

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC LC CASE NO. E032 OF 2024

LILIAN ANYANGO OBALA (Suing as the legal Rep. of the Estate of
MESHACK ADUOL MONYE) PLAINTIFF

VERSUS

COSMAS OKANGI NYANGÁU..... 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

DISTRICT LAND REGISTRAR - KISUMU 3RD DEFENDANT

J U D G E M E N T

1. Vide the plaint dated 5th November, 2024, Lilian Anyango Obala in her capacity as legal representative of the estate of Meshack Aduol Monye, sued the Defendants herein and sought orders of;

- (a) A declaration that the title issued to Cosmas Okangi Nyang’au was fraudulent, irregular, illegal, unlawful, null, and void.
- (b) An order be issued directed to the Chief Land Registrar, Kisumu, to cancel the title issued to Cosmas Okangi Nyang’au.

- (c) A declaration that Meshak Aduol Monye (deceased) is the legal and rightful owner of the suit property known as EAST KISUMU/KANYAKWAR “B”/42.
- (d) Costs of the suit
- (e) Such other or further relief as the Honourable court deems just.

2. The Plaintiff’s case was that at all material times, Meshack Aduol Monye, deceased, was the duly registered owner of all that parcel of land known as EAST KISUMU/KANYAKWAR “B”/412, the suit land herein. That the deceased acquired the property through purchase when the same was sold by public auction and registered in his name on 11th January, 1989.

That after the death of the deceased, the Plaintiff discovered that the suit land was unlawfully registered in the name of the 1st Defendant on 17th May, 2005.

The Plaintiff pleaded that she has always had possession and control of the suit land which is registered in the name of the deceased. The Plaintiff further pleaded that the 1st Defendant either alone or in concert with other persons acquired the land through illegality and fraud. The Plaintiff pleaded the

particulars of fraud under paragraph 18 of the plaint and sought the court's intervention.

3. In response to the claim, the 2nd and 3rd Defendants filed a statement of defence dated 14th April, 2025 denying the Plaintiff's claim and seeking that the suit be dismissed with costs.
4. Vide his statement of defence dated 17th April, 2025, the 1st Defendant denied the Plaintiff's claim and specifically denied being privy to the suit land. The 1st Defendant denied ownership of the suit land. He averred that he had been wrongly sued.
5. The Plaintiff testified as PW1, adopted the contents of her witness statement dated 4th November, 2024, which rehashed the contents of the plaint. The Plaintiff produced exhibits in support of her claim, including a copy of the title deed for the suit land, Grant of Letters of Administration, Certificate of Confirmation of Grant and copy of transfer form by Chargee in exercise of power of Sale by United Trustee Finance Limited and prayed that the claim be allowed.
6. In his testimony, the 1st Defendant reiterated the contents of his statement of defence and denied owning the suit land. He

stated that he had never been to the suit land and had no claim whatsoever over it.

7. The 2nd and 3rd Defendants opted not to call any witnesses and closed their case.

8. It was submitted on behalf of the Plaintiff that the Plaintiff had provided evidence that proved the root of her title and that the court should order rectification of the register under section 80 of the Land Registration Act by directing the registration subsequent to that of the deceased to be cancelled.

No submissions were filed on behalf of the Defendants.

9. The sum effect of the material placed before the court is that the Plaintiff's claim was not contested by the 1st Defendant, who was said to be the current registered owner of the land. The 1st Defendant stated expressly that he had no claim over the suit land. At the court's directions, the 1st Defendant filed a copy of his national identity card No.12513101 in the name of COSMAS OKANGI NYANGAU for identification and authentication of his particulars.

10. I have keenly examined the documents produced as exhibits by the Plaintiff in light of the evidence of PW1 and find that the Plaintiff has discharged the burden of proof, being

proof on a balance of probabilities. The Plaintiff produced a copy of the title deed dated 11th January, 1989, in the name of the deceased, transfer by Chargee in exercise of power of sale dated 4th November, 1988, Notice of Sale by Prime Auctioneers dated 11th October, 1988, among other documents.

11. I find that the Plaintiff has proved the case on a balance of probabilities and enter judgment in favour of the estate of the deceased for:-

- i. A declaration that the title issued to Cosmas Okangi Nyang'au in respect of land parcel known as EAST KISUMU/KANYAKWAR "B"/412 was fraudulent, irregular, illegal, unlawful, null, and void.**
- ii. An order directed to the Chief Land Registrar, Kisumu to cancel the title issued to Cosmas Okangi Nyang'au in respect of land parcel known as EAST KISUMU/KANYAKWAR "B"/412.**
- iii. A declaration that Meshak Aduol Monye (deceased) is the legal and rightful owner of the suit property known as EAST KISUMU/KANYAKWAR "B"/412.**

- iv. As the 1st Defendant did not contest the claim, each party shall bear own costs of the suit.**

Orders accordingly.

Judgment dated and signed at Kisumu, delivered this 19th day of March, 2026, virtually through Microsoft Teams Online Application.

**E. ASATI,
JUDGE.**

In the presence of:

Maureen: Court Assistant.

Nyaseme for the Plaintiff.

Wesonga for the 1st Defendant.

N/A for the 2nd and 3rd Defendants.