



**Kariuki v Masaiaine & 6 others (Environment & Land Case 181 of 2018)  
[2025] KEELC 861 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 861 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 181 OF 2018  
LC KOMINGOI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**GEORGE NGURE KARIUKI ..... PLAINTIFF**

**AND**

**SEIN MASIAINE ..... 1<sup>ST</sup> DEFENDANT**

**JENIFFER MASIANE SAPONG ..... 2<sup>ND</sup> DEFENDANT**

**JEREMIAH KIMANI KIBUI ..... 3<sup>RD</sup> DEFENDANT**

**CHRISTOPHER MUTIA MUTHAMA ..... 4<sup>TH</sup> DEFENDANT**

**SAMUEL NYACHAMA MAUGO ..... 5<sup>TH</sup> DEFENDANT**

**MAPEMA INVESTMENTS LIMITED ..... 6<sup>TH</sup> DEFENDANT**

**THE PRINCIPAL LAND REGISTRAR ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By the Plaint filed on 22<sup>nd</sup> November 2018, the Plaintiff claims that at all material times, he was the registered owner of property Kajiado/Kitengela/6535 (herein after referred to as the “suit property”) measuring approximately 20 acres and had never transferred it to anyone. He however discovered that on or about 14<sup>th</sup> October 2009, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fraudulently caused themselves to be the registered as the owners of the property, who consequently subdivided it to parcels Kajiado/Kitengela/54044 and Kajiado/Kitengela/54045. They would then transfer parcel Kajiado/Kitengela/54044 to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and parcel Kajiado/Kitengela/54045 was transferred to the 5<sup>th</sup> Defendant. Sometime on 13<sup>th</sup> January 2015 the 3<sup>rd</sup> and 4<sup>th</sup> Defendants went on to subdivide parcel Kajiado/Kitengela/54044 to parcel Kajiado/Kitengela/81564 and Kajiado/Kitengela/ 81565 and sold and transferred it to the 6<sup>th</sup> Defendant. That the 1<sup>st</sup> to 6<sup>th</sup> Defendants therefore fraudulently



with the aid of the 7<sup>th</sup> Defendant fraudulently caused the transfer and subdivision of the suit property into their names, depriving of the Plaintiff its rightful use and possession.

2. The plaintiff set out particulars of fraud and misrepresentation against the Defendants as follows:

That the 1<sup>st</sup> and 2<sup>nd</sup> Defendant being aware that the suit property had been sold off to the Plaintiff by the late Masaine Malambu Kiondo forged his signature and caused the property to be transferred to their names and caused its subdivision and transfer to the other Defendants. That the 7<sup>th</sup> Defendant caused the removal of the true and correct green card for the suit property and replaced it with the current one which does not bear the Plaintiff's entry as the owner and effecting transfers to the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants.

3. The Plaintiff also claimed that this action had caused wasting way of the property and denied him the use of the same. He sought for the following orders;

- a. A declaration that the parcel known as Kajiado/Kitengela/6535 belongs to the Plaintiff absolutely.
- b. An order directed to the 7<sup>th</sup> Defendant to cancel Green Cards LR Numbers Kajiado/Kitengela/6535 and its subsequent subdivisions being parcels Kajiado/Kitengela/54044, Kajiado/Kitengela/54045, Kajiado/Kitengela/81564 and Kajiado/Kitengela/81565 in the names of the 1<sup>st</sup> to the 6<sup>th</sup> Defendants.
- c. An order directed to the 7<sup>th</sup> defendant to reconstruct a green card in the names Masaine Malambu and subsequent entries reflecting the Plaintiff as the bona fide registered and absolute owner in tandem with the title issued on 31<sup>st</sup> August 1995.
- d. An order for compensation for general, exemplary and punitive damages against the Defendants.
- e. Costs of this suit.
- f. Any other relief this Honourable Court may deem fit to grant.

4. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their statement of defence dated 7<sup>th</sup> February 2022 contested the Plaintiff's claim stating that they were the registered proprietors of property known as Kajiado/Kitengela/6535 measuring approximately twenty (20) acres and no fraud or misrepresentation was occasioned in the transfer and subdivision of the same. They also claimed that no loss or damage had been incurred by the Plaintiff. They sought for dismissal of the suit for being frivolous.

