

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**

**ELCLOM CASE NO. E001 OF 2025**

**KAMASET & COMPANY LIMITED**  
.....**PLAINTIFF**

**VERSUS**

**HELLEN CHELEL MULAMA.....1<sup>ST</sup>**  
**DEFENDANT**

**LAND REGISTRAR, UASIN GISHU COUNTY.....2<sup>ND</sup>**  
**DEFENDANT**

**JOHNSTONE MULAMA.....3<sup>RD</sup>**  
**DEFENDANT**

**JUDGMENT:**

1. The plaintiff, Kamaset & Co. Limited came to this court by way of originating summons/notice of motion dated 22<sup>nd</sup> May, 2025 seeking the determination of the following issues:-
  1. Whether the delay or refusal to register the transfer of Land by the Land Registrar is proper, justified and lawful.
  2. Whether the power of attorney registered by Land Registrar on 4.2.2020 is a valid instrument donating powers to the 1<sup>st</sup> Defendant to transact and or deal in the land and resultant subdivisions.

3. Whether the plaintiff is obligated to produce the power of attorney which has been acted on by the Land Registrar on registering the subdivisions.
  4. Whether the Land Registrar despite requiring personal attendance of the 1<sup>st</sup> Defendant to approve and endorse the transfer of land is acting within the law by declining to register the transfer.
  5. Whether the missing or misplaced Power of Attorney form from parcel file is adequate reason for refusal to register the transfer despite entries of registration of power of Attorney in the land records.
  6. Whether reconstruction of records of any missing land records is the responsibility of the defendants.
  7. Whether the delay for 2 years is justified and in the interest of citizens who are entitled to services from the Government Land department.
  8. Whether the defendants can be ordered to complete registration of the transfer or do all that is necessary to effect the transfer of land to the plaintiff.
  9. That the costs of the summons be awarded to the plaintiff.
2. The originating motion is supported by the affidavit of professor Daniel Rotich Chebutuk, the director of the plaintiff company, sworn on 22.5.2025 and is based on the following grounds:-

- a) The sale of the land is uncontested by the parties and the 1<sup>st</sup> Defendant was willing to transfer save for unresponsive land registry.
  - b) The suit parcel of land was sold by the 1<sup>st</sup> Defendant vide an agreement dated....
  - c) The purchase price was paid in full and the 1<sup>st</sup> defendant acknowledged receipt in full settlement of purchase consideration.
  - d) The 1<sup>st</sup> defendant pursued subdivision of the land in order to convey the portion sold to the plaintiff.
  - e) The 1<sup>st</sup> defendant executed all the conveyance documents in favour of the plaintiff.
  - f) The 1<sup>st</sup> Defendant attended the Land Registry at the summons of the Land Registrar and she endorsed the transfer of land.
  - g) The 2<sup>nd</sup> defendant henceforth declined to register without compelling reasons.
  - h) The delay or refusal to carry out his duties under the Registration of Land Act is unlawful and prejudicial to the plaintiff.
3. The application is supported by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.
  4. The 2<sup>nd</sup> Defendant opposed the application vide a Replying Affidavit sworn on 20<sup>th</sup> February, 2026 by Naomi Rop, the Land Registrar Uasin Gishu County. She deponed that

registration of interests in land is governed strictly by the Land Registration Act, 2012, the Land Act and the Land Registration (General) Regulations. That the Land Registrar does not act as an agent of any party to a sale agreement but exercises statutory and quasi-judicial powers in processing registrable instruments, and before registration of any transfer, the Registrar is required by law to verify authenticity of instruments, identity and capacity of the parties, validity of any Power of Attorney, legality of subdivision, compliance with statutory consents and requirements.

5. The 2<sup>nd</sup> defendant averred that the plaintiff has not demonstrated that a complete and registrable transfer instruments was presented for registration in accordance with the law. That the suit property records revealed issues requiring verification, particularly the Power of Attorney and parcel documentation. That where doubts arise concerning authenticity, completeness of records, identity of parties, or validity of instruments, the Registrar is legally obligated to withhold registration pending verification.
6. It is also deponed that the requirement for personal attendance of parties is a lawful administrative safeguard intended to prevent fraud and unlawful land transfers, and any delay in registration was occasioned solely by the need to verify documentation and protect the integrity of the Land

registry, and not out of malice, bad faith or negligence. That where a transfer is based on a Power of Attorney, the Registrar must confirm the validity of the instrument, proper execution, registration, donor's authority and identity, and the absence, inconsistency, or inability to verify the power of Attorney lawfully prevents registration of the transfer.

7. It was further deponed that the 2<sup>nd</sup> Defendant was not a party to the sale agreement between the plaintiff and the 1<sup>st</sup> Defendant and any dispute relating to performance of the same is contractual and enforceable only between the contracting parties. That the plaintiff seeks orders compelling registration of a transfer and issuance of title, and a court order cannot replace mandatory statutory documentation nor compel the Registrar to act contrary to the Land Registration Act.
8. It is also averred that the issues raised by the plaintiff involve contested questions of fact including validity of documents, ownership and compliance, which cannot be determined through originating summons proceedings. That the plaintiff has not exhausted the administrative mechanisms available under the Land Registration Act before filing suit.
9. It is argued that at all material times, the Land Registrar acted lawfully, reasonably and within statutory mandate. That the Registrar's duty is to safeguard the accuracy,

legality and sanctity of the Land register for the public interest, and registering an instrument without proper verification would expose the Government to liability and undermine indefeasibility of title.

