



**Mutangili v Registrar of Titles (Environment & Land Case  
E125 of 2024) [2025] KEELC 774 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 774 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E125 OF 2024**

**JA MOGENI, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**KYULE MUTANGILI ..... APPLICANT**

**AND**

**THE REGISTRAR OF TITLES ..... RESPONDENT**

**JUDGMENT**

1. This matter was commenced by way of an Originating Summons dated 25/03/2024 in which Kyule Mutangili, the Applicant is seeking for Orders that a Vesting Order do issue in his favour in respect of all that parcel of land known as NAIROBI BLOCK 49/45 (formerly Land Reference Number 36/VII/302); that the Deputy Registrar of this Court be authorized to execute the transfer Forms/ Documents to effect registration/Transfer to the Applicant.
2. The Summons is made on the grounds in the body of the Summons and is supported by the Affidavit of the Applicant sworn on 19/03/2024.
3. On 30/4/2024, when this matter came up in Court inter partes, there was no appearance on behalf of the Respondent despite, having been served with Court papers. Mr. Munyasya, Advocate, represented the Applicant. He informed the Court that they served the Application on 23/04/2024 and filed an Affidavit on 24/04/2024. The Court issued a mention date for directions on disposal of the Application on 10/06/2024 and directed the Applicant to serve.
4. However, on 10/06/2024, there was no appearance on behalf of Applicant nor the Respondent. The Court directed that the matter should be mentioned again on 16/07/2024 where the Applicant sought to have a hearing date and the Court scheduled a formal proof hearing for 4/07/2024.
5. The Respondent did not file a Response to the Application; hence, the case was undefended.



## **Applicant's Case**

6. It is the Applicant's case that he purchased the property known as Nairobi Block 49/45 (formerly Land Reference Number 36/VII/302) vide an Agreement of Sale dated 17/04/1997 from one Jerome Mwathi Kaumbulu and that the said Kaumbulu sold the property on behalf of the other family members on the strength of an Assent dated 5<sup>th</sup> November 1991.
7. The Applicant testified that to complete the transaction the Applicant paid in full the purchase price to Jerome Mwathi Kaumbulu of Seven Million Five Hundred Shillings only (Kshs. 7,500,000/-). Upon the payment Jerome Mwathi Kaumbulu executed a deed of Indenture which was intended to convey the property to the Applicant but soon thereafter the Applicant learnt that the Kaumbulu family relocated to the United States and they lost contact.
8. That although the Applicant had retained the said Conveyance Deeds under the belief that they were the real Legal Title Documents, he learnt from his Advocate that they are not and so he has not been holding a valid title.
9. That upon visiting the Land Registry through his Advocates it was discovered that the volume register which bore his documents to the suit property had the folio bearing the registration torn and it is missing despite efforts to trace it. It is his contention that he has been in possession and occupation of the property for uninterrupted 27 years.
10. Consequently, this suit was heard as an undefended cause on 24/07/2024. The Plaintiff led evidence by Mr. Munyasya [the Plaintiff's Attorney]. In the Affidavit the Applicant stated that he had attached annexure KM1 which bore 7 documents namely:-
  - a. The Sale Agreement dated 17/4/1997
  - b. The Indenture Deed dated 7/2/1973 and Registered at Lands Registry on 8/2/1973
  - c. The Assignment Deed dated 6/09/1974 and Registered at Lands Registry on 30/11/1953
  - d. The Assent Deed dated 5/11/1991 and Registered at Lands Registry on 5/11/1991
  - e. The unregistered Indenture Deed drawn in 1997
  - f. The Kenya Gazette Special Issue of 17/10/2022 denoting the new Land Parcel number
  - g. The receipt for payment of NAIROBI City County Rates.
11. The Counsel for the Applicant did not file any submissions.

## **Determination**

12. I have considered the Originating Summons, the evidence tendered in support of the Originating Summons, and the pleadings filed. The Originating Summons is an uncontested cause. Consequently, the only question that falls for determination is whether the Applicant has satisfied the criteria upon which the title can be vested in him. The Applicant is seeking for Orders that the Vesting Order do issue in his favour in respect to the suit property and that the Deputy Registrar of this Court be authorized to execute all such documents as are necessary to effect transfer of the property to the Applicant.
13. The Applicant has presented several documents to attest to the fact that he bought the suit property from one Jerome Mwathi Kaumbulu who sold the same on behalf of his family. What the Applicant did not present to Court however is the consent from the said family that the said Jerome Mwathi had been authorized to sell the suit property. Although the indenture refers to a Power of Attorney dated



11/01/1997 the same was not produced in Court as evidence or as proof to this attestation. It therefore follows that the purchaser, Plaintiff was dealing with an administrator who was not authorized to engage.

