



Kyule & another (Suing as the administrators of the Estate of the Late Kyule Mumo - Deceased) v Musyoka & 2 others (Environment and Land Case 196 of 2015) [2026] KEELC 1342 (KLR) (25 February 2026) (Judgment)

Neutral citation: [2026] KEELC 1342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 196 OF 2015
A NYUKURI, J
FEBRUARY 25, 2026**

BETWEEN

**PASCHALL MUTWETUMO KYULE 1ST PLAINTIFF
JOHN MUMO KYULE 2ND PLAINTIFF
SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE KYULE
MUMO - DECEASED**

AND

**MICHAEL WAMBUA MUSYOKA 1ST DEFENDANT
DISTRICT LAND REGISTRAR - MACHAKOS 2ND DEFENDANT
THE ATTORNEY GENERAL 3RD DEFENDANT**

JUDGMENT

Introduction

1. The plaintiffs instituted this suit against the defendants, by way of a plaint dated 18th August 2015 where they sought the following orders:
 - a. A permanent injunction do issue restraining the defendants either by themselves/agents and or servants from trespassing, transferring, alienating, developing and/or in any other way interfering with the deceased's property Athi River/Athi River Block 5/259 pending the hearing and determination of this suit.
 - b. That an order do issue directing the cancellation of title deed in the names of Michael Wambua Musyoka and a new title deed be issued in the names of the 1st plaintiff Paschall Mutwetumo Kyule.



- c. Any other relief that this honorable court may deem fit and expedite to grant.
 - d. Costs of this suit.
2. The plaintiffs stated that they were the sons and duly appointed administrators of the estate of the late Kyule Mumo, who died on 8th November 1999 leaving seven beneficiaries. That the deceased was allocated land parcel No. Athi River/Athi River Block 5/259 by Drumvale Farmers Co-operative Society Limited (hereinafter referred to as Drumvale) and that the aforesaid parcel formed part of his estate.
 3. Further that the suit property was unlawfully transferred to the 1st defendant and a title deed issued to him by the 2nd defendant on 22nd July 2013 without their knowledge, consent, or involvement. Further, that an official search conducted on 19th February 2015 confirmed registration of the property in the 1st defendant's name, prompting them to lodge complaints with the police on 23rd February 2015 and the Land Registry, Machakos on 25th February 2015. That despite demand and notice of intention to sue, the defendants declined to rectify the alleged irregular registration.
 4. The 1st defendant filed a statement of defence dated 13th October 2015 in opposition to the plaint wherein he denied the plaintiffs' claim and asserted that land parcel Athi River/Athi River Block 5/259 lawfully devolved to him as a beneficiary of the estate of his late grandmother, Kiloko Mitaa, who was a member of Drumvale Farmers Co-operative Society Limited under share No. 402. He pleaded that he was duly registered as proprietor following succession and confirmation from the society, and denied any fraud or illegality in the registration process.
 5. The 1st defendant further raised a jurisdictional objection, contending that the dispute falls within the ambit of Section 76 of the *Co-operative Societies Act* on the basis that the parties herein were persons claiming through deceased members of a cooperative society.
 6. In response to the plaint, the 2nd and 3rd defendants also filed a joint statement of defence dated 24th September 2015, stating that the suit property originally belonged to Drumvale, which confirmed to the Land Registry that the property had been allocated to Kiloko Mitaa. That upon presentation of succession documents by the 1st defendant and subsequent confirmation from the society, the 2nd defendant lawfully registered the 1st defendant as proprietor. That thereafter, upon receiving a complaint from the plaintiffs, a restriction was placed against the title on 25th February 2015 pending resolution of the ownership dispute.
 7. On record is a reply to defence dated 15th December 2015 filed by the plaintiffs. In the said reply, the plaintiffs denied that land parcel Athi River/Athi River Block 5/259 devolved to the 1st defendant through the estate of Kiloko Mitaa, contending instead that the said Kiloko Mitaa was allocated land parcel Mavoko Block 12/268 and not the suit property. The plaintiffs further challenged the authenticity and validity of the letter dated 27th June 2013 allegedly issued by Drumvale Farmers Co-operative Society Limited, terming it ambiguous and a forgery.
 8. Further, that under the society's allocation policy, each member was entitled to not more than five acres of agricultural land and one acre commercial plot, and contended that the 1st defendant's claim to two separate five-acre parcels was irregular and misleading. They maintained that this court had jurisdiction pursuant to Article 162(2)(b) of *the Constitution* to determine disputes relating to ownership of land. The plaintiffs stated that the 1st defendant's defence disclosed no triable issues, relied on uncertified documents, and prayed that the same be struck out and judgment be entered as prayed in the plaint.



