



**Mbugua & another v County Government of Embu (Civil Application
E009 of 2024) [2025] KEELC 5905 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
CIVIL APPLICATION E009 OF 2024**

**AK BOR, J
JULY 16, 2025**

BETWEEN

PAUL KIMANI MBUGUA 1ST APPLICANT

MARY WARIARA MBUGUA 2ND APPLICANT

AND

THE COUNTY GOVERNMENT OF EMBU RESPONDENT

RULING

1. The Applicants brought the application dated 2/4/2024 seeking to have the court order that the register in respect of the land known as Embu Municipality parcel number 92 be rectified by removing the name of Obadia Kamiru as a proprietor of the land and for the Land Registrar Embu to effect the said rectification forthwith. They sought to have the costs in the cause. The application was brought under Sections 1 and 3A of the Civil Procedure Act and Section 80 of the Land Registration Act.
2. The application was made on the grounds that the renewed lease has a mistake and that rectification was necessary to reflect the true position.
3. Paul Kimani Mbugua swore the affidavit in support of the application. He deponed that the land in question was originally registered in the name of Obadia Kamiru and the Applicants' late father Samwel Mbugua. He deponed that the Applicants are the administrators of the estate of the late Samwel Mbugua who was succeeded by their late mother, Mary Wariara Mbugua. Samwel Mbugua died on 18/2/1994 while Obadia Kamiru died on 17/12/1961, as shown by the Chief's letter. That before Obadia Kamiru died, he sold his share out of the suit land to their father Samwel, for Kshs. 3300/= and the sale of the share was ratified on 26/7/2007 in the meeting of the Town Planning and Housing Committee held on that day.
4. Mr. Mbugua further deponed that his family developed and had been in occupation of the suit land from 1960's to date. He averred that when the original lease expired, a new lease was issued which took



- effect on 1/7/1992 and that it included the name of Obadia Kamiru as one of the proprietors which is a mistake and an error in light of the sale. The Land Registrar Embu declined or refused to effect the changes unless he got a specific court order to that effect. According to Mr. Mbugua, the respondent as the custodian of the transactions and documents pertaining to the suit land failed and ignored to write to the Land Registrar to effect the changes in the lease, which necessitated its inclusion as a party to this application.
5. Mr. Mbugua attached copies of the certificate of confirmation of grant issued to the Applicants, the death certificate for Samwel Mbugua, the chief's letter confirming Obadia Kamiru's death, correspondence over the sale transaction, minutes of the meeting ratifying the sale and a certified copy of the lease.
 6. The Applicants filed their submissions, which the court has considered. They submitted that their application has merit and was properly before the court and was brought in accordance with the Civil Procedure Act and Rules. The Applicants invoked Article 159(2)(d) of the Constitution to urge the court to prioritize substantive justice over procedural technicalities. They submitted that they seek an order for rectification of the land register under Section 80 of the Land Registration Act on the ground that the inclusion of Obadiah Kamiru's name in the new lease was a mistake or error on the part of the Land Registrar, given that he had sold his interest in the property to their father Samuel Mbugua, as evidenced by the correspondence produced in court. The Applicants cited various cases, which they did not furnish to the court.
 7. 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. Section 80 (2) provides that the register should not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.
 8. The Applicants produced documents including the minutes of the Town Planning Works and Housing Committee meeting held on 26/7/2002 where the application by Obadiah Kamiru for the transfer of his shares in plot no. 1112/92 to Samuel Mbugua was approved. The letter dated 29/6/1973 from Obadiah Kamiru's son, Gikandi Kamiru addressed to the Town Clerk Embu confirmed that the family had agreed that the entire plot would be transferred to Samuel Mbugua.
 9. Based on the documents presented in support of the application, the court is satisfied that it was the intention of Obadiah Kamiru and Samwel Mbugua to have the suit land relinquished to Samwel Mbugua. The inclusion of Obadiah Kamiru in the new lease is a mistake.
 10. The prayers sought in the application dated 2/4/2024 are merited and rectification of the register for Embu Municipality parcel number 92 under Section 80(1) of the Land Registration Act is warranted.
 11. The application dated 2/4/2024 is hereby allowed. The court makes no orders as to costs.

DELIVERED VIRTUALLY AT EMBU THIS 16TH DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. J. Kiongo holding brief for Mr. Mugambi Njeru for the Applicant

Diana Kemboi- Court Assistant



No appearance for the Respondent