14. Even though the suit is undefended, I am under an obligation to ensure that the right legal processes are followed. This is not a case where the end justifies the means, in a case such as this the means and the end are both critical. Both the process and the outcome have to be clinically sound. Section 3(2) of the Evidence Act provides:-

“ 3(2). A fact is proved when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it exists.”

15. Sarkar on Evidence (10<sup>th</sup> edn) pages 21 and 26 states:-

“ .... Facts fall into two classes, those which can and those which cannot be perceived by the senses. Examples of facts which cannot be perceived by the senses are intention, fraud, good faith and knowledge. Facts can be directly perceived either with or without the intervention of senses. Anything which is the subject of perception or consciousness is a fact. The definition of fact (in the Evidence Act does not restrict a fact to something which can be exhibited as a material object. The word proof seems properly to mean anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. Absolute certainty amounting to demonstrations is seldom to be had in the affairs of life and we are frequently obliged to rely on degrees of probability which fall very short of it indeed. Practical good sense and prudence consists mainly in judging aright whether in each particular case the degree of probability is so high as to justify one in regarding it as certainty and acting accordingly. If we waited for absolute certainty we would never act at all. In like manner all that a judge need look for is such a high degree of probability that a prudent man in any other transaction where the consequences of a mistake were equally important would act on the assumption that the thing was true. The Evidence Act adopts the requirements of a prudent man as an appropriate concrete standard by which to measure proof. Absolute certainty is not required. The definitions are mere embodiments of a sound rule of common sense.”

16. Therefore, the degree of probability is what I will rely on in making my disposition given that the case is undefended. Proceeding by the sound rule of common sense as articulated by Sarkar (supra) I am somehow justified in scrutinizing the testimony and the documents produced as evidence to support the claim by the Plaintiff.
17. The Plaintiff when testifying in Court stated that he paid the entire purchase price as he had indicated at paragraph 4 of the Supporting Affidavit. My scrutiny of the Sale Agreement states that he paid Kshs. 5,330,000/- and the balance was to be paid following the agreement between the purchaser and the vendor.
18. I note that there is no evidence presented to support the claim of payment of Kshs. 7,500,000/- no bank document nor receipt, no bank transfer or anything that can support the claim of payment of this kind of money in 1997. At that time this was a lot of money and I assume it could have been withdrawn and carried in suit case or bag. Even it was the down payment of Kshs. 5,330,000/-.
19. The sale agreement at paragraph 11 states that the purchaser shall pay stamp duty. The Plaintiff did not present any evidence of payment of the said stamp duty. Further the documents produced are blurred



and black meaning I cannot read and decipher what information is contained therein. I therefore cannot speak with certainty that whereas the suit is undefended the Plaintiff and the Applicant of the Originating Summons is speaking from a point of truth or that what he is alleging is a fact on the ground.

20. Further, from the copy of the indenture presented it is now emerging that said Jerome Mwathi Kaumbulu was an administrator together with Bertha May Kaumbulu but that Bertha and other beneficiaries of the suit property gave Jerome the Power of Attorney. Again as I said earlier the Power of Attorney was not produced to support this claim and neither was the Confirmation of Grant appointing the two as joint administrators presented alongside the rest of the documents.
21. Needless to say that the Plaintiff conveniently did not sue Jerome Mwathi Kaumbulu who is the one who sold him the suit property and chose to take the easy route out of telling the Court at paragraph 6 that he lost contact since the family relocated to the United States. Now in this era of globalization, the United States is reachable via plane, Ship, telephone, email, among other modes of communication. Nothing would have been harder than suing the said Jerome and serving him through substituted service through a mode of communication that is international in nature which modes are known to the Plaintiff.
22. I think I have said enough to already show that the Originating Summons has no legal leg to stand on that would facilitate granting of a vesting order.
23. In the circumstances, and for the reasons I have given and set out above, it follows that Vesting Order cannot issue in the circumstances of this case. Accordingly, I dismiss the Originating Summons dated 25/03/2024 and direct that the Plaintiff will bear his own costs.
24. Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

Judgment read in virtual Court in the presence of:

Mr. Munyasya for the Applicant

Respondent – Absent

Ms Lillian - Court Assistant.

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**MOGENI J**

**JUDGE**

