



**Maitha v Muka Mukuu Co-operative Society; Kioko & 4 others (Interested Parties) (Tribunal Case 335/E463 of 2023) [2025] KECOPT 451 (KLR) (28 August 2025) (Judgment)**

Neutral citation: [2025] KECOPT 451 (KLR)

**REPUBLIC OF KENYA  
IN THE COOPERATIVE TRIBUNAL  
TRIBUNAL CASE 335/E463 OF 2023  
J MWATSAMA, VICE CHAIR, B SAWE, F LOTUIYA,  
P. GICHUKI, M CHESIKAW & PO AOL, MEMBERS  
AUGUST 28, 2025**

**BETWEEN**

**JOHN KASUKI MAITHA ..... CLAIMANT**

**AND**

**MUKA MUKUU CO-OPERATIVE SOCIETY ..... RESPONDENT**

**AND**

**NICHOLAS MBUVI KIOKO ..... INTERESTED PARTY**

**DANIEL MUANGE ..... INTERESTED PARTY**

**SUSAN MUENI ..... INTERESTED PARTY**

**ROSTINA KANZONZOI ..... INTERESTED PARTY**

**DOREEN NELINDA ..... INTERESTED PARTY**

**JUDGMENT**

1. The matter for determination is a Statement of Claim dated 13<sup>th</sup> June 2023. In the Statement of Claim, the claimant avers that he is a member of te Respondent, member number 1191 and owning share number 1204. The interested parties are described as beneficiaries to the late Mary Kavata Mbuvi who was member number 1398 at the Respondents society. That the Claimant was allocated plot number 3-024 which he had been in occupation prior to the allotment. That at some point the Respondent allocated the same parcel to one Peter Mbuvi Muange, by crossing /cancellation/ alteration of the Claimant’s copy of documents which were in the custody of the Respondent. That the Respondent has claimed that the land belonged to the interested parties and sought to move the Claimants to another plot number 12-278 which the Respondent allege was allocated to the Claimant. The Claimant feels aggrieved and accuses the Respondent of collusion and fraud. He prays for :



- a. That a declaration order do issue that the claimant is the lawful owner of plot No. 3 -024 Muka Mukuu Cooperative society.
- b. That an order do issue directing the Respondent to re-issue the claimant with ownership documents for plot no. 3-024 Muka Mukuu Cooperative society and to forward the claimant's documents to the land Registrar Machakos for processing of tittle deed.
- c. That orders do issue restraining the respondent and the interested parties from evicting the claimant and/or in any other way interfering with the claimant's peaceful occupation of plot No.3-024 Muka Mukuu Cooperative Society.
- d. That costs of this be paid by the Respondent.

The Claim is accompanied by the Claimant's witness statement and documents in support of his Claim.

2. The Respondent entered appearance and filed a Statement of Defence dated 8<sup>th</sup> November 2023. In their response, the Respondents state that the Claimant joined the Society on 3<sup>rd</sup> July 1969 and was allocated plot number 12-278, and one late Peter Mbuvi Muange was allocated plot number 3-024 on 11<sup>th</sup> October 1983. The Respondents deny the particulars of fraud, and state that sometime on 31<sup>st</sup> March 1982 the Claimant attempted to get a yellow card showing that he was allocated plot No. 3-024 but the attempt was thwarted and the card cancelled.
3. The interested parties filed a Response to the Statement of Claim dated 19<sup>th</sup> April 2024. In their Response, the interested parties admit only the descriptive parts of the Statement of Claim, and make a blanket denial of the avrements in the Statement of Claim, including the jurisdiction of this Tribunal. They also state that there is a pending court case being MCELC/E027 OF 2023 at Kithimani touching on the subject matter herein and between the same parties herein.

