



**Katiku v Tumbo & 2 others (Environment & Land Case 17 of 2014)
[2023] KEELC 17623 (KLR) (17 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17623 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 17 OF 2014**

**A NYUKURI, J
MAY 17, 2023**

BETWEEN

PATRICK MUSA KATIKU PLAINTIFF

AND

REGINA NGII TUMBO 1ST DEFENDANT

FRANCIS MUTISYA TUMBO 2ND DEFENDANT

CHRISTOPHER MUSEMBI MUTISO 3RD DEFENDANT

JUDGMENT

Introduction

1. By a plaint dated 6th March 2014, and filed on 11th March 2014, the Plaintiff herein sought the following orders;
 - a. A permanent injunction to restrain the Defendants by themselves, their agents, servants, surrogates and any other person or persons acting or purporting to act under them from trespassing into or, in any other manner howsoever, interfering with all that piece of land known as Plot Number 3 at Ngelani.
 - b. A declaration that the Plaintiff is the lawful owner of Plot Number 3 at Ngelani, and that he is entitled to a quiet ownership, use and possession thereof.
 - c. Costs of the suit.
 - d. Any other of further relief as this Honourable Court may deem fit and just to grant.
2. The Plaintiff averred that he was the lawful owner of all that piece of land known as Plot Number 3 at Ngelani (suit property) by virtue of his membership with Ngelani Ranching Unity. He stated that the Defendants had been interfering with his quiet possession of the suit property by clearing vegetation,



- cultivating and trespassing on the same and that although he warned them to desist from their unlawful acts, they ignored his warning.
3. On 2nd April 2014, the Defendants file defence and counterclaim. They denied the Plaintiff's claim and averred that the suit property was jointly owned by the 1st and 2nd Defendants' family with the Plaintiff's family. They denied trespassing on the suit property and reiterated that their entry on the suit property was lawful.
 4. The Defendants further averred that they had been made aware that the Plaintiff had placed two squatters on the suit property without involving the Defendants which actions were unlawful.
 5. The Defendants counterclaimed for the following orders;
 - a. That the Plaintiff suit be dismissed with costs.
 - b. That judgment be entered for the 1st and 2nd Defendant for equal part ownership of the suit property.
 - c. Interests thereon at court rates from the date of filing of the defence and counterclaim until judgment.
 - d. Costs of the defence and counterclaim.
 - e. Any other further relief as this Honourable Court may deem fit and just to grant.
 6. The Plaintiff filed reply to defence and defence to counterclaim on 14th April 2014. He denied the Defendants allegations that the suit property was jointly owned by his family and the Defendants family and maintained that the suit property exclusively belonged to the Plaintiff.
 7. The matter proceeded by way of *viva voce* evidence.

Plaintiff's Evidence

8. PW1, Patrick Musa Katiku, the Plaintiff in this matter, testified on 9th December 2021. He adopted his witness statement filed on 6th April 2017 as his evidence in chief. It was his testimony that he owns the suit property and that the Defendants have been trespassing on the suit property by clearing vegetation and cultivating the same despite being warned to stop. He maintained that he held the certificate of title to the suit property. He stated that the Defendants would visit the suit property purporting to arbitrate over the same. He produced documents attached to three lists of documents. The first list was filed on 11th March 2014. He also produced documents attached to the list of documents filed on 15th September 2021 and 12th November 2021. He produced two demand letters, ownership certificate, certificate of title, National Euanu Clan Association Machakos District Committee's decision of 12th January 2013, letter dated 13th January 2013, transfer for Title Number IR no 12023 dated 13th October 1964, letter dated 9th June 2009, letter dated 28th January 2013, rent clearance certificate for Plot Number 8914 dated 31st December 2008, letter dated 7th August 2013, chief's letter dated 15th January 2009, Ngelani Ranching Unity ownership certificate for Plot no 8914 dated 4th February 2009 and affidavit of Julius Musyimi Nzioki; as P-Exhibits 1 – 13.
9. On cross-examination, he stated that the decision of the Clan District Chairman was signed by Christopher Mutiso and Abdalla Omar but the same ought to have been a joint decision of the District Chairman and his team plus the Divisional Chairman and his team who should all sign the decision. He maintained that that was not done in this case which resulted in the Divisional Chairman writing a letter contesting the District Chairman's decision. He maintained that the land was his and that no one had challenged his title.