9. The matter was heard by way of viva voce evidence after parties had complied with Order 11 of the Civil Procedure Code. The plaintiffs called three witnesses in support of their case, while the defence called one witness.

Plaintiffs' evidence

10. PW1 was Paschall Mutwetumo Kyule. He adopted his witness statement dated 18th August 2015 as his evidence in chief and produced the documents filed alongside the plaint. He testified that the suit property, Athi River/Athi River Block 5/259, was allocated to his late father, Kyule Mumo, by Drumvale Farmers Co-operative Society Limited and formed part of the deceased's estate. He stated that the society confirmed the deceased's ownership and that the land was to be transferred to him as a beneficiary.
11. The witness also testified that an official search revealed that the property had been registered in the name of the 1st defendant on 22nd July 2013 without the knowledge or consent of the plaintiffs. Upon discovering the transfer, he lodged complaints with the police and the District Land Registrar and sought placement of a caution against the title.
12. On cross-examination, PW1 conceded that he did not have a title deed in the name of the deceased but maintained that the allotment by the co-operative society established ownership. That he was not present when the alleged transfer to the 1st defendant was effected and that he relied on records obtained from the society and the land registry.
13. He acknowledged that the dispute centered on membership and allocation records held by the co-operative society. In re-examination, PW1 reiterated that the society had confirmed the deceased's entitlement to the land and insisted that the transfer to the 1st defendant was undertaken without lawful justification.
14. PW2 was Peter Wanjohi Kiama, the liquidator of Drumvale Farmers Co-operative Society Limited and Assistant Commissioner for Cooperative Development. He adopted his witness statement filed on 28th October 2021 and produced the relevant register extracts and correspondence. He testified that according to the Society's records, Athi River/Athi River Block 5/259 was allocated to Member No. 111, the late Kyule Mumo, while Mavoko Town Block 12/268 was allocated to Member No. 402, the late Kiloko Mitaa. He stated that the letter dated 27th June 2013, which purported to reference both parcels, was a forgery, as he did not author it and ordinarily issued separate letters for separate parcels.
15. On cross-examination, he acknowledged that Kiloko Mitaa was a member of the Society and that each member was entitled to two parcels, but maintained that the Society's register showed the suit property belonged to the late Kyule Mumo. He admitted that the register contained alterations but stated that they did not affect the suit property.
16. PW3 was Jonah Munguti. He adopted his witness statement as his evidence in chief and testified that he had been the patron of Drumvale Farmers Co-operative Society Limited. He stated that parcel No. Athi River/Athi River Block 5/259 was allocated to the late Kyule Mumo as Member No. 111 of the Society. He further testified that upon the deceased's demise, his seven sons agreed that the suit property be given to Paschall Mutwetumo Kyule and Martin Kaloki Kyule, and that Martin Kaloki Kyule later sold his 2.5-acre share to Paschall Mutwetumo Kyule.
17. He also stated that on 2nd July 2012, the liquidator of the society, Peter Wanjohi Kiama, wrote to the District Land Registrar, Machakos, confirming that the suit property belonged to the deceased and was to be transferred to Paschall Mutwetumo Kyule. That however, a search conducted on 19th February



2015, revealed that the property had been registered in the name of Michael Wambua Musyoka on 22nd July 2013 and that he had urged the liquidator to liaise with the Land Registrar to rectify the error and facilitate issuance of title to the plaintiff herein. That marked the close of the plaintiff's case.