5. The 5<sup>th</sup> Defendant in his Statement of Defence filed on the 17<sup>th</sup> July 2024 while contesting the Plaintiff's claim, stated that the suit was time barred because it took the Plaintiff over two decades to file a claim against the land which was registered in the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' names in the year 1995 as the suit filed in the year 2018. He prayed that the suit should therefore be dismissed with costs. The 5<sup>th</sup> Defendant also claimed that he was a bona fide purchaser for value and any claim of fraud or misrepresentation was unfounded.

6. The 7<sup>th</sup> Defendant, despite being given time to file its pleadings, did not file any.

7. This suit was first set down for hearing on the 6<sup>th</sup> October 2022 where the Plaintiff testified and closed his case in absence of the Defendants. This Court while going through the file to prepare a judgement noted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who had entered appearance were never served with a hearing notice. On the 18<sup>th</sup> April 2023 Counsel for the 1<sup>st</sup> to 4<sup>th</sup> and 6<sup>th</sup> Defendants sought for time to approach



the Plaintiff with a view of settlement out of court. Despite the time given, they were unsuccessful. There was also an application by the 4<sup>th</sup> Defendant which was allowed and the Court granted the Defendants time to file their documents. The hearing date was set down by consent of all parties. When the matter was called out, counsel for the Plaintiff and the 5<sup>th</sup> defendant were present in court it is only the Plaintiff's counsel who appeared later. The matter therefore proceeded *ex parte*.

### **Evidence of the Plaintiff**

8. PW1, George Ngure Kariuki the Plaintiff, adopted his witness statements dated 22<sup>nd</sup> November 2018 and produced his bundle of documents as evidence which was marked as P. Exhibit 1 to 9. He stated that he acquired the suit property from its original owner and was the only proprietor having not transferred it to anyone.
9. At the close of the oral testimony the Plaintiff tendered a final written submissions.

### **The Plaintiff's submissions**

10. Counsel for the Plaintiff outlined the following three issues for determination summarised hereunder:
11. On whether the Plaintiff had proved his case on the required threshold, counsel submitted that sometime in March 1995, the Plaintiff got information that 20 acres of land which was to be hived from land Kajiado/Kitengela/2341 was being sold at the price of Kshs. 30,000. The Plaintiff agreed to purchase the land and followed due process including getting Land Control Board consent, paying stamp duty and all other necessary fees and the acquired title to the land on 31<sup>st</sup> August 1995. The Plaintiff produced evidence of the title deed in his name, mutation and evidence of payment of the purchase price among others. Counsel submitted that save for the defence filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants they did not appear in court to prove the same as required by Section 109 and 112 of the *Evidence Act* and they were therefore mere assertions as was held in *Kyalo Elly Joy vs Samuel Gitahi Kanyeri* [2021] eKLR. As such, the Plaintiff's evidence was uncontroverted and met the required threshold.
12. On whether the Plaintiff was entitled to the prayers sought, counsel submitted that the Plaintiff having tendered evidence of ownership of the suit property, he was entitled to the reliefs sought citing *Ahmed Ibrahim Suleiman & another vs Noor Khamisi Surur* (2013) eKLR together with costs to the suit as per Section 27 of the *Civil Procedure Act*.

### **Analysis and Determination**

13. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. I find that the issues for determination are:
  - i. Whether the Plaintiff has proved his case on a balance of probabilities;
  - ii. Whether the Plaintiff is entitled to the reliefs sought;
  - iii. Who should bear costs of the suit?
14. The Plaintiff's case that he was the bonafide owner of property Kajiado/Kitengela/6535 having purchased it from the late Masiaine Malambu in the year 1995 and was issued with a title deed dated 31<sup>st</sup> August 1995 which was produced as evidence. The Plaintiff also produced a handwritten breakdown of what he claimed was the payment of the purchase price for the suit property.
15. The green card produced as evidence shows that the file for what looks like parcel number 6536, was opened on 31<sup>st</sup> August 1995 and Title issued to, one Masiaine Malambu Kiondo and on 14<sup>th</sup> October