10. PW2, Julius Musyimi relied on his affidavit sworn on 10th November 2021 which he adopted as his evidence in chief. He produced the letter dated 31st January 2013 as P-Exhibit 5. The witness testimony was that he was the Divisional Chairman Euani Clan Mitaboni. He stated that the suit property belongs to the Plaintiff as he holds title thereto by virtue of his membership of Ngelani Ranching Unity. That the suit property is in Ngelani within his division.
11. He stated further that in 2012, members of the Tumbo family including the Defendants herein invaded the suit property, cleared vegetation and began cultivating thereon. He testified that the Plaintiff filed a complaint before him and that the matter was escalated to the District Chairman. That although there were two meetings held on 17th November 2012 and 12th January 2013 at a place called “Kwa Munee”, no solution was found and that the District Chairman refused to have members visit the site and did not allow documents including title to be produced. He stated that the District Chairman proceeded to make what the witness referred to as false judgment that did not take into account the committee members views and that he wrote the judgment alone; yet the judgment ought to have been signed by all the committee members in attendance. He testified that although the judgment is said to have been signed by one Said Abdallah Omari, the said person was never in attendance in any of the sessions. According to him, the District Chairman overstepped his mandate.
12. On cross-examination, he confirmed that he wrote the letter dated 13th January 2013 to show that they did not agree with the District Chairman of the clan. The witness denied authoring the affidavit which he relied on and alleged that he did not understand the meaning of the contents of the affidavit. The witness was unwilling to answer several questions put to him in cross-examination. In re-examination, he stated that the committee was not allowed to visit the suit property. That marked the close of the Plaintiff’s case.

Defendants’ Evidence

13. DW1 was Francis Mutisya Tumbo. He adopted his witness statement filed on 7th October 2021 as his evidence in Chief. He stated that his father was called Tumbo and that the suit property was purchased by Tumbo and Katiku in 1968, which they were to share equally. That the land was a settlement scheme and each member was to pay ksh 700/- and two cows. That his father passed on first and thereafter after the death of Katiku, he asked the clan to share the land between them equally which the clan did. That in 1996, both families held a meeting and confirmed that the property was jointly owned by the two families.
14. According to the witness, the two families jointly owned Plot no 32 Mitaboni, Plot no 1826 Mitaboni, Plot no 16 Kavilila, the suit property and several cows. He stated that the above properties were shared out, save for the suit property as they were awaiting to be allocated the same, as it was still under the settlement scheme. That the allocation was done in 2009 when both Tumbo and Katiku were dead. That in 2013, they involved the assistance of Euani Clan to subdivide the suit properties among the two families. That although the Plaintiff’s family was summoned, they refused to attend and that the clan proceeded to subdivide the land among the two families in their absence.
15. In cross-examination, he conceded that he had no document to show that the suit property was jointly bought by Katiku and Tumbo. He also stated that he had no title to the suit property and had not sought for the cancellation of the Plaintiff’s title.
16. DW2, was Kivuva Lavu. He stated that he was a brother to Tumbo Lavu and he adopted his witness statement at page 13 of defence bundle as his evidence in chief. It was his testimony that Tumbo Lavu and Katiku Lavu jointly owned several properties, which included the suit property as they were doing business together. He informed court that in the 60’s, Tumbo Lavu was involved in an accident and



left the properties to be managed by Katiku. That towards the purchase of the suit property Tumbo Lavu gave Katiku KSh 700/- to deliver to the society, which money was delivered by Katiku in the company of Muia Tumbo, Tumbo's late son. Further that each of them also paid 2 cows. He stated that the membership of the society was however registered in the name of Katiku Lavu. That the two brothers died in 1979 before sharing the suit property and in 1996 the family agreed and listed down the properties of Tumbo and Katiku and invited the Euani Clan to share out the property between the family of Tumbo and Katiku.

