



**Chengo (Suing as the Administrator and Personal Representative of the Estate of the Late Chaka Chengo Mbega - Deceased) v More Than Conquerors Limited & 3 others (Environment and Land Case 33 of 2021) [2025] KEELC 4201 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4201 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 33 OF 2021**

**YM ANGIMA, J**

**MAY 29, 2025**

**BETWEEN**

**NDORO CHAKA CHENGO (SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE CHAKA CHENGO MBEGA - DECEASED) ..... PLAINTIFF**

**AND**

**MORE THAN CONQUERORS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GULF AFRICAN BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**A. Plaintiffs' claim**

1. By a plaint dated 15.02.2021 the plaintiff sued the defendants seeking the following reliefs;
  - a. A declaration that the 1<sup>st</sup> defendant acquired title to parcel number Kadzonzo/Madzimbani/1189 fraudulently and the same be cancelled and reverted back to Ndoro Chaka Chengo (plaintiff).
  - b. A declaration that the charge in favour of the 2<sup>nd</sup> defendant was based on bad title and the same be discharged unconditionally.
  - c. Costs of this suit.
2. The plaintiff pleaded that on 17.05.2018 he entered into a sale agreement with the 1<sup>st</sup> defendant for the sale 12 acres out of his Title No. Kilifi/Kadzonzo Madzimbani/1189 (the suit property) at an agreed



price of Kshs.65,000,000/=. He pleaded that it was a term of the agreement that the 1<sup>st</sup> defendant was to pay a deposit of Kshs. 2,000,000/= and the balance of Kshs. 63,000,000/= in instalments upon registration of transfer in favour of the 1<sup>st</sup> defendant and a charge in favour of Credit Bank Ltd.

3. It was pleaded that in contravention of the terms of the sale agreement the 1<sup>st</sup> defendant fraudulently transferred the entire suit property and charged it to the 2<sup>nd</sup> defendant without his knowledge or consent. The plaintiff pleaded that despite another agreement dated 19.03.2020 with the 1<sup>st</sup> defendant to facilitate payment of the purchase price the latter had failed to oblige. It was also the plaintiff's case that the 1<sup>st</sup> defendant had failed to facilitate sub-division of the suit property and transfer back the balance of 15.5 acres to him and retain only the 12 acres the subject of the sale agreement.

#### **B. 1<sup>st</sup> defendant's defence**

4. The 1<sup>st</sup> defendant filed a defence dated 12.04.2021 denying liability for the plaintiff's claim. It admitted the existence of the sale agreement dated 17.05.2018. However, it denied any fraud or breach of contract as alleged by the plaintiff and put him to strict proof thereof. It was pleaded that it was the plaintiff who had frustrated completion of the sale transaction by writing a letter dated 12.02.2020 to the 2<sup>nd</sup> defendant purporting to cancel the transaction. In particular, it was denied that the suit property was transferred without the knowledge or consent of the plaintiff and he was put to strict proof thereof. As a result, the 1<sup>st</sup> defendant prayed for dismissal of the plaintiff's suit with costs.

#### **C. 2<sup>nd</sup> defendant's defence**

5. The 2<sup>nd</sup> defendant filed a defence dated 01.04.2021. The 2<sup>nd</sup> defendant denied knowledge of the dealings between the plaintiff and the 1<sup>st</sup> defendant save through a letter dated 19.03.2020 by which the plaintiff expressly agreed to the creation of the charge over the suit property. It was further pleaded that the charge created over the suit property was to secure repayment of Kshs. 17,000,000/= and was created in the ordinary course of business and in compliance with the law. The 2<sup>nd</sup> defendant further pleaded that it could not discharge the charge unless the money secured by it was paid in full. As a result, it prayed for dismissal of the plaintiff's suit with costs.

#### **D. 3<sup>rd</sup> and 4<sup>th</sup> defendants' response**

6. Even though the Attorney General acted for the 3<sup>rd</sup> and 4<sup>th</sup> defendants in an application for interim orders, there is no indication on record of the Attorney General having filed any defence to the action.

