



Lichuma (Suing as the Administrator of the Estate of Laban Khaemba Maraianya alias Mwadulo) v Ambiche (Environment & Land Case 11 of 2023) [2025] KEELC 501 (KLR) (12 February 2025) (Judgment)

Neutral citation: [2025] KEELC 501 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 11 OF 2023
CK NZILI, J
FEBRUARY 12, 2025**

BETWEEN

PATRICK SITATI LICHUMA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF LABAN KHAEMBA MARAIANYA ALIAS MWADULO) PLAINTIFF

AND

SHADRACK RUTHERFORD AMBICHE DEFENDANT

JUDGMENT

1. Before the court is a plaint dated 31/7/2023 in which the plaintiff, as the legal administrator of the estate of the late Laban Khaemba Maraianya alias Mwadulo, sued the defendant for irregularly and falsely obtaining subdivision of the deceased's LR No. Ndivisi/Mihuu/127 into Ndivisi/Mihuu/1832 and 1833, and transferring or registering the latter with his name, to the detriment of the bonafide beneficiaries, and without their knowledge, consent, or approval.
2. The plaintiff sought for:
 - (1) Nullification of the subdivision and transfer of the resultant title to his name.
 - (2) In the alternative to (1) above, a declaration that the defendant holds the title deed for Ndivisi/Mihuu/1833 in trust for the estate of the deceased and termination of the said trust for the land to revert to the estate of the deceased.
 - (3) An order that the County Land Registrar, Bungoma, to cancel the subdivision of Ndivisi/Mihuu/1832 and 1833 and to unconditionally restore the number to its original status, namely Ndivisi/Mihuu/127.



3. At the trial, Patrick Sitati Lichuma testified as PW1. Relying on his witness statement dated 31/8/2023, he told the court that the late Laban Khaemba Maraiana alias Mwadulo was his uncle, who passed on 13/5/1976. PW1 told the court that on 21/2/1994, the defendant unlawfully petitioned for letters of administration in the estate of his late uncle without the consent or knowledge of the beneficiaries vide Bungoma SRM Probate and Administration Cause No. 50 of 1992, on a false allegation that he was a creditor of the deceased.
4. On the strength of the Certificate of Confirmation of Grant, PW1 testified that the defendant proceeded to apply for the subdivision of the land into two portions and had parcel No. Ndivisi/Mihuu/1833 transferred and registered under his name. PW1 told the court that on 6/3/1998, the family of the deceased became aware of the fraud and applied for revocation of the Grant, which was allowed on 22/3/2001, and the defendant was ordered to pay costs of the said application, that he cleared through M/S Kiarie & Co. Advocates.
5. PW1 told the court that on 10/5/1995, a Letter of Confirmation of Grant was issued to Daniel Lusamamba Khaemba, a firstborn of the deceased vide Kitale Resident Magistrates Court Succession Cause No. 13 of 1993, who unfortunately died on 24/12/2012, before completing the task as an administrator of the deceased estate. PW1 told the court that following the death of the son, and after a meeting of all the beneficiaries, he was chosen to complete the administration of the estate through a Grant of Letter of Administration De Bonis Non, issued to him on 14/11/2022 in Kitale Chief Magistrates Court Succession Cause No. 13 of 1993.
6. PW1 produced a copy of Grant of Letters of Administration De Bonis Non, Certificate of Confirmed Grant, Judgment in Kitale HC Misc. Civil Appl. No. 16 of 1998, decree, copy of the green card, and a demand letter as P. Exhibit 1-6, respectively.
7. After the close of the plaintiff's testimony, Mr. Samba, learned counsel for the plaintiff, orally submitted that the uncontroverted evidence tendered by the plaintiff proves, on a balance of probabilities, that the defendant unlawfully subdivided and transferred a portion of the deceased's land to himself, when the deceased had not sold him any land.
8. Learned counsel submitted that going by the decision of the High Court revoking the Confirmed Grant allegedly obtained by the defendant, out of which he obtained the title deed, the same amounted to intermeddling with the estate of a deceased person, and title obtained thereof has no legal value.
9. The issue for determination by this court is whether the plaintiff has pleaded and proven illegality in the manner the suitland was dealt with by the defendant, resulting in the subdivisions and transfer of a portion to the defendant. It is trite law that he who alleges must prove. In *Morris Mwit Mburugu -vs- Dennis Kimanthi M'Mburugu* [2016] eKLR, the court observed that where a person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to Sections 45 and 82 of the *Law of Succession Act*, that act amounts to intermeddling, is unlawful and cannot be protected by the court or law. The court went on to state that such a transaction was capable of being nullified and or set aside at the instance of the innocent beneficiaries, who may have been affected by the act, but were not involved in the same.
10. Sections 24, 25, and 26 of the *Land Registration Act* provide that a certificate of title shall be taken by courts as prima facie evidence of ownership unless obtained through fraud, misrepresentation, or obtained as a result of a corrupt scheme. In this suit, the plaintiff has produced evidence that the high court revoked the Grant used by the defendant to obtain his title.
11. The plaintiff urges the court to recall or cancel the subdivisions, transfer, and registration of the resultant title, especially the one under the defendant's name, in order for the land to revert to the estate



of the deceased. The wrongdoing or fraud on the part of the defendant was determined and established in the High Court of Kenya at Kitale Misc. Civil Appl. No. 16 of 1998. In the decree dated 9/10/2001, the court made a finding that the Grant should not have been used to pass any rights or obligations to the defendant. The defendant has not appealed against the said decree on both facts and the law. In this suit, the defendant has not filed a defense or appeared before the court to testify or refute the testimony of the plaintiff.

12. In *Monica Adhiambo -vs.- Maurice Odero Koko* [2016] eKLR, the court held that Section 93 of the *Law of Succession Act* does not validate unlawful acts. In the *Estate of Christopher Aita Adela (Deceased)* [2009] eKLR, the court observed that the purchase of immovable property from the deceased estate might be invalidated if shown to have been either fraudulent, defective, or tainted with irregularities.
13. In this suit, the defendant has not refuted the uncontroverted evidence that the title deed he holds and the manner of obtaining its subdivision and registration was irregular, unlawful, and fraudulent. I find the suit proved on a balance of probabilities. See *Arthi Highway Developers Ltd -vs.- West End Butchery Ltd & Others* [2015] eKLR.
14. I proceed to nullify and invalidate the subdivision of LR. No. Ndivisi/Mihuu/127 into parcel No. Ndivisi/Mihuu/1832 and 1833 and the resultant transfer and registration of the latter to the defendant's name. The suit land shall revert or be restored to the initial status as of 13/5/1976 to be dealt with in accordance with the *Law of Succession Act* Cap 160. The County Land Registrar, Bungoma County, is directed to recall the defendant's title deed for its cancellation. Costs to the plaintiff.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 12TH DAY OF FEBRUARY 2025.

In the presence of:

Court Assistant - Chemutai

Wafula for Samba for the plaintiff present

No appearance by the defendant

HON. C.K. NZILI

JUDGE, ELC KITALE.