Defence evidence

18. The 1st defendant testified as DW1. He adopted his witness statement dated 13th October 2015 as his evidence in chief and produced the documents filed therewith. He stated that he was the administrator of the estate of his late grandmother, Kiloko Mitaa, a shareholder of Drumvale Farmers' Co-operative Society Limited under Share No. 402.
19. He testified that members of the society were entitled to two parcels of land and that his grandmother was allocated Mavoko Town Block 12/268 and Athi River/Athi River Block 5/259. He averred that in 2013 he lawfully followed the requisite procedure and was issued with a title deed for the suit property. He further referred to proceedings before the Co-operative Tribunal Case No. 720 of 2016, concerning the Society's liquidation and asserted that the liquidator's actions had been challenged.
20. On cross-examination, DW1 confirmed that Kiloko Mitaa was a member of the Society. He acknowledged that there were alterations in the society's registers and confirmed the existence of a pending criminal case relating to alleged forgery of documents connected to the suit property. In re-examination, he maintained that the green card and prior court proceedings supported his registration and reiterated that he lawfully acquired title to the suit property.
21. Parties were directed to file written submissions in support of their respective positions. On record are submissions dated 21st August 2025 filed by the plaintiffs; undated submissions filed by the 1st defendant, and submissions dated 24th April 2025 filed by the 2nd and 3rd defendants; all of which this court has duly taken into consideration.

Plaintiffs' submissions

22. Counsel for the plaintiffs identified two issues for determination, namely; whether the 1st defendant acquired the suit property, illegally and fraudulently; and whether the title issued to him ought to be cancelled.
23. On whether the 1st defendant acquired the suit property illegally and fraudulently, counsel submitted that the plaintiffs were the duly appointed administrators of the estate of the late Kyule Mumo pursuant to letters of administration ad litem issued on 30th April 2015. It was contended that the suit property was allocated to the deceased by Drumvale Farmers' Co-operative Society Limited as Member No. 111 and therefore formed part of his estate.
24. It was further submitted for the plaintiffs that an official search conducted on 19th February 2015 revealed that the suit property had been registered in the name of the 1st defendant on 22nd July 2013 without the knowledge or consent of the plaintiffs which was fraudulent and unlawful.
25. Counsel relied on the membership register produced by the liquidator, PW2, which indicated that Plot No. 259 was allocated to Kyule Mumo, while Plot No. 268 was allocated to Kiloko Mitaa. It was further submitted that the liquidator disowned the letter allegedly relied upon to process the 1st Defendant's registration, thereby demonstrating misrepresentation. Relying on the decisions in *Kinyanjui Kamau v George Kamau* (2015) eKLR and *Ndolo v Ndolo* (2008), counsel submitted that fraud must be specifically pleaded and strictly proved, and that the plaintiffs had discharged that burden through documentary evidence and testimony.



26. On the issue of cancellation of title, counsel invoked Section 26(1) of the *Land Registration Act*, 2012, submitting that a certificate of title may be impeached where it is obtained through fraud, misrepresentation, illegality, or procedural impropriety. It was contended that the 1st defendant's title fell within these exceptions and ought to be revoked.

1st defendant's submissions

27. The 1st defendant submitted that he was the lawful administrator of the estate of the late Priscilla Kiloko Mitaa, a member of Drumvale Farmers' Co-operative Society Limited under Share No. 402. He contended that according to the society's records, she was allocated Parcel Nos. Athi River/Athi River Block 5/259 and Mavoko Town Block 12 Plot No. 268 and that in 2013 he lawfully followed due process and was issued with a title deed for the suit property.
28. He further submitted that investigations conducted by the Directorate of Criminal Investigations in 2015, following a complaint by the 1st plaintiff, did not establish any wrongdoing and that restrictions placed on the property were subsequently lifted. Further that the plaintiff herein had filed an initial suit in Milimani ELC Case No. 196 of 2015 seeking to restrain the defendant herein from interfering with the suit property, and that the case was dismissed for lack of evidence.
29. He maintained that his registration as proprietor of the suit property was regular and supported by the society's records and succession documentation. The 1st defendant prayed for the court to find that the plaintiffs had failed to prove fraud and questioned why the deceased Kyule Mumo was never issued with a title deed during his lifetime if he was indeed the rightful owner.