#### **E. Trial of the action**

7. The material on record shows that at the trial hereof only the plaintiff testified on his own behalf before closing his case. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants were absent at the trial but the 2<sup>nd</sup> defendant was represented by an advertise. However, the 2<sup>nd</sup> defendant did not any witness at the trial.
8. The record shows that the plaintiff adopted the contents of his witness statement dated 15.02.2021 as his evidence in chief. He also produced the documents in list of documents dated 15.02.2021 as exhibits in support of his claim. His evidence at the trial mirrored the averments made in his plaint and the affidavit he had filed in support of an interlocutory application for interim orders. He urged the court to allow his claim as prayed in the plaint together with costs.



## **F. Directions on submissions**

9. Upon the conclusion of the hearing the plaintiff was granted 21 days to file and serve his submissions whereas the defendants were granted a similar period to file and serve theirs. However, the record shows that none of the parties had filed submissions by the time of preparation of the judgment.

## **G. Issues for determination**

10. The record shows that the parties did not file an agreed statement of issues for determination in this matter. As a result, the court shall frame the issues as provided for under Order 15 Rule 2 of the Civil Procedure Rules. Under the said rule, the court may frame issues from the following;
  - a. The allegations contained in pleadings or answers to interrogatories.
  - b. The allegations contained in statements sworn by or on behalf of the parties.
  - c. The contents of documents produced by the parties.
11. The court has considered the pleading, documents and evidence on record in this matter. The court is of the view that the main issues for determination herein are as follows;
  - a. Whether the plaintiff has proved his claim against the defendants.
  - b. Whether the plaintiff is entitled to the reliefs sought in the suit.
  - c. Who shall bear costs of the suit.

## **H. Analysis and determination**

### **a. whether the plaintiff has proved his claim against the defendants**

12. The court has considered the material on record in this matter. The plaintiff's case against the 1<sup>st</sup> defendant was for alleged breach of the sale agreement dated 17.05.2018 and fraud. The plaintiff testified that the 1<sup>st</sup> defendant had not only failed to pay the agreed purchase price of Kshs.65,000,000/= but had fraudulently transferred the entire suit property and charged it to the 2<sup>nd</sup> defendant without his knowledge or consent.
13. The material on record shows that there was some sort of misunderstanding between the plaintiff and the 1<sup>st</sup> defendant on the issue of transfer and charge to the bank as a result of which the plaintiff sought to stop the loan transaction. However, it would appear from the memorandum of understanding dated 19.03.2020 and the plaintiff's advocates letter dated 19.03.2020 that the dispute was resolved and the bank was notified accordingly.
14. By their letter dated 19.03.2020 to the officers of the 2<sup>nd</sup> defendant the plaintiff's advocates stated as follows;

Re: Title No. Kilifi/Kadzonzo/Madzimbani/1189 of more than Conquerors Company Limited used as security by yourselves

Reference is drawn to our letter dated 12<sup>th</sup> February, 2020 and served on yourselves on 13<sup>th</sup> February 2020.

We regrettably wish to write and state that our client Ngoro Chaka Chengo and More Than Conquerors Company Limited have sorted out their issues accordingly.



That in consideration of the development we wish on the instructions of our client to withdraw the said restriction and/or caveat over the property accordingly.

In addition, we also wish to state that our client has not objection whatsoever over the subject property being used to secure the loan facility as engaged between yourselves and More Than Conquerors Company Limited (emphasis added).