2009 it was transferred to Sein Masiaine and Jeniffer Masiaine and title issued on 21<sup>st</sup> October 2009. This parcel number bears the same registry map sheet number as the green card for parcel 6535 in the Plaintiff's name which shows that it was opened on 31<sup>st</sup> August 1985 and title issued to the Plaintiff. The green card in the 1<sup>st</sup> and 2<sup>nd</sup> defendants' names shows that the parcel was closed on subdivision on 2<sup>nd</sup> December 2012. The Plaintiff also produced a green cards for the subsequent subdivisions and registration in favour of the other defendants. However, the green cards for these subsequent subdivisions do not contain the registry map sheet numbers. The other glaring discrepancy on the two green cards presented as evidence is the parcel numbers. Where one parcel number although illegible, looks like 6536 and the other one is 6535. However, be that as it may, the registry map sheet numbers are the same in both green cards. Is it possible to have the same registry map sheet number on two parcels of land? Justice Eboso in *Simon Nyoro Ngugi v John Baptista Irungu Kariuki & another* [2018] KEELC 588 (KLR) stated: "... When a court of law is confronted with two parallel land parcel registers, it becomes inevitable to interrogate the history of the two parallel registers. This view is informed by the fact that a parcel register relating to a previously registered land is a product of a previous parcel register and is created as a product of a survey involving sub division of an existing registered parcel of land. The register is created pursuant to an instrument of conveyance by the previous registered proprietor..."

16. It is settled in law that where there are two competing titles to the same property, it is imperative to question the history and root of the said titles to ascertain their genuineness and this was echoed by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR).
17. On the history of the titles at hand, the late Masiaine Malabu Kiondo was the first registered owner of the suit property on 31<sup>st</sup> August 1995 and title issued in his name. That is not in contention. What comes next is the title held by the Plaintiff which was issued on the same date 31<sup>st</sup> August 1995 and the one held by the 1<sup>st</sup> and 2<sup>nd</sup> defendants which as per the green card was issued on 14<sup>th</sup> October 2009. The defendants who despite being aware of the hearing of this suit, elected to stay away and did not participate in this case. Therefore, there was no evidence presented in court to controvert the Plaintiff's title which was issued in 1995. As such, this being the first in time, in absence of evidence of fraud or misrepresentation it must prevail. This was the Court of Appeal's holding in *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] KECA 816 (KLR):

"... Like equity keeps teaching us, the first in time prevails so that in the event such as this one where, by mistake that is admitted, the Commissioner of Lands issued two titles in respect of the same parcel of land, then if both are apparently and on the face they were issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail..."

18. This is also the provision of Section 26(1) of the *Land Registration Act* which provides that;

"(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, ... 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."



19. It is my view that, the title held by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants having been challenged means that any other titles or subdivisions emanating from it are equally null, void and did not confer any interest. Given the provisions of Section 80 of the *Land Registration Act*, this court orders rectification of the register by cancelling all entries and subdivisions in relation to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants.
20. As much as the issue of fraud against the Defendants was not proved to the required threshold, it is my view that the existence of more than one green card in relation to the same property is a prima facie indication of possible fraud and unscrupulous dealings at the land registry which should be discouraged.
21. The Plaintiff has also sought of general, exemplary and punitive damages against the Defendants. While the Plaintiff did not provide any evidence to aid the court in assessing the award of general damages, it is on record that the suit property had been subdivided and transferred to several defendants. Having found that the Plaintiff is the bona fide owner of the suit property, this court finds that he is entitled to general damages, trespass of Kshs. 200,000/= .
22. Accordingly judgment is entered for the Plaintiff as against the Defendants jointly and severally as follows:
  - i. That a declaration is hereby issued that the Plaintiff's title deed with respect to Title Number Kajiado/Kitengela/6535 measuring approximately 8.09 hectares is conclusive evidence of ownership and the Plaintiff is the absolute and indefeasible owner of the suit property.
  - ii. That a declaration is hereby issued that that the Defendants whether by themselves or their servants or agents or otherwise howsoever are wrongfully in occupation of the suit property and are not entitled to remain on the suit property.
  - iii. The Land Registrar is hereby ordered to cancel, rectify and reconstruct the green card for property Kajiado/Kitengela/6535 in the name of Masiaine Malambu Kiondo and subsequent entries to reflect the Plaintiff as the owner. Within ninety (90) days from the date of this Judgement.
  - iv. That the Defendants are hereby directed to vacate the suit property within ninety (90) days from the date of this Judgement in default the plaintiff do use lawful means to evict them.
  - v. General damages of Kshs200,000/=
  - vi. Costs of the suit shall be borne by the Defendants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:

Mr. Murithi for Mr. Nzaku for the Plaintiff.

N/A for the 1<sup>st</sup> to 4<sup>th</sup> Defendants.

Mr. Angora for Mr. Maina for the 5<sup>th</sup> Defendant.

Ms. Njuguna for the 7<sup>th</sup> Defendant.

Court Assistant – Mutisya.

