



REPUBLIC OF KENYA



**Rashid v Mramba (Environment and Land Appeal E015 of 2024)
[2025] KEELC 4292 (KLR) (4 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4292 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E015 OF 2024**

EK MAKORI, J

JUNE 4, 2025

BETWEEN

ABDALLAH RASHID APPELLANT

AND

KABIBI KARISA MRAMBA RESPONDENT

(Being an appeal from the judgment and decree of Hon. J. Ongondo (SPM), delivered on April 24, 2024, at Malindi in Malindi CMCC Land Case No. E065 of 2023)

JUDGMENT

1. This Appeal arises from the plaintiff's plaint dated July 10, 2023, wherein she asserts that she is the beneficial and/or legal owner of the parcel of land identified as Malindi/Municipality Block 4 (Kibokoni Scheme) 92, which measures approximately 0.0025 hectares, located in Kibokoni within the Magarini Constituency of Kilifi County.
2. On the 24th of April 2024, the trial court rendered its judgment in favor of the plaintiff, wherein the court declared her to be the beneficial owner of the property in question.
3. Aggrieved, the Appellant filed the Memorandum of Appeal dated 6th May, 2024, raising the following grounds:
 - a. That the Learned Magistrate misapprehended and misunderstood the chronological order of events concerning land plot number Malindi/Municipality Block 4 (Kibokoni Scheme), measuring approximately 0.0225 hectares, located in Kibokoni.
 - b. The Learned Magistrate erred in both fact and law by failing to consider the evidence and documents submitted by the Appellant.
 - c. The Learned Magistrate erred both in law and fact by failing to consider all the evidence presented to him before delivering the judgment.



- d. The Learned Magistrate erred in both fact and law by failing to recognize how the respondent fraudulently acquired the title to Plot Number Malindi/Municipality Block 4 (Kibokoni) scheme, measuring approximately 0.0225 hectares, situated in Kibokoni.
4. The function of this court is to re-evaluate the evidence presented before the Lower Court and reach an independent conclusion. In the matter of *Okeno v Republic* [1972] EA 32 at 36, the East African Court of Appeal articulated the responsibilities of the court during a first appeal as follows:
- “An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v. R.*, [1957] E. A. 336) and to the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*, [1958] E. A. 424.”
5. The court directed that the appeal be canvassed through written submissions. Parties did comply.
6. Based on the materials and submissions presented before me, the issues raised in this appeal, which I frame for the decision of this court, can be succinctly condensed into the following inquiries: whether the learned magistrate arrived at the correct conclusion regarding the ownership of the suit property, and who should bear the costs associated with this appeal.
7. Based on the record, after considering the cases presented by both the plaintiff and the defendant, the Trial Court reached the following conclusion:
- “The plaintiff states that she acquired the portion as a squatter in 2006 and continued to occupy the portion until 2016, when adjudication took place and she was granted a title deed. The plaintiff’s name appears in the beneficiaries list produced by the defendant.”
8. The Magistrate then went on to state:
- “The plaintiff has demonstrated and proved the root of the title. Her name appears in the list of the squatters who were beneficiaries upon adjudication. She was issued with the title upon adjudication. It is clear, therefore, the plaintiff’s title cannot be impeached on any of the grounds in Section 26(1)(a)(b) of the *Land Registration Act*.
- In view of the foregoing, I find and hold that the plaintiff’s registration as the owner of the suit land is absolute and indefeasible to the extent that the creation of such title was in accordance with the applicable law (see *Chemei Investment Ltd v the Attorney General & others* Petition No. 94 of 2005).”
9. According to the record, the respondent, Karisa Kabibi Mramba, provided testimony as PW1. She called one witness who corroborated her assertion that she is the beneficial owner of the suit property. The respondent accused the appellant of trespassing onto the suit property without any legal right and of constructing on the suit property despite never having been on the land. Furthermore, the appellant failed to raise any objection to the respondent’s registration as the legitimate owner when complaints of any nature were lodged at the Lands Office.