Yours faithfully

Shimaka N. Leonard

For Marende Nacheza & Company

15. It is evident from the said letter that the plaintiff was fully notified of whatever action may have been taken by the 1<sup>st</sup> defendant earlier on and he fully agreed to have the suit property charged to the bank as security for the loan facility the 1<sup>st</sup> defendant was intending to take from the bank. He cannot, therefore, be heard to complain that the suit property was fraudulently transferred to the 1<sup>st</sup> defendant and charged to the bank without his knowledge and consent as pleaded in the plaint. A breach of an agreement or memorandum of understanding is to be distinguished from fraud. In the premises, the court finds no evidence of fraud on the part of the 1<sup>st</sup> defendant even though it did not tender any evidence at the trial. The plaintiff's documents speak for themselves.
16. It would, therefore, follow that the plaintiff has no plausible cause of action against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants in the circumstances. The plaintiff could only have had a claim against them if he had proved some form of fraud to which they were privy. There was no illegality or irregularity in the creation and registration of the charge in favour of the bank. If the bank somehow failed to release the loan amount then that can only be an issue between the borrower and the lender, that is, between the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Clearly, the plaintiff has no business to intervene in the loan transaction since he was neither the borrower nor the chargor.
17. The only claim which the plaintiff appears to have demonstrated is the breach of contract in the sense that the 1<sup>st</sup> defendant had failed to pay the purchase price for which no appropriate remedy was sought in the plaint. The obligation to pay the purchase price squarely fell upon the 1<sup>st</sup> defendant as purchaser and not the bank. It would also appear that the issue of sub-division and transfer of 15.5 acres out of the suit property is premature in view of the memorandum of understanding dated 19.03.2020. Moreover, sub-division and transfer of a portion of the suit property would not be possible during the subsistence of the charge unless there was a tripartite agreement to that effect amongst the plaintiff, 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant.
18. Clauses 16 of the memorandum of understanding dated 19.03.2020 provided that;
  - i. That upon successful use of the title document as security to the bank and upon the first party not intending to use the title document, the first party will cause a sub-division and transfer the part of the acres in favour of the second party at their cost.
  - ii. Where the property has been attached by the bank, then the first party will still be expected to ensure a sub-division is caused and the remainder of acreage is transferred to the second party"
19. The court finds no evidence on record to show that any of the events referred to in clause 16 of the memorandum of understanding have arisen. The court is thus not satisfied that the 1<sup>st</sup> defendant is in breach of any agreement to re-transfer a portion of the suit property to the plaintiff. It is common knowledge that such sub-division can only be undertaken upon a discharge or partial discharge by



the bank which incidentally was not privy to either the sale agreement or the memorandum of understanding.

20. It is noteworthy that the plaintiff has not sought rescission of the sale agreement with the 1<sup>st</sup> defendant and he has not sought specific performance of the sale agreement so that he may receive the agreed purchase price. He has not even sought damages or monetary compensation for the loss of the suit property. Instead, he chose the unorthodox method of directly seeking nullification of the transfer and charge on account of alleged fraud. Since the plaintiff has failed to prove the alleged fraud, the court is of the view that the plaintiff has failed to prove his pleaded case against the defendant.

**b. Whether the plaintiff is entitled to the reliefs sought in the suit**

21. The court has found that the plaintiff has failed to prove his claim based on fraud against the defendants, or any one of them. The court has also found that the plaintiff has not sought any appropriate remedy for the 1<sup>st</sup> defendant's failure to pay the purchase price. It would thus follow that the plaintiff is not entitled to the reliefs sought in the suit.

**c. Who shall bear costs of the suit**

22. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Although the plaintiff has failed in his quest to nullify the transfer and charge the subject of the suit, the court is of the view that he should not be penalized in costs. It is evident from the material on record that both the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant contributed to the delay in payment of the purchase price. The court is thus of the view that the appropriate order to make in the circumstances is for each party to bear its own costs.

**I. Conclusion and disposal orders**

23. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to prove his pleaded case against the defendants or any one of them. As a result, the court makes the following orders for the disposal of the suit;
- a. The plaintiff's suit is hereby dismissed in its entirety.
  - b. Each party shall bear its own costs.

It is so ordered.

**JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Ms. Kyalo for the plaintiff

No appearance for the 1<sup>st</sup> defendant



Mr. Kongere for the 2<sup>nd</sup> defendant

No appearance for the AG for the 3<sup>rd</sup> and 4<sup>th</sup> defendants

