



**Mashua v Shah & another (Environment & Land Case
E028 of 2021) [2025] KEELC 4350 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E028 OF 2021**

MD MWANGI, J

JUNE 5, 2025

BETWEEN

CHARLES KARANJA MASHUA APPLICANT

AND

KANTILAL SHIRSHIR SHAH 1ST RESPONDENT

LAND REGISTRAR, KAJIADO 2ND RESPONDENT

RULING

(On re-opening of the case and application of the provisions of section 22(b) of the [Civil Procedure Act](#) at the instance of the Court suo moto)

1. The plaintiff instituted this suit by way of a plaint dated 3rd April 2021. The plaintiff asserts that he is the registered owner of all that parcel of land known as L.R. No. Loitoktok/Ngamia/53 where the lives with his family.
2. It is the plaintiff's case that in the year 2020 when he attempted to register a caution on the title to the land at the Kajiado Land Registry, he discovered that the 1st defendant had lodged a 'transfer by chargee' form which was pending final execution by the 2nd defendant. The plaintiff states that he then realized that he faced the risk of his being deprived of his land where he had lived for over 55 years. That is when he decided to file this suit.
3. The plaintiff though in his plaintiff confirmed that there had been previous proceedings between him and the 1st defendant being Civil Case No. 497 of 1994 over the same subject matter.
4. The plaintiff prayed for 3 orders in his plaint, namely,
 - a. A declaration that the proprietary interest of all that parcel of land known as Loitoktok/Ngamia/53 absolutely vests in him;



- b. An order that all the illegal/irregular transfers of the suit property be cancelled and or declared null and void; and
 - c. A permanent injunction restraining the defendants from preparing, processing, facilitating and or signing any certificates of title/leases or issuing any title deeds, trespassing into, taking possession of, and or dealing with in any manner all that parcel of land known as Loitoktok/ Ngamia/53.
5. Amongst the documents that the plaintiff produced as exhibits in support of his case during the hearing was a copy of an official search of the title to the suit property dated 7th December 2020. The certificate discloses that as at the date of the search (over 4 years ago), there were two pending applications, namely;
 - a. Transfer by charge, dated 16th January 2019; and
 - b. Caution (416/1/20).
 6. The plaintiff in his witness statement which he adopted as his evidence in chief offered no explanation on the entry 'pending transfer by chargee'. He alleged that he only came to learn about it when he attempted to lodge a caution on his own title.
 7. To enable the court deliver on its mandate of doing justice to all and in order to determine this matter with finality, it is necessary that the court be appraised of the current status of the title to the suit property. The plaintiff did not produce the current certified copy of the title or a current search showing the present status of the title. Order 21 rule 6 of the Civil Procedure Rules requires the production of a certified copy of the title before any judgement is rendered in a matter where there is a prayer for a judgement the grant of which would result in alteration to the title of land.
 8. The court considers its absolutely necessary to establish the current status of the title, before rendering a final judgment in this matter. Further, it is important that the court establishes the basis of the so called 'transfer by chargee'. The right person to offer the explanations is the Land Registrar who is mandated under the provisions of Section 9 of the *Land Registration Act* to maintain the register, and who is also the custodian of the 'parcel file' containing all the instruments and documents that support subsisting entries in the land register.
 9. As this court stated in the case of Jeremy Mark Block vs The Kenya Forest Service & Others (ELC Pet. 1396 of 2014), the law allows the court to, on its own motion and at any stage of the proceedings to call any person whose attendance is required to produce documents or give evidence.
 10. Section 22(b) of the *Civil Procedure Act* empowers the court at any time, either on its own motion or on the application of any party to,

“.....either on its own motion or on an application by any party to issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid.”
 11. The *Evidence Act* also at section 173 empowers a Judge or a Magistrate, in order to obtain proper evidence, to ask any question, in any form, at any time, of any witness, or of the parties about any fact and to order the production of any document or thing.
 12. I consider this case one such exceptional case that calls for the exercise of the court's discretion for purposes of the just and conclusive determination of this matter.



13. The court therefore vacates its earlier order on delivery of a judgment and re-opens the case to enable the Land Registrar Kajiado Central appear as a witness to appraise the court of the status of the title of all that parcel of land known as L.R. No. Loitoktok/Ngamia/53 and to further to produce the parcel file.
14. The court will issue appropriate witness summons to the Land Registrar, Kajiado Central to appear as a witness in this matter and to testify before the court on the status of the title to the suit property on an appropriate date and further to produce the parcel file.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5TH DAY OF JUNE 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Mwendwa h/b for Mr. Marete for the Plaintiff

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