#### **Claimats Case**

4. The matter came for hearing on 6<sup>th</sup> August 2024. CW1, one Mbatha Mauta adopted his witness statement where he stated that he became acquainted with the Claimant when he was allocated plot no. 3-024 at the Respondent's society, and that the Claimant has been in occupation of the suit property since the time or (sic) allocation and has never ceased occupation of the property at any point. On cross-examination, he said that the only issue is when one Mr. Mbuvi had sent people to cut down trees in the parcel of land.
5. CW2, the Claimant, in this testimony adopted his witness statement in which he had reiterated the contents of the Statement of Claim. On cross -examination, he informed this Tribunal that he completed payment in 1982, and that his documents were stolen. He further stated that he received the eviction notice in 1982, that they had gone to arbitration and that he was told to vacate. In re-exam, he stated that the only issue he had with the land with Peter Muaye Mlengi but that dispute was resolved and the one Peter already passed on.
6. CW3, one James Nthei Kioki informed this court that the Claimant had been his neighbor since 1970s and even when in 1982 when dermacation was done.

#### **Respondent's Case**

7. Respondent's witness, one Stephen Kariuki Keania informed this Tribunal that he is a member of the Respondent, and an elected member of the management committee of the Respondent's society. He brought this court's attention to Rexh1 and Rexh2. Rexh1 shows that the Claimant joined the society



on 3<sup>rd</sup> July 1969, and that he was assigned membership no. 1204 and that in 1986 he was allocated plot number 12-278. Rexh2 is a copy of registration form which shows that Peter Mbuvi Muaye joined on 3<sup>rd</sup> September 1969 and was assigned member number 1416 and in 1983 he was allocated main plot number 3-024. He informed the court that Peter Mbuvi Muaye was the original owner of plot number 3-024, and that he transferred his shares to his son Martin Mwaye Mbuvi on 1<sup>st</sup> November 2005 and later transferred by Martin to one Mary Kavate Kiomo.

8. Both parties filed their submissions. According to the Claimants, it is undisputed evidence that the Claimant is a fully paid-up member of the society who is entitled to the full rights and benefits accruing to a member. The Claimant also submits that it is undisputed evidence that the Claimant has had an uninterrupted occupation of the Claimant since 1969 to date. That the Claimant was issued with a green card/plot record dated 31<sup>st</sup> March 1982, and the same was cancelled and that no sufficient reason was given for this. That the Respondent, on cross examination, indeed agreed that the registration form was altered.
9. According to the Respondent, the Claimant failed to prove that the suit property belongs to him. That this is because the Respondent is the custodian of the member records, and rightly confirmed the records of the Claimant and those of Peter Mbuvi Muange. Further they submit that the Claimant has not proved ownership of the suit property and therefore the prayer for injunction to fail.

## **ANALYSIS**

10. This Tribunal has taken note of the pleadings filed by the parties, the evidence adduced during the hearing and the documents produced by the parties. It is not in dispute that the Claimant was a member of the Respondent. It is also not in dispute when he joined the Respondent and when he was allocated a parcel of land. What is in dispute is the land in which he was allocated. The question before this Tribunal is the determination of the ownership of land parcel number 3-024, the land which both the Claimant and interested party claim to own.
11. The various transfers to subsequent beneficiaries by the estate of one Peter Mbuvi Muange is not disputed and is not the subject of this matter. The real question is who the right owner of land is between the Claimant herein and Peter Mbuvi Muange.
12. It is the Claimant's evidence that he lived in the land long before the demarcation and allocation, and that when the allocation was done he was given the same parcel. It is the Respondent's and interested party's claim that the land was never allocated to the Claimant, and that the same was allocated to one Peter Mbuvi Muaye. It is trite law that whoever alleges must prove.
13. The Claimant produced a plots and share register for the year 2009, and in that register, the Claimant at number 1191, and one Mary Kavata Kioko at number 1398 are both allotted plot number 3-024. Similarly, the Respondent's letter dated 13<sup>th</sup> December 2005 written to the Claimant to vacate, at paragraph 3, informs the Claimant to produce any document that gives him the right to own the property. These documents are not disputed by the Respondent and they clearly indicate that the Respondents were not sure who he real owner of the property. The allocation of plots were done sometime in 1982, and the plot record indicate that the Claimant was allocated plot number 3-024, however the same is cancelled.
14. The Respondent in rebutting the evidence produced by the Claimant, equally produced documents very similar to the Claimant's but bearing the name of Peter Mbuvi Muange. On cross examination, the Respondent's witness informed this court that they did not know who had been in possession of the land, but confirmed that they issued a notice to vacate to the Claimant. They also stated that the Claimant appointed a next of kin in 1982 and allocated land in 1986. He also said that the reason



