



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**ENVIRONMENT AND LAND COURT OF KENYA**

**AT MALINDI**

**LAND CASE NO. 145 OF 2013**

**YAA SIMBA BANZI alias**

**YAA SIMBA.....PLAINTIFF**

**=VERSUS=**

**1. JANE WAMBUI LINDALAU**

**2. THE LAND REGISTRAR KILIFI**

**3. THE HON. ATTORNEY GENERAL.....DEFENDANTS**

**J U D G M E N T**

**Introduction**

1. The Plaintiff moved this court by way of a Plaint dated 16th August 2013. In the Plaint, the Plaintiff has averred that he is the sole registered owner of the parcel of land number Gede/Mijimboni/424; that the title deed to the suit property got lost after a gang of people attacked him upon pronouncing that he was a wizard and that when he conducted an official search, he discovered that the suit property had been fraudulently transferred to the 1<sup>st</sup> Defendant.
2. The Plaintiff has sought in his plaint an order of rectification of the register by canceling the name of the 1<sup>st</sup> Defendant and reinstating his name in the register as the proprietor of Gede/Mijimboni/424 (the suit property).
3. The Summons to Enter Appearance and the Plaint was served upon the 1<sup>st</sup> and 2<sup>nd</sup> Defendant by way of advertisement in the Standard Newspaper of 5<sup>th</sup> September 2013. The 1<sup>st</sup> Defendant did not enter appearance within the prescribed time. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants entered appearance on 25<sup>th</sup> October 2013 but did not file the Defence. The matter proceeded for formal proof on 28<sup>th</sup> November 2013.

**Plaintiff's Evidence:**

4. The Plaintiff, PW1 informed the court that he left his home situated in the suit property after his neighbours claimed that he was a wizard. Out of fear that he will be killed, the Plaintiff left his

- family on the suit property. While away, unknown people stole the original title deed that he had left in his house and sold the suit property to the 1<sup>st</sup> Defendant. It was the Plaintiff's evidence that he has never sold the suit property to the 1<sup>st</sup> Defendant or at all and that he never appeared before the Land Control Board which was required to give its consent before the suit property could be transferred to the 1<sup>st</sup> Defendant. PW1 produced the extract copy of the title deed as Plaintiff exhibit number 1 and a copy of his national identity card as Plaintiff exhibit number 2.
5. The Plaintiff finally stated that his family is still on the suit property and prayed that the 1<sup>st</sup> Defendant's name should be deleted from the register and the register to reflect that he is the registered owner of the suit property.
  6. The Plaintiff's brother, PW2 stated that the Plaintiff left the suit property when the villagers accused him of being a witch. The villagers broke into his house and stole the title deed in respect to the suit property. The suit property was eventually sold by unknown people to the 1<sup>st</sup> Defendant. According to the witness, the 1<sup>st</sup> Defendant has never taken possession of the suit property since he purported to purchase the same.
  7. The Plaintiff closed his case after calling one witness, PW2 and did not make any submissions.

### **Analysis and Findings:**

8. The Plaintiff, PW1, and PW2 informed the court that the Plaintiff's title deed was stolen by unknown people after he left his house. The Plaintiff produced in evidence a copy of the register (the green card) showing that the 1<sup>st</sup> Defendant is the registered owner of the suit property. The Plaintiff also produced his national identity card number 2126081 which shows that before the suit property was transferred to the 1<sup>st</sup> Defendant on 10<sup>th</sup> July 1980, he was the registered proprietor of the same.
9. I have perused the entries in the green card. The fourth entry shows that the title deed was issued to the Plaintiff on 10<sup>th</sup> July 1980. On the same day, the title deed was transferred to the 1<sup>st</sup> Defendant.
10. Although the 1<sup>st</sup> Defendant was served with the Summons to Enter Appearance by way of advertisement in the Standard Newspaper on 5<sup>th</sup> September 2013, the Defendant did not file any response to the Plaintiff's claim. By the time the matter proceeded for formal proof on 28<sup>th</sup> November 2013, the Attorney General had also not filed any Defence although he entered appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on 25<sup>th</sup> October 2013.
11. The Plaintiff's testimony and exhibits are uncontroverted. There is no evidence on record to show that the 1<sup>st</sup> Defendant indeed purchased the suit property from the Plaintiff.
12. In the circumstances, I find that the Plaintiff has proved on a balance of probability that the suit property was fraudulently transferred to the 1<sup>st</sup> Defendant.
13. For the reasons I have given above, I allow the Plaintiff's claim as prayed in the Plaint dated 16<sup>th</sup> August 2013.

Dated and Delivered in Malindi this **28<sup>th</sup>** Day of **February 2014**

**O. A. Angote**

**Judge**

