

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E037 OF 2024

MIRIAM MWENDE KIMANTHI..... 1ST
PLAINTIFF
CHRISTINE MBINYA KIMANTHI..... 2ND PLAINTIFF
NELIUS MBULA KIMANTHI.....3RD
PLAINTIFF
SIMON MUNYAO KIMANTHI..... 4TH
PLAINTIFF

-VERSUS-
DAVID KYALO NGOLANIE.....
DEFENDANT

JUDGMENT

1. The Plaintiffs filed this suit against the Defendant in which they sought the following reliefs:
 - a. **A declaration that the registration of the parcels of land known as Makueni/Kalongo/3960, Makueni/Kalongo/3962 and Makeuni/Kalongo/5050 in the Defendant's name was fraudulent.**
 - b. **An order directing that the parcels numbers Makueni/Kalongo/3960, Makueni/Kalongo/3962 and Makueni/Kalongo/5050 be subdivided equally among the deceased's 6 children, taking into account the portions which the Defendant has sold to 3rd parties.**
 - c. **Costs of this suit and interest.**
 - d. **Such other or further reliefs as this honourable court may deem fit and just to grant.**
2. The Defendant who was duly served neither entered appearance nor filed a defence.
3. The Plaintiffs and the Defendant are all children of William Kimanthi Ngolanie who died on 22nd December, 1997 (deceased). The deceased owned three parcels which were all registered in the Defendant's name after the

demise of the deceased without going through the process of succession. Two of the properties were solely registered in the name of the Defendant. These are LR No. Makueni/Kalongo/3962 and Makueni/Kalongo/5050. The third parcel that is Makueni/Kalongo/3960 was registered in the name of the Defendant and one Munyao William Ngolanie.

4. On 4th March, 2024 the Defendant brought a criminal case against the 1st to 3rd Plaintiffs for forcible detainer in respect of LR No. Makueni/Kalongo/3960. This criminal case was withdrawn and the family of the deceased agreed on the mode of sharing of the three properties. When a surveyor was brought to subdivide the properties according to the agreement, the Defendant refused to cooperate forcing the Plaintiffs to file this suit.
5. At the hearing, the 1st Plaintiff testified on behalf of the other Plaintiffs. The Plaintiffs called PW2 Raphael Kimoni Mwangela who is the Divisional Chairman of the Akitutu clan. He confirmed that all the three properties belonged to the deceased but the Defendant had them registered in his name. There was a family meeting held where it was agreed on the mode of sharing the properties but the Defendant later reneged on the agreement.
6. Though the case was not defended, the Plaintiffs were bound to prove that the properties belonged to the deceased. The Plaintiffs produced a death certificate which shows that the deceased died on 22nd December, 1997. There was no succession which was carried out in respect of his estate. One of the properties that is Makueni/Kalongo/3960 is registered in the Defendant's name and that of Munyao William Ngolani. The registration was done on 19th January, 2015 and title issued on 15th April, 2015.
7. Though there were no official searches produced by the Plaintiff in respect of Makueni/Kalongo/3982 and 5050, the family agreed to share the two which shows that they belonged to the deceased. The ownership of the three parcels was confirmed by an independent witness that is the Divisional Chairman of the Akitutu Clan.

8. It is not proper for one to intermeddle with properties of a deceased. As the Defendant had himself registered as sole owner of the three parcels to the exclusion of the other family members, the said registration was obtained fraudulently and the matter is squarely within the Environment and Land court to determine it. I therefore find that the Plaintiffs have proved their case against the Defendant on a balance of probabilities. I allow the same as prayed in prayer a, b, and c of the plaint dated 28th October, 2024.

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HON. E. O. OBAGA

JUDGE

JUDGMENT SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026.

IN THE PRESENCE OF:

Ms. Kalinga for Plaintiff.

Court assistant Steve Musyoki