why they cannot allocate the other member another plot, is that one has to occupy the plot they were allocated. This is a double edged sword, in our opinion because we ask ourselves, if one has to occupy the plot they were allocated to why is the Claimant still in occupation of a land that was allegedly allocated to someone else in 1982, about 43 years later?

15. The evidence in this matter is not clear cut black and white in favour of one party against the other. However, this being a civil matter, the standard of proof is on a balance of probabilities. The Respondent is the custodian of all the records of the society, and we feel that as much as they have produced records to show that one Peter Mbuvi Kiange, has or had interest in the subject property, they have equally failed to explain to this Tribunal the documentation that the Claimant has with respect to the property, and which the Respondents have not disputed. They have also failed to explain how a person can live in land that is not theirs, for over 23 years without any interruption or interference. The Respondent did not dispute the Claimant's averments that he lived in the land since 1969. We feel that had the Claimant been allocated a different land from the one he is currently in, the Respondent would not have let him stay for over 23 years before trying to evict him. We therefore are inclined to belief that the Claimant is the right allottee of the land parcel number 3-024, or at worst, that this was a case of double allocation. The Claimant has lived in the land since 1969, and the Respondent has informed this court that they want the Claimant to vacate the subject property so that he can be given another one. During the hearing, we asked how the allocation was done, and the response we got was that the members balloted. Therefore, we feel that there is no extra value attached to any parcel of land since all the members of the Respondent are equal members. It is only fair that the Claimant is left to live in the land he has lived in since 1969, and the Respondent sorts the other member who was allegedly allocated the land in 1982, never stalked claim in the land, only for his beneficiaries to come claiming the same more than 23 years later. The lands were distributed based on individual shares, which we believe are all equal, and any share could be allocated any plot of land.
16. The upshot of the above is that we find merit in the Claimant's claim. We order as follows:
  - a. A declaration is hereby issued that the Claimant is the lawful owner of plot no 3-024 Muka Mukuu Co-operative Society
  - b. The Respondent to re-issue the Claimant with ownership documents for plot number 3-024 Muka Mukuu Cooperative Society and to process the Claimant's title deed, within 30 days of the date of this judgement
  - c. An order is hereby issued to restrain the Respondents and the interested parties from evicting the Claimant or in any other way interfering with the Claimant's peaceful occupation of plot no. 3-024 Muka Mukuu Cooperative Society
  - d. The Claimant is awarded the costs of this Claim

**JUDGMENT SIGNED, DATED AND DELIVERED *VIRTUALLY* AT NAIROBI THIS 28<sup>TH</sup> DAY OF AUGUST, 2025.**

**HON. J. MWATSAMA DEPUTY CHAIRPERSON SIGNED 28.8.2025**

**HON. BEATRICE SAWE MEMBER SIGNED 28.8.2025**

**HON. FRIDAH LOTUIYA MEMBER SIGNED 28.8.2025**

**HON. PHILIP GICHUKI MEMBER SIGNED 28.8.2025**

**HON. MICHAEL CHESIKAW MEMBER SIGNED 28.8.2025**

**HON. P. AOL MEMBER SIGNED 28.8.2025**



**TRIBUNAL CLERK MUTAI**

Thiong'o advocate holding brief for Gichuki advocate for the Claimant

Muia advocate for the Respondent

**HON. J. MWATSAMA DEPUTY CHAIRPERSON SIGNED 28.8.2025**