10. At the hearing, the respondent testified that she legally acquired the land and that the suit land was regularly obtained; she obtained the Title Deed as a squatter through the adjudication process. She possesses ownership documents and has occupied the land since 2007, only becoming aware of the Appellant when he began construction on the suit property. The trial court did consider how the respondent acquired the suit parcel and registered it in her name. Ultimately, the trial court was satisfied with the evidence presented by the respondent, which constituted conclusive proof that she was the bona fide registered owner of the suit property.
11. The defendant, conversely, submitted a statement of defense in which he refuted the plaintiff's claim. He asserted that he had acquired the land from Cosmas Baya prior to the adjudication in accordance with the sale agreement.
12. During the hearing, the appellant submitted the sale agreement dated 14 December 2010, which was executed between Fatma Issa and Cosmas Baya concerning the unregistered suit land at that time.
13. The appellant claims that, based on the evidence presented before the trial court, it is clear that although the land parcel in question remains unregistered, its strategic location was recognized. The respondent did not contest its location during the trial. The designation of the suit parcel, as outlined in the sale agreement, was identified as the third parcel of land from Ali Kiringa near Jabreeze Primary School. Additionally, the sketch map submitted by the appellant indicated the suit parcel as Malindi/ Municipality Block 4 (Kibokoni Scheme) 92.
14. The Village Elder, a retired chairman of the Kenya Informal Settlement Improvement Scheme (KISIS), testified in court as DW1 that he warned the respondent not to register her name as a beneficiary of the suit parcel during the allocation, as she was not the legitimate owner. The respondent ignored the warning and went on to represent herself as the owner when the adjudication officers arrived.
15. According to the appellant, the respondent misrepresented herself to the adjudication officers as the owner of the then-unregistered land by concealing the fact that she was not the actual owner of the suit property. Additionally, the village elder stated that the appellant had made a personal inquiry to the village elder, who was then the chairman of KISIS, regarding the documentation on the ownership of Plot No. 92 Kibokoni Settlement Scheme.
16. The appellant asserted that on July 21, 2023, the village elder drafted a correspondence addressed to the respondent, thus confirming the following facts:
 - i. During the adjudication process, the respondent had been managing the suit parcel for a long time.
 - ii. The adjudication committee directed her to inform the appellant of the intended allocation.
 - iii. According to the respondent, the appellant was full of himself, and thus she did not inform the appellant of the said allotment and chose to register herself.
 - iv. The committee warned the respondent not to register herself as the owner and instead let the suit parcel stay idle until the actual owner comes back.
 - v. From the minutes of the meeting held, it is clear that the respondent fraudulently gifted herself the suit parcel, and her failure to honor the summons from the village elder was a clear indication of fraud.
17. Based on the preceding discussion, I assess that the primary issue presented before the trial court was the root of the title held by the respondent. I align myself with the decision cited by the appellant, in



the case of *Daudi Kiptugen v Commissioner of Lands, Nairobi Lands, Chief Lands Registrar, Nairobi, The Hon. Attorney General, Heldo Food Stuff Limited & District Land Registrar Eldoret* [2015] KEELC 674 (KLR), wherein the court examined the procedures involved in the issuance of land title documents and articulated the following:

“The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein...”

18. In resolving the matter at hand, the trial court emphasized that courts cannot endorse titles that have been fraudulently obtained and regard them as sacrosanct. Consequently, the trial court cited the case of *Chemey Investment Limited v Attorney General & 2 others* [2018] KECA 863 (KLR), which held as follows:

“Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example *Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others* [1996] eKLR; *Funzi Island Development Ltd & 2 Others v. County Council of Kwale* (supra); *Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 Others* KLR (E&L) 1, 563; *John Peter Mureithi & 2 Others v. Attorney General & 4 Others* [2006] eKLR; *Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others* (2017) eKLR; *Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others* [2015] eKLR; *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR and *Milan Kumarn Shah & Others v. City Council of Nairobi & Others*, HCCC No. 1024 of 2005. The effect of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense.”

19. The respondent established before the trial court that her title was acquired through the adjudication process, during which she was recognized as a squatter. The appellant’s alleged purchase of unregistered land became null and void once the adjudication process commenced and was completed. Within the adjudication framework, a comprehensive process exists for recognizing and registering the rights and interests of parties, which are acknowledged and registered, alongside an established dispute resolution mechanism. See *Amarnath (Suing on Behalf of the Estate of the Late Amarnath Gupta) v Kazungu & 2 others* (Civil Appeal E033 of 2021) [2023] KECA 1280 (KLR) (27 October 2023) (Judgment), thus:

“The ELC commenting on the role of the Court vis-a-vis that of the adjudicating bodies under the Act in the persuasive authority of *Tobias Achola Osindi & 13 Others vs. Cyprian Otieno Ogalo & 6 Others* [2013] eKLR by Okongo J., as follows:

“The whole process leading up to the registration of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interests in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act...The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest.



As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the residents of the area concerned. I am fully in agreement with the submission by the advocates for the defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the court. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The court cannot, however, usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land...”

25. Having carefully considered this appeal, we find no fault with the finding and holding of the ELC Judge that it had no jurisdiction to entertain the Appellant’s suit. The process of land adjudication had effectively come to its logical conclusion and could not be re-opened otherwise than in the manner contemplated by the law. In the circumstances, the ELC properly struck out the Appellant’s suit. The Appellant did not have any separate cause of action against the 1st Respondent other than the matters which were adjudicated upon and determined by the Ministerial Appeals Committee during the appeal to the decision of the objection proceedings. That decision was final.”
20. The appellant’s request to the Lower Court, and subsequently to this Court, was to overturn the allocation process that had long been finalized. The Lower Court was not the appropriate forum for such matters, nor is this Court. The fraud allegedly committed by the respondent (which was not proved) should have been addressed at the forum dealing with the adjudication process, not in the manner contemplated in the claim before the Lower Court and subsequently in this appeal.
21. As a result, the current appeal lacks merit and is dismissed, with costs to be borne by the appellant both here and in the lower court.

DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN MALINDI ON THIS 4TH DAY OF JUNE, 2025, IN THE ABSENCE OF ALL PARTIES WHO HAD BEEN NOTIFIED OF THE DELIVERY DATE.

E. K. MAKORI

JUDGE