2nd and 3rd defendant's submissions

30. The 2nd and 3rd defendants submitted that the suit property, Athi River/Athi River Block 5/259, was originally owned by Drum Vale Farmers' Co-operative Society Limited and that the dispute as to whether it was allocated to the late Kyule Mumo or the late Kiloko Mitaa can only be conclusively clarified by the Society as the original owner and transferor.
31. It was further submitted that the role of the 2nd defendant, as Land Registrar, is governed by Sections 7, 14, and 24 of the *Land Registration Act*, which mandate the land registry to maintain the register and effect registration upon proper application and supporting documentation. That the 1st defendant applied for registration for purposes of succession and presented documents demonstrating that he was the administrator of the estate of the late Kiloko Mitaa, who, according to the Society's confirmation vide a letter dated 27th June 2013, had been allocated the suit property. That the land registry reviewed the documents, conducted due diligence, and found no record of Kyule Mumo as proprietor in the register. The 2nd and 3rd defendants therefore maintained that the registration of the 1st defendant was undertaken lawfully and procedurally upon examination of the requisite documentation and confirmation from the Society's liquidator.

Analysis and determination

32. I have considered the pleadings, evidence and rival submissions. The issues that arise for determination are;
- a. Whether this court has jurisdiction to hear and determine this matter.
 - b. Whether the 1st defendant's registration of the suit property was through fraud



- c. Who between the plaintiff and the 1st defendant is the lawful owner of parcel No. Athi River/ Athi River Block 5/259
- d. Whether the plaintiff deserves the orders sought in the plaint.
33. On jurisdiction, the 1st respondent argued that this court lacked jurisdiction on the bases of section 76 of the Cooperative *Societies Act*. That section provides that disputes that concern the business of a cooperative society arising between members, past members or persons claiming through members, past members or deceased members; or between members, past members or deceased members and the society its committee or officer; or between the society and another cooperative society shall be tried by the Cooperative Tribunal.
34. The Jurisdiction of this court is provided for in Article 162 (b) of *the Constitution* of Kenya as read with section 13 of the *Environment and Land Court Act*, which provisions clothe this court with jurisdiction to determine matters relating to the environment and the use and occupation of, and title to, land.
35. In the instant case, the question before court is whether the registration of the 1st defendant as the owner of the suit property was obtained unlawfully and fraudulently. In my view that is not a matter that concern the business of Drumvale and therefore, the same is outside the purview of section 76 of the Cooperative *Societies Act*, and within the ambit of Article 162 (2) (b) of *the Constitution* of Kenya. For that reason, I find and hold that this court has the jurisdiction to hear and determine the dispute herein.
36. I now turn to the merits of the suit. Article 40 (6) of *the Constitution* of Kenya only protects the right to acquire and own property in respect of property that is lawfully acquired.
37. Section 26 of the *Land Registration Act* provide for indefeasibility of title as follows;
- “Certificate of title to be held as conclusive evidence of proprietorship
- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
38. Thus, registration of land vests in the proprietor thereof absolute and indefeasible rights unless there is proof that the acquisition of the said title was by fraud, misrepresentation, illegality, want of procedure or corruption.
39. In the case of *Dina Management Limited v County Government of Mombasa & 5 Others*, the Supreme court of Kenya held that a title obtained unlawfully cannot confer lawful ownership.
40. It is trite that where fraud is alleged, the same ought to be specifically pleaded and strictly proved. The standard proof of fraud is slightly higher than the standard required in ordinary civil cases of the



balance of probability, but slightly below the standard of proof in criminal cases of beyond reasonable doubt. In *Kinyanjui Kamau –vs George Kamau* [2015] e KLR, the court held as follows; -

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo –vs- Ndolo* [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...”

