to

the defendant was lawful. The court was urged to dismiss the suit with costs.

Analysis and Determination

48. Having considered the pleadings filed herein, oral and documentary evidence tendered by all the parties herein together with the written submissions filed by the Plaintiff and the Defendant, the following issues arise for determination: -

(i) Whether the registration and subsequent transfer of the suit parcel to the Defendant was lawful.

(ii) Whether the Plaintiff has proved his case and is entitled to the reliefs sought.

49. It is trite law that he who alleges must prove. This is set out under **Section 107(1)(2)** of the **Evidence Act**, which provides as follows:

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

Sections 109 and 112 of the same Act states;

“109. 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.

“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

50. It was the Plaintiff case that their father was the registered owner of the suite parcel and that his father died leaving behind the said property. Upon the death of his father, the defendant maliciously swore an affidavit claiming that he was the only son of the deceased **Joseck Mwambeo Mwaviswa** and was entitled to inherit the estate of the deceased. According to the Plaintiff, the defendant went

on and procured the title of the suit property through corrupt, illegal and fraudulent means.

51. The Defendant on the other hand maintained that he was entitled to inherit the suit property which was lawfully registered and transferred to him and that the suit was filed by the Plaintiff to disinherit him.

52. It is a trite law that when a title is under challenge, it is not enough to waive the instrument of title. A party, as held in **Munyu Maina -vs- Hiram Gathiha Maina [2013] KECA 94 [KLR]** shows that his title, which is an end result, was obtained formally, regularly, and in a procedural manner.

53. While a certificate of title is prima facie proof of ownership, it is noteworthy that where it is challenged, then the burden lies on its owner to prove ownership of the same.

54. In **General & Another -vs- Hussein & Others Civil Appeal 100 Eldoret No. 32 of 2018 [2025] KECA 1022 [KLR]** the court cited **Presbyterian Foundation - vs- Kibera Savage Self Help Group Nursery School [2025] eKLR**, that a good root of title must show its origin, must have a recognizable description of the

property, and it must not contain anything that casts any doubt on the title.

55. The Court of Appeal in **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, held that where a title is challenged, the registered proprietor must go beyond merely producing the title deed and demonstrate the legality of how it was acquired.

56. Similarly, in **Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015]** the Court emphasized that courts must interrogate the root of title where illegality is alleged.

57. In the present case, it is not disputed that the suit property was originally registered in the name of the deceased who died in 1998. Any transfer thereafter could only be undertaken through the lawful succession process under the Law of Succession Act (Cap 160 Laws of Kenya).

58. According to PW1, the Land Registrar she stated that while the transfer to the Defendant had been done lawfully, she was not able to produce or furnish this courts with any documents showing how the same was transferred after the death of its initial owner Joseck Mwambeo Mwaviswa.

Equally none of the Defendant's witness was unable to furnish this court with the said evidence during trial.

59. Under **section 26 of the [Land Registration Act](#)**, fraud is one of the grounds under which title to land can be impeached. It provides that the title of a proprietor shall not be subject to challenge except on ground of fraud or misrepresentation to which the person is proved to be a party.

60. From the evidence that was tendered, the title deed was issued to the Defendant on 24th September 2023 to the Defendant yet there were no documents availed to support the same.

61. From the evidence that was tendered herein and the analysis of the first issue it is evident that there are gaps as to how the property was transferred to the Defendant. This can only imply that the Defendant did not acquire the title to the suit property lawfully. No letters of administration form LR 6 and form LR 57 Confirmation of Grant of Letters of Administration were produced as evidence to confirm that indeed the said transfer was lawful.

62. In **Trouistik Union International & another v Jane Mbeyu & another [1993] eKLR**, the Court of Appeal held that no person has capacity to deal with the estate of a deceased person without obtaining a grant of representation.

63. In this case no letters of administration, confirmed grant, or other succession documents were produced to demonstrate how the property was transmitted from the deceased to the Defendant. The Court therefore finds that the Defendant failed to demonstrate a lawful root of title.

64. It is also evident that any dealings of a deceased property without completion of the succession process is prohibited as stipulated under Section 45(1), 79 and 82(b)(ii) of the Law of Succession Act.

65. In the circumstances it is the finding of this court that the Plaintiff has successfully proven that the registration and subsequently transfer of the suit parcel to the Defendant was not in accordance with the law for failing to follow the due process.

66. As to whether the Plaintiff is entitled to the reliefs sought, it is worth noting that the Plaintiff sought for various reliefs as enumerated in his plaint and this court having

found that the registration and subsequent transfer of the suit parcel to the Defendant was not in accordance with the law, it is satisfied that the Plaintiff has proved his case to the required standard and is entitled to the reliefs sought.

67. This Court is satisfied that the Certificate of title held by the Defendant was procured illegally and as such it is impeachable and ought to be cancelled. Similar position was applied by this court in the case cited in Plaintiff's submissions of **Fatuma Mohamed & 2 Others vs Wananchi Estates Limited & 5 Others; Leila Mohamed (Interested party) [2025]eKLR.**

68. **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.”

69. Under the above provisions, the Court may order cancellation or rectification of the register where a registration has been obtained through fraud or mistake.

70. In **Funzi Island Development Limited & 2 Others v County Council of Kwale & 2 Others [2014] eKLR**, the Court of Appeal held that courts cannot uphold titles obtained through illegality or procedural impropriety.

71. Upon rectification of the register, the suit property shall revert to the name of the deceased Joseck Mwambeo Mwaviswa and shall form part of his estate pending lawful distribution through succession proceedings.

72. In respect to costs, while it is trite law that the same follow the event albeit to be awarded to the successful party unless otherwise directed by the Court, in the instant case, it is not in doubt that the dispute herein involves family members and, in the circumstances, it is only prudent that each party bears own costs.

Final orders

73. From the foregoing analysis, the Plaintiff has proved his case to the required standard, this Court makes the following final orders;

- i) It is hereby declared that the registration and subsequent transfer of the property known as Mbololo/Tausa/962 to the Jefferson Mwaviswa Mwambeo was illegal, null and void.***
- ii) The Land Registrar, Taita Taveta County, is hereby directed to cancel the entries made in the register in respect to the transfer and issuance of title to Jefferson Mwaviswa Mwambeo and restore the name of Joseck Mwambeo Mwaviswa (deceased) as the registered proprietor of the suit property.***
- iii) Each party to bear own costs of the suit.***

Dated, Signed and Delivered Virtually at Voi this 12th day of March 2026.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mwakio h/b for Mr. Mwazighe for the Plaintiff.

Mr. Omwenga for the Defendant.

Court Assistant: Mary Ngoira.

ORIGINAL