



**Denman Properties Limited v County Land Registrar Kilifi & 9 others (Environment and Land Case 150 of 2014) [2025] KEELC 5383 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5383 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE 150 OF 2014  
EK MAKORI, J  
JULY 10, 2025**

**BETWEEN**

**DENMAN PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**COUNTY LAND REGISTRAR KILIFI ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**AWADH ASEID ..... 4<sup>TH</sup> DEFENDANT**

**AWAAH ABEID ..... 5<sup>TH</sup> DEFENDANT**

**PHILIP MWARANDU ..... 6<sup>TH</sup> DEFENDANT**

**ABDIRIZA MAALIMU AHMED ..... 7<sup>TH</sup> DEFENDANT**

**JABRI ABDULNASSIR SEIF ..... 8<sup>TH</sup> DEFENDANT**

**HON. GIDEON MUNG'ARO ..... 9<sup>TH</sup> DEFENDANT**

**THOYA FOLENI FRANCIS ..... 10<sup>TH</sup> DEFENDANT**

**RULING**

1. The Notice of Motion dated April 26, 2024, significantly aims to have counsel for the 7th and 8th Defendants/Applicants come on record and act on their behalf. The court set aside the consent judgment entered on June 18, 2015, along with the attendant costs.
2. The application is supported by the annexed affidavit sworn by one Abdiriza Maalimu on April 27, 2024, and a further supplementary affidavit sworn on September 19, 2024.



3. The application is opposed; Sophia Abdillahi Chacha swore a comprehensive replying affidavit on July 11, 2024.
4. Parties were instructed to submit written arguments on the issues raised in the application. Dr. Gitau, learned counsel for the applicants, filed his submissions. In contrast, Mr. Binyenya, learned counsel for the respondents, chose to rely on the filed replying affidavit, which he believed was comprehensive enough to address the issues raised in the application.
5. The issues I frame for the court's decision, based on the materials presented and the submissions and averments by the parties, are whether Dr. Gitau should come on record for the applicants, whether to set aside the consent judgment herein, and who should bear the costs of the application.
6. To ensure fairness, I agree to record Dr. Gitau as appearing and representing the applicants from now on.
7. On July 3, 2025, this court determined that having Sophia Abdillahi Chacha cross-examined before issuing this ruling was unnecessary and repetitive.
8. From the submission by Dr. Gitau and the affidavits deposed by the applicant, the reasons for seeking to set aside the consent judgment entered on June 18, 2015, are that the applicant contends they were never served with a summons to enter appearance and defend. They also state they never appointed Mr. Michira Messah to represent them in this matter, let alone enter a consent on their behalf.
9. The applicants argue that in Malindi ELC No. E015 of 2024, where they sued Mr. Michira Messah over the contested consent, he states in his defense at paragraph 6 that he never acted on their behalf, thereby criminalizing the entire consent and making it null and void.
10. Besides, they contend that they were never a party to Malindi ELC Petition No. 11 of 2012, which was adopted as binding in