17. He maintained that the family of Katiku did not attend the Euani Clan meetings even after being summoned three times and that the clan proceeded to subdivide the suit property between the two families.
18. In cross-examination, he stated that he did not attend the meeting of the District Chairman and Divisional Chairman and was not involved in the clan decision making. He stated that he had no document to show that the suit property was bought by Tumbo Lavu. In re-examination, stated that it was his mother who told him that Katiku and Tumbo bought the suit property.
19. DW3, Christopher Musembi Mutiso confirmed that he was the 3rd Defendant in the case. He adopted as his evidence in chief, his witness statement at page 7 of the Defendants' bundle. He also produced documents attached to his list of documents dated 7th October 2021 and a further list dated 31st August 2021. He produced his letter dated 27th July 2013, a letter by Tumbo Lavu's wives dated 13th August 1996, a letter by Assistant Chief dated 16th November 2012, letters dated 3rd August 2009 and 16th July 2009 by the District Officer Athi River, and a letter dated 2nd August 2013 by the Secretary Ngelani Ranching Unity.
20. It was DW3's testimony that he was the Machakos District Chairman of Euani Clan, and that on 17th November 2012, he was invited by PW2 to assist him in arbitrating a matter between the family of Tumbo and Katiku. He stated that in the meeting, present were Senior Clan Officials from both the District and Divisional levels and representatives from both families. According to the witness, the purpose of the meeting was to finalize subdivisions of the properties owned by Katiku Lavu and Tumbo Lavu. These properties were a shop in Plot no 32, one oxen drawn cart, 6 cows, land at Ngelani Plot no 8914 of 72.5 acres, land at Kwa Ndulu Plot no 1826 and land at Kamuthanga Settlement Scheme Plot no 248 of 198.7 acres.
21. The witness stated that on 29th August 2013, they met again and decided that everything was to be divided equally among the two families. He informed court that the officials of the clan and members of Tumbo family visited the suit property and found two squatters on the land and informed the area Assistant Chief. That the squatters were Kyalo Munyao and John Mutiso who alleged to have been placed on the land by Katiku's family. It was DW3's testimony that the Chief declined to proceed with the subdivision on the basis that the family of Katiku was not present. That they postponed the subdivision which was subsequently done on 16th September 2013 in the absence of the Katiku family.
22. In cross-examination, DW3 stated that he had not seen the Plaintiff's title and did not know if he had one. He stated that he never disagreed with the Divisional Chairman over this matter. His position was that it was not a must that the Divisional Chairman signs the decision as he was present when the decision was made. He stated that the decision was made before the visit to the suit property. He stated further that the Divisional Chairman was not involved in the decision and that Tumbo Lavu's family was present when the decision was made. In re-examination, he stated that the Divisional Chairman never complained about the way the property was shared and that the District Officer authorized the subdivision.



23. DW4 was Charles Mutua Tumbo, a son of Tumbo Lavu. He stated that Juliana was his sister. He adopted his witness statement filed, as his evidence in chief. His testimony was that the suit property was bought in 1964 from one P. J. Henry and that the same was surveyed on 11th July 1965. That by then, his father worked as a herds person whose salary was one cow per a year and a bucket of flour per month. According to DW4, his father Tumbo and Katiku purchased the suit property as they were members of Ngelani Ranching Unity. That Katiku was the registered member while Tumbo was a shadow member because Tumbo had been involved in a road traffic accident and constrained to a wheel chair. He told court that Tumbo paid two bulls and ksh 700/- towards the purchase of the suit property which money was handed to Ngelani Society officials by Muia Tumbo and Katiku. That the other properties held by the two families were shared but a dispute arose over the suit property which was reported to the District Officer Athi River who referred the dispute to the families for resolution. It was also his testimony that in November 2012 and January 2013 respectively, the Euani Clan held meetings with the purpose of sharing the suit property among the two families but that on three occasions, the Katiku family failed to attend but the property was still shared among the two families by the clan.
24. According to DW4, their entry on the suit property was pursuant to the ruling by the clan. In cross-examination, DW4 stated that he did not know whether the Plaintiff had title to the suit property and that he had never sought for cancellation of the Plaintiff's title.
25. DW5, Said Omar Abdalla testified that at the material time he was the Secretary of Euani Clan Association but was the current Chairman of the Association. He adopted his witness statement dated 12th October 2021 as his evidence in chief.
26. It was DW5's evidence that in 2012, they were requested by Euani Divisional Chairman to assist in the arbitration of the division of properties between the families of Tumbo Lavu and Katiku Lavu. That they convened a meeting on 17th November 2012 and that in the meeting, the two families were represented where the clan established that the two families had inherited properties from their fathers who were brothers who had jointly purchased the suit property. He also said that after interrogating the facts, they made a conclusion that the suit property was jointly acquired by Tumbo and Katiku. That the meeting was adjourned to 12th January 2013 for further deliberations on the subdivision. That on 12th January 2013, both families were represented and it was agreed that subdivision be done on 29th August 2013. That on 29th August 2013, clan officials visited Plot no 8914 in the presence of the area Chief, Assistant Chief, security personnel, surveyor and members of Tumbo family. That Katiku's family was not present and the area chief advised that the subdivision should not proceed in the absence of Katiku's family.
27. He stated that Katiku's family were invited to attend the subdivision on 16th September 2013, but they never showed up and with the chief's authority, the subdivision was carried on Plot no 8914 by subdividing the parcel into two.
28. On cross-examination, the witness testified that he was present in the clan meeting. That the first meeting was on 28th September 2012 and the second meeting was on 12th January 2013. He stated that he was not aware there was another meeting before the decision was made because according to him the decision was made on 12th January 2013. According to the witness, the Divisional Chairman had been unable to decide the case and therefore he was not supposed to be party to the decision. According to him, proceedings before the District Chairman are normally signed by four people while the judgment is signed by two people. He stated that he was not aware that the Plaintiff had title. This marked the close of the defence case.