41. In the instant case, the plaintiff pleaded that the 1st defendant fraudulently and unlawfully acquired registration of the suit property. It is not disputed that the suit property originally belonged to Drumvale, a land buying company which distributed the land it owned to its members according to their shareholding. It is also not disputed that the plaintiff’s father one Kyule Mumo and the 1st defendant’s grandmother one Kiloko Mitaa were both members of and had shares within Drumvale.
42. It is also not disputed that the registration of the land originally owned by Drumvale into the respective names of the members of Drumvale, by the 2nd defendant was done in accordance with the list supplied to the 2nd defendant by officials of Drumvale. What is disputed is who between Kyule Mumo and Kiloko Mitaa was the owner of the suit property.
43. Both the plaintiff and the 1st defendant availed letters from Drumvale stating that they were owners of the suit property. However, PW2, Peter Wanjohi Kiama, the liquidator of Drumvale and custodian of their documents and Assistant Commissioner for Cooperative Development presented two crucial documents which pointed to the fact that the true owner of the suit property who had lawfully been granted the same by Drumvale was Kyule Mumo. This is because this witness produced an extract of the register of Drumvale which showed that Kyule Mumo was member No. 111 and his parcel was plot No. 259 while Kaloko Mitaa was member No. 402 and her property was plot No. 268. The 1st defendant did not produce contrary evidence or another register to counter this evidence. Besides, the 1st defendant conceded that Kyule Mumo was member No. 111 of Drumvale, but he is silent on the plot number given to the said member.
44. In addition, PW2 maintained that the letter dated 27th June 2013 and produced by the 1st defendant was a forgery because the original letter which he wrote was only in reference to parcel No. Mavoko Block 12/268 and did not touch on the suit property. I have considered the letter produced by the 1st defendant dated 27th June 2013. It stated as follows;

“REF; Land Parcel- Amavoko Block 12/268/athiblock 5/259.

This is to inform you that the above parcel of land was allocated to the late Kiloko Mitaa M/NO. 402, by the society.

Kindly assist the family.”

45. As pointed out by the plaintiff, which is clear, is that the body of the letter refers to a single parcel of land and not two parcels, while the title thereof refers to what appears to be two parcels but it is clear that the words “/ATHI BLOCK 5/259” were inserted in the original letter as that is not the correct description of the suit property. The correct description of the suit property is “Athi River/Athi River Block 5/259.” This is not what is stated in the letter above. It is clear to me therefore, that the evidence of PW2



and the inconsistency, ambiguity and unintelligibility in the letter dated 27th June 2013 produced by the 1st points to the fact that the same is a forgery.

46. For the above reasons, I find and hold that the registration of the 1st defendant as proprietor of the suit property was acquired through fraud and illegality as Kaloko Mitaa never owned or acquired the same. This court has power under section 80 of the *Land Registration Act* to order cancellation of title which is shown to have been fraudulently acquired. Therefore, the plaintiff are entitled to the prayer of cancellation of the 1st defendant's title and registration of the same in the 1st plaintiff's name. The plaintiffs' prayer for a permanent injunction was sought to be granted pending hearing and determination of this suit. Since the suit has now been determined, that prayer is spent.
47. The upshot is that I find and hold that the plaintiffs have proved their claim against the 1st defendant on the required standard. The suit as against the 2nd and 3rd defendants is dismissed with no order as to costs. I therefore enter judgment for the plaintiff against the 1st defendant as follows;
- a. That an order is hereby issued cancelling the registration of title for parcel No. Athi River/Athi River Block 5/ 259 in the name of Michael Wambua Musyoka, the 1st defendant. The said title shall be registered in the name of the 1st plaintiff PASCHALL MUTWETUMO KYULE and a new title deed in respect thereof shall issue to the 1st plaintiff accordingly.
 - b. The costs of the suit are awarded to the plaintiffs and shall be borne by the 1st defendant.
48. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 25TH DAY OF FEBRUARY 2026 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms Morara for the plaintiff

1st defendant in person

Ms Kubai for the 2nd and 3rd defendants

Court Assistant: Delphine

