



REPUBLIC OF KENYA



KENYA LAW
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**Mwasi v Chai (Environment & Land Case E070 of 2021)
[2025] KEELC 3425 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3425 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E070 OF 2021
FM NJOROGE, J
APRIL 29, 2025**

BETWEEN

LUCIA MKANJALA MWASI PLAINTIFF

AND

ABDUL AHMED CHAI RESPONDENT

RULING

Background

1. The background to the present application which is dated 17/1/2025 is as follows: Vide a plaint dated 9/8/2021 filed on her behalf by Murimi Ndumia Mbago & Muchela Advocates the plaintiff approached this court seeking the following orders:
 - a. A declaration that the plaintiff is the bona fide /legitimate owner/proprietor of the parcel of land fraudulently registered in favour of the defendant vide number Kilifi /Roka/586 & Kilifi/ Tezo Roka /586;
 - b. The honourable court be pleased to order the immediate cancellation of the illegally/ improperly procured titles aforementioned and that the register be rectified to countermand the entry in favour of the defendant and substitute the plaintiff therewith;
 - c. An order of permanent injunction restraining the plaintiff from interfering with the defendant's possession /occupation of the subject property;
 - d. Costs of this suit and interest.
3. The plaintiff's claim is that she was at all material times the legal/beneficial owner of a parcel of land situate in Tezo/Roka Settlement Scheme measuring approximate 12.49 acres; that she had purchased it from Salom Omar Thoya in 1983 and paid the consideration in full and took possession and constructed a house thereon and she has been in possession since, living thereon and eking



out a subsistence therefrom. Around the year 2016 she learnt that the defendant had fraudulently caused registration of the parcel in his name vide Title Number Kilifi/Roka/586 later on inexplicably registered or duplicated as Title No Kilifi/Tezo/Roka /586. She alleged that the defendant obtained the registration by way of fraud and misrepresentation. Particulars of misrepresentation are given in the plaint. On that basis, she thus seeks the orders set out earlier herein above.

4. The defendant filed a memorandum of appearance and statement of defence both dated 26/4/2023. The defendant never testified at the hearing. The evidence of the plaintiff therefore went uncontroverted and judgment was entered in her favour on 17/2/2024.

Application

5. There is now an application presented before court dated 17/1/2025 seeking to set aside that judgment on the following grounds:
 - a. That the defendant was not notified of the hearing;
 - b. The advocates who appeared on behalf of the defendant were impostors and they had no instructions from him;
 - c. That the defendant has a good defence to his claim.
6. The above grounds are set out at the foot of the application and also elaborated in the affidavit of the defendants in support of the motion, dated 17/1/2025.
7. The applicant states that he engaged the services of and has been paying an advocate called Bore and no other. He denies that Riziki Emukule had instructions to appear on his behalf in this matter. He also denies that the firm of Birir & Co Advocates had instructions to act for him in the matter. Later he learnt that Bernard Bore is not an advocate of the High Court.
8. The plaintiff filed a replying affidavit in opposition to the motion, dated 28/1/2025. She deponed that at paragraph 3 of his supporting affidavit the defendant admits that he was served, and that at all material times he was aware that the case was in court, and that after he engaged the services of an advocate his documents were duly prepared and served on the plaintiff's counsel; that the plaintiff is not concerned with the issue of hiring counsel by the defendant; that from inception no document has been signed or filed by Bernard Bore for the defendant and the defendant is thus being untruthful. That the firms of Riziki Emukule and Birir & Co advocates were indeed the defendant's advocates, and the defendant willingly absented himself at the hearing. She states that she is of the advanced age of 86 years and any further delay to the conclusion of the case would be to her detriment. She points out that there is no evidence that the defendant lodged any complaints about his woes with the police for investigations since the matters he raises have a criminal nature in them.

Submissions

9. The plaintiff filed submissions dated 3/3/2025 while the defendant filed submissions dated in respect of the application. I have considered the said submissions in the process of preparing the present ruling.

Determination.

10. The law firms mentioned by the defendant are well known in this Malindi Court station and I find it incredible that they imposed themselves upon the defendant in order to provide him with representation against his wish. As stated by the plaintiff there is no evidence that the defendant lodged any complaints with the police regarding the conduct of the said law firms, or of the person going by the name of Bernard Bore, for investigations and the arraignment of any person found to have committed



an offence under the law. If from the beginning the defendant has been aware that he has had a case to defend in court it is hardly credible that since the year 2021, he has never known who his real advocate in the matter was, Bernard Bore having not filed a single document on his behalf. He has also not indicated how many times he followed up with the said Bore to find out how the case was going. Owing to the foregoing I am not persuaded that the defendant is telling the truth in his application.

11. The upshot of the foregoing is that the application filed by the defendant and dated 17/1/2025 lacks merit and it is hereby dismissed with costs to the plaintiff.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 29TH DAY OF APRIL, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