10. In conclusion, the 2<sup>nd</sup> defendant stated that the plaintiff has not established any illegality, bad faith or refusal by the 2<sup>nd</sup> defendant to perform a statutory duty, arguing that the suit is premature, misconceived and an abuse of the court process and urged the court to dismiss the same with costs.

**Submissions:**

11. The application was canvassed by way of written submissions. The plaintiff filed submissions dated 10<sup>th</sup> March, 2026. As already stated, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants are not opposed to the application and agreed to have judgment entered for the plaintiff against them. Counsel for the 2<sup>nd</sup> Defendant did not file submissions and relied on the replying affidavit filed.

**Analysis and Determination:**

12. I have considered the application, the responses and the submissions filed. The only issue for determination is whether the court should order the 2<sup>nd</sup> defendant to complete registration of the transfer of parcel No.

SERGOIT/KOIWAPTAOI BLOCK 3 (SHAMTREK)/924 in favour of the plaintiff.

13. The application is brought under Order 37 Rule 3 of the Civil Procedure Rules which provides as follows: -

***“A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the judge sitting in chambers, for determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”***

14. As rightly submitted by the plaintiff, Order 37 Rule 3 applies to cases where there exists no dispute over the validity of a contract over land. In this case, it is the plaintiff's case that the 1<sup>st</sup> Defendant and the plaintiff entered into an agreement of sale  $\frac{1}{4}$  of that piece of land known as SERGOIT/KOIWAPTAOI BLOCK 3 (SHAMTREK)/349. That the 1<sup>st</sup> defendant executed the agreement of sale on the strength of a Power of Attorney donated by the 3<sup>rd</sup> Defendant. The 1<sup>st</sup> Defendant and the 3<sup>rd</sup> defendant are mother and son. That upon payment of the full purchase price, the 1<sup>st</sup> defendant proceeded to cause a subdivision of the parcel so

that she may excise the sold portion to the plaintiff for conveyance. That subdivision gave rise to the suit land title No. SERGOIT/KOIWAPTAOI BLOCK 3 (SHAMTREK)/924 and 925. That the plaintiff sought and obtained consent to transfer and executed all conveyance instruments and the same presented for registration, but the 2<sup>nd</sup> Defendant failed to effect the transfer or issue title deed despite having received all the instruments as by law required. The question that arise is whether the 2<sup>nd</sup> defendant is justified in failing to carry out the wishes of the parties who do not have any dispute over the suit land.

15. The general powers of the 2<sup>nd</sup> Defendant are provided for under section 14 of the Land Registration Act which provides as follows:-

***“14. General powers of Land Registrars;***

***(1) The chief Land Registrar, County Land Registrar or any other Land Registrars may, in addition to the powers conferred on the office of the Registrar by this Act -***

- (a) Require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;***
- (b) Summon any person to appear and give any information or explanation in respect to land, a***

***lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;***

***(c) Refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;***

***(d) ...***

***(e) ...***

16. In this case, the plaintiff averred that it presented the requisite documents to the 2<sup>nd</sup> defendant for registration. The 1<sup>st</sup> and 3<sup>rd</sup> defendants support the plaintiff's position. It is the general practice of the Land Registrars to give reasons for rejecting registration in writing on the booking form. Whereas the 2<sup>nd</sup> Defendant deponed that the suit property records revealed issues requiring verification, particularly the power of attorney, that in my view is an issue between the parties, that is the plaintiff, the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant. Moreover, the parties have all admitted that those documents were presented to the 2<sup>nd</sup> defendant. That it was the very same Power of Attorney which was used in registering the mutation and subdivision. The 2<sup>nd</sup> defendant herein is a public officer who has a duty to register

documents upon laid down verification procedures, and if not satisfied with the documents presented, he/she has a duty to call for more documents for verification or explanation within reasonable time. In performing her duties, the 2<sup>nd</sup> defendant is by law expected to act expeditiously, efficiently, lawfully, reasonably and procedurally fairly.

17. In this case the plaintiff's case is that the documents were presented in the year 2022. The 2<sup>nd</sup> defendant is enjoined to act expeditiously, fairly, rationally and justly, and not keep the plaintiff in limbo for about 4 years.
18. I have perused the replying affidavit filed by the 2<sup>nd</sup> Defendant. Whereas the same alludes to issue regarding the power of Attorney and parcel documentation, the 2<sup>nd</sup> defendant does not state what was particularly deficient with the Power of Attorney or the parcel file. As already stated, there is no dispute disclosed as to the ownership of the suit land. The owner of the land is not opposed to the plaintiff's suit, including compelling the 2<sup>nd</sup> Defendant to transfer title to the plaintiff.
19. As a result, I find that the Originating summons dated 22<sup>nd</sup> May, 2025 is merited, and the 2<sup>nd</sup> defendant is hereby orders to complete the registration of the transfer and issue the plaintiff with a title deed for the suit land title No. **SERGOIT/KOIWAPTAOI BLOCK 3 (SHAMTREK)/924.**
20. Each party to bear their own costs.

21. Orders accordingly.

**DATED, SIGNED** and **DELIVERED** virtually at **ELDORET** on this **7<sup>TH</sup>** day of **MAY, 2026** vide Microsoft Teams.

**HON. C. K. YANO**  
**ELC, JUDGE**

In the virtual presence of:-

Mr. Mwetich for the plaintiff.

Ms. Langat holding brief for Mr. Ngigi for 1<sup>st</sup> & 3<sup>rd</sup> Defendants.

Mr. Kwame for 2<sup>nd</sup> Defendant.

Court Assistant - Laban.