29. Parties filed their respective written submissions in arguing their respective cases. On record are the Plaintiff's submissions dated 28th November 2022 and the Defendants' submissions dated 16th February 2023.

Plaintiff's Submissions

30. Counsel for the Plaintiff submitted that the District Chairman did not have any legal backing to make the decision he made as it is only the court that can cancel title. Counsel submitted that all the defence witnesses acknowledged that the Plaintiff was the registered owner of the suit property and that his title has never been challenged in any court. Reliance was placed on the case of *Jacob Earnest Ambale Odongo v Violet Shikuku* [2021] eKLR and *Keiyian Group Ranch v Samuel Oruta & 9 Others* [2021] eKLR, for the proposition that when a person is the registered proprietor of land other persons' entry on the land amounts to trespass. Counsel argued that as the Plaintiff had a valid title that has never been challenged in court, he is entitled to the orders sought.

Defendants' Submissions

31. Counsel for the Defendant submitted that DW2 conceded that he did not swear the affidavit attributed to him. Counsel argued that the certificate of title produced by the Plaintiff shows that land title Number I.R. 160345 is registered in his name as lessee from the Government of Kenya. Counsel argued this certificate is different from the certificate of ownership issued by Ngelani Ranching Unity on 4th February 2009 which states, "This is to certify that Patrick Musa Katiku of P.O. Box 65 Athi River being holder of ID no 26xxx68 is registered with the above company as absolute proprietor of Ngelani Ranch Plot no 3". According to counsel, one cannot be a lessee from Government and at the same time claim absolute ownership.
32. It was submitted on behalf of the Defendant that the documents produced by the Defendants show that the suit property was jointly acquired by Tumbo and Katiku and that the evidence of the defence confirmed the joint ownership. Counsel argued that Tumbo and Katiku contributed the purchase price and two cows and therefore the Defendants are entitled to an equal share of the suit property.
33. Reliance was placed on the cases of *C.M.N v A. W. N* [2013] eKLR and *Peterson Maina Magama v Macharia Magana* [2016] eKLR, for the proposition that where a property is jointly owned, it ought to be shared equally. Counsel argued that no document was produced by the Plaintiff to show he was the absolute owner of the suit property and that therefore the Defendants were not trespassers on the suit property.

Analysis and Determination

34. I have carefully considered the pleadings, evidence and submissions presented by the parties. In my view, the issues that arise for the court's determination are;
- a. Whether the suit property was jointly acquired by Tumbo Lavu and Katiku Lavu.
 - b. Whether the Plaintiff is entitled to the orders sought in the plaint.
 - c. Whether the Defendants are entitled to the orders sought in the counterclaim.
35. Article 40 of the *Constitution* protects the right to acquire and own property as an individual or jointly, as follows;
1. Subject to Article 64, every person has the right, either individually or in association with others, to acquire and own property –



- a. Of any description; and
 - b. In any part of Kenya.
36. Registration of property in a persons name, confers on them absolute ownership and if it is a leasehold the registered proprietor will have all the rights and privileges attendant to such registration.
37. Section 24 of the *Land Registration Act* Provides as follows;
Subject to this Act –
 - a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
38. Section 25 of the Land Registration Act provides as follows;
 1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 2. Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
39. Section 26 states that a certificate of title held by a registered proprietor shall be conclusive evidence of proprietorship. That section provides as follows;
 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 the proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.
 2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original



40. Essentially therefore, unless a title is challenged on grounds of fraud misrepresentation, illegality, want of procedure or corruption, the title remains proof of proprietorship and the title holder's rights of indefeasible ownership are protected under the law.
41. In the instant suit, this matter turns on whether the suit property was jointly acquired by Tumbo Lavu and Katiku Lavu. The Defendants do not dispute the acquisition by the Plaintiff of the suit property save that their position is that the Plaintiff jointly acquired the suit property with Mr. Tumbo Lavu. On the other hand, the Plaintiff insists that he acquired the suit property by virtue of his membership of Ngelani Ranching Unity.
42. From the evidence adduced on both sides, it is not disputed that the Plaintiff was a member of Ngelani Ranching Unity Cooperative Society. What the court understood the Defendants to be saying, was that the Plaintiff was a member while Tumbo Lavu was what they referred to as a "shadow member". The Plaintiff produced an ownership certificate from Ngelani Ranching showing that on 4th February 2009, he was indicated as being an absolute proprietor of LR no 8914 of 66.25 acres. He further stated that he owned the suit property which he held title thereof and that the Defendants were merely trespassers.
43. The Plaintiff also produced a certificate of title for IR no 12023/127 LR no 8914/52. The title showed that the Plaintiff was the registered proprietor of the suit property on 31st December 2014 for a leasehold interest in LR no 8914/52 for a term of 955 years with effect from 1st September 1955. The transfer produced by the Plaintiff shows that on 13th October 1964, one Pete Joseph Hennry signed a transfer of title Number 12023 in favour of Katiku Lavu, Muteti Makumbi, Wilson Kioko Koli and Josiah Matu Maitha.
44. The rent clearance certificate produced by the Plaintiff dated 31st December 2008 shows that the rent was paid by Katiku Lavu.
45. From the documents produced by the Plaintiff, it is clear that the suit property is registered in the Plaintiff's name pursuant to his membership of Ngelani Ranching Unity. The registration has not been challenged on account of fraud, misrepresentation, illegality, want of procedure or corruption or on any other grounds and it is therefore my finding that the Plaintiff is the lawful owner of the suit property.
46. The Defendants' case was that the suit property was jointly acquired by Tumbo Lavu and Katiku Lavu. The documents produced in support of that assertion are a letter by the 3rd Defendant, a letter by the wives of Tumbo Lavu, letters by Assistant Chief, the District Officer Athi River Division and the secretary Ngelani Ranching Unity, as well as minutes of Euani Clan.
47. I have considered the minutes of the meetings by Euani Clan of 17th November 2012 and the agenda thereof was the administration of the estate between Tumbo Lavu and Katiku Lavu. The said minutes indicate that the clan deliberated on the matter and in what the clan referred to as a ruling they stated that the documents and the allegations of witnesses ought to be verified to ascertain authenticity. The committee also stated that another meeting was to be held on 29th December 2012. The committees' proceedings show that on 29th December 2012, the meeting was postponed and rescheduled to 12th January 2013.
48. It appears that in the minutes of 12th January 2013, the documents presented were minutes of clan sitting of 21st October 1984. The committee stated that the document had no relationship with clan officials involvement. They stated that documents presented were family documents dated 30th March



1986, the District Officer's letter of 16th July 2009, letter of 3rd August 2009 and rent certificate no 123115 of 2nd December 2008. However, on that date no verdict was given.

49. On 29th August 2013, there was attendance for purposes of demarcation of the suit property and in attendance was the Chief, Assistant Chief, officials of Euani Clan including DW2 and DW5, security personnel, and members of Tumbo Lavu family. In the verdict, the Chief advised that subdivision could not be done in the absence of Katiku's family and the exercise was scheduled for 16th September 2013. It was also decided on the same date that the suit property will be divided into two equal portions of 33 acres.
50. On 16th September 2013, the minutes thereof shows that the suit property was shared among the two families of Tumbo and Katiku. The clan also gave what they called a judgment which is dated 15th January 2013; where they stated that the documents produced by the two parties show that the suit property was jointly acquired and stated that the suit property must be equally shared between the parties. The minutes show that in holding that the suit property belonged to Katiku and Tumbo, the clan relied on the letter by the family of Tumbo Lavu dated 30th March 1996, which stated that the suit property belonged to Tumbo and Katiku.
51. While this court is enjoined under Article 159 (2) (c) of the Constitution to promote alternative justice system, including traditional dispute resolution mechanisms, pursuant to Article 159 (3) of the Constitution, the court is under duty to ensure that a traditional dispute resolution mechanism applied is not used in a way that contravenes the Bill of Rights, is repugnant to justice and morality or results in outcomes that are repugnant to justice and morality, or is inconsistent with the Constitution or any written law.
52. Having considered the minutes of Euani Clan as well as the testimonies tendered on behalf of the defence, I note that the decision of the clan was made without the participation of the Plaintiff, which means that the Plaintiff did not submit to their jurisdiction, and therefore that decision cannot be binding on him. Besides, the minutes do not state the dispute and the evidence or testimony of each party to the dispute. This amounts to a breach of Constitutional right to a fair hearing. In addition, the testimony of the defence was not consistent on how the proceedings before the clan was done. From the testimony of DW1 and DW2, they testified that there was no attendance on the part of the Plaintiff or his family before the Euani Clan while DW3 and DW5 insisted that the Plaintiff attended the clan meetings. Therefore, the veracity of the proceedings before the clan cannot be authenticated. Furthermore, according to DW1 and DW2, the reason for engaging the clan was to have the clan subdivide the suit property and nothing more. Even the findings made by the clan to the effect that the suit property was owned by Tumbo and Katiku on the basis of a letter by the family of Tumbo was not a rational basis for such a decision because an assertion by the family of Tumbo cannot be a fair basis for concluding that it is proof that the land belonged to the two brothers. For the above reasons, I find and hold that the decision by Euani Clan does not pass the Constitutional muster and I hereby reject the same.
53. In regard to the other documents produced by the Defendants, I note that the letter of the Assistant Chief dated 16th November 2012 only stated that there will be a meeting on 17th November 2012; and therefore had no evidence of contribution of Tumbo towards the purchase of the suit property. As regards the letters by the District Officer Athi River dated 3rd August 2009 and 16th July 2009, which were both addressed to the Chairman Ngelani Ranching Unity, asking him to handle the complaint raised by the family of Tumbo and to investigate the complaint; there is nothing therein to prove contribution by Tumbo towards the purchase of the suit property. Even the letter by the secretary Ngelani Ranching Unity dated 2nd August 2013 addressed to the National Chairman Euani Clan



did not prove the contribution by Tumbo towards the purchase of the suit property, as the same only indicated that the land by then belonged to Ngelani Ranching Unity and no one was allowed to interfere with it, as the same was under demarcation.

54. Therefore, having considered the Euani Clan proceedings and decision, letters from the local administration and from the secretary Ngelani Ranching Unity, I find that there is no shred of evidence to prove the Defendants' allegations that the suit property was acquired with the contribution of Tumbo Lavu. Indeed, the Defendants confirmed in their testimony that they had no evidence to show that Tumbo Lavu paid any consideration towards the acquisition of the suit property. It is therefore my finding that there was no proof that the suit property was acquired jointly by Tumbo Lavu and Katiku Lavu.
55. Having considered the totality of the evidence tendered, this court is persuaded that the Plaintiff is the lawful owner of the suit property while the Defendants have failed to convince the court that their father contributed towards the purchase of the suit property. In any event, they have not obtained letters of administration to make a claim on behalf of the estate of Tumbo Lavu who, they stated was deceased.
56. The defendants' counsel submission that the title held by the Plaintiff being a leasehold contradicted the ownership certificate from Ngelani Ranching Unity, which conferred absolute ownership, is a misguided argument. This is because the Plaintiff's acquisition of the suit property was by virtue of his membership of Ngelani Ranching Unity, which is a private entity and whose reference to the suit property is limited to their private arrangements and has nothing to do with the Government's registration processes in respect of the suit property. Therefore, the fact that ownership certificate by Ngelani Ranching Unity stated that it conferred absolute ownership on the Plaintiff, while the title from the Department of Lands conferred leasehold interest, is not contractionary in itself. Ngelani Ranching were not the lessees, it was the Government that is the lessee. Ngelani Ranching was just a vehicle to acquire land.
57. In the premises, I find and hold that the Defendants' counterclaim for an equal part in the suit property lacks merit and the same is hereby dismissed with costs.
58. As the Plaintiff has proved his claim on the required standard, I enter judgment for the Plaintiff as against the Defendants as follows;
 - a. A permanent injunction be and is hereby issued to restrain the Defendants by themselves, their agents, servants, surrogates and any other person or persons acting or purporting to act under them from trespassing into or, in any other manner howsoever, interfering with all that piece of land known as Plot Number 3 at Ngelani.
 - b. A declaration be and is hereby made that the Plaintiff is the lawful owner of Plot Number 3 at Ngelani, and that he is entitled to a quiet ownership, use and possession thereof.
 - c. The costs of the suit shall be borne by the Defendants.
59. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 17TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;



Mr. Othim for Plaintiff

Mr. Abong'o for Defendants

Ms Josephine – Court Assistant

