



**Karisa v Musa & 3 others (Environment & Land Case 10 of 2017)
[2022] KEELC 14846 (KLR) (15 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14846 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 10 OF 2017
MAO ODENY, J
NOVEMBER 15, 2022**

BETWEEN

KARISA CHARO KARISA PLAINTIFF

AND

ANAS HASSAN MUSA 1ST DEFENDANT

MACKSTONE KARISA GARAMA 2ND DEFENDANT

RACHEL DAMA KADENGE MASHA 3RD DEFENDANT

DISTRICT LAND REGISTRAR -KILIFI 4TH DEFENDANT

JUDGMENT

1. The Plaintiff's case was dismissed on the March 7, 2022 and therefore what remains for determination is the 3rd Defendant's Counter Claim dated May 10, 2018 whereby she sought the following orders; -
 - a. Vacant possession of the 3rd Defendant's parcel of land known as Title No Kilifi/ Mtondia/709 and an order for demolition of any structure or houses constructed by the Plaintiff on the said parcel of land and his eviction therefrom.
 - b. An order of permanent injunction against the Plaintiff, restraining the Plaintiff by himself, his servants or agents from erecting any structures or houses on the said parcel of land known as Title No Kilifi/ Mtondia/ 709 and from selling or alienating the said parcel of land or from dealing with the said parcel of land in any manner.
 - c. Costs of this suit and interest thereon at Court rates.
 - d. Any other relief that this honourable court may deem just to grant.
2. DW1 the 3rd Defendant Rachel Dama Kadenge Masha adopted her statement dated February 9, 2017 as her evidence in chief, a list of documents dated February 9, 2017 and told the court that she is the



registered owner of all that parcel of land situated within Mtondia Settlement Scheme at Mtondia within Kilifi County measuring 0.43 hectares known as Kilifi/ Mtondia/ 709 as per a copy of the Title Deed which she produced in court.

3. It was DW1's testimony that the owner of the original parcel of land known as title No Kilifi/ Mtondia/99 was the late Karisa Mweri and upon his death, the estate devolved to the three sons and his widow. She further told the court that to facilitate the allocation to each beneficiary the deceased widow and one son Charo Karisa Mweri were appointed the administrators of the estate and the said parcel of land was divided into Kilifi/ Mtondia/ 467,468,469 & 470 respectively.
4. It was her testimony that on September 10, 1998 one Kenga Karisa Mweri the then beneficial owner of portion No Kilifi/ Mtondia/709 sold the land to her at a consideration of Kshs. 82,500/- and that the Administrators obtained the requisite consents from the Land Control Board and later on transferred the said portion to her.
5. The Defendant further stated that after purchasing the suit property she took possession and built 5 permanent houses and one semi-permanent house, planted several mangoes, coconut, cashew-nut, orange and other hardwood trees and that she has been in possession of the suit property for over 15 years.
6. DW1 also told the court that on September 24, 2005 she bought a parcel of land adjacent to the suit property measuring ½ acres from DW2 who had purchased it from Kenga Karisa Mweri and produced a copy of agreement dated September 24, 2005.
7. DW2 Pattyson Kasena Changawata told the court that on June 7, 2001 he purchased a parcel of land at Mtondia from Kenga Karisa Mweri at a consideration of Kshs. 35,000/ -. That the parcel of land was within title No Kilifi/ Mtondia /469 a subdivision of parcel No Kilifi/ Mtondia /99 and that he later on sold the ½ acre of land to Rachel Dama Masha.

Analysis and Determination

8. The Plaintiff's suit was dismissed on March 7, 2022 and the court allowed the 3rd Defendant to proceed with her counterclaim. This is an undefended claim and the issue for determination is whether the 3rd Defendant has proved that she is the rightful owner of the suit land.
9. The Defendant gave a history of the suit land and how she acquired it. From the evidence on record it is apparent that the original title No Kilifi/ Mtondia/ 99 was first registered under the Settlement Fund Trustees on the September 8, 1980 and that on March 11, 1997, the title was transferred to Dama Karisa Mweri and Charo Karisa Mweri. The suit property was later subdivided into four portions and new titles Kilifi/ Mtondia/ 467, 468, 469 and 470 were issued respectively.
10. On March 14, 1997 Title No Kilifi/ Mtondia/ 469 was subdivided into two plots number 709 and 710 and the record also shows that No Kilifi/ Mtondia/709 was transferred to Rachel Dama Kadenge Masha on July 9, 2002 and a title deed issued which she produced as an exhibit before the court.
11. She has also produced an agreement for sale showing how she acquired the suit land having purchased it from one Kenga Karisa Mweri on the September 10, 1998.



12. The 3rd Defendant has produced proof that she is the registered owner of the suit land by exhibiting a title deed which is prima facie evidence that she is the absolute and indefeasible owner as provided for under Section 26(1) of the [Land Registration Act](#) as follows: -

“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 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.

13. The Defendant’s title can only be impeached if it is proven that she acquired it fraudulently, unprocedurally or through misrepresentation which in this case has not been proven

14. Registration of a proprietor gives such a person the absolute ownership as provided for under section 24(a) of the [Land Registration Act 2012](#). I therefore find that the 3rd Defendant has proved her counterclaim and is therefore allowed and issue the following specific orders: -

- a. The Plaintiff to give vacant possession of the 3rd Defendant’s parcel of land known as Title No Kilifi/ Mtondia/709 within 45 days failure to which eviction order to issue.
- b. An order is hereby issued for demolition of any structure or houses constructed by the Plaintiff on the said parcel of land within 45 days.
- c. An order of permanent injunction is hereby issued against the Plaintiff, restraining the Plaintiff by himself, his servants or agents from erecting any structures or houses on the said parcel of land known as Title No Kilifi/ Mtondia/ 709 and from selling or alienating the said parcel of land or from dealing with the said parcel of land in any manner.
- d. Costs of this suit and interest thereon at Court rates.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 15TH DAY OF NOVEMBER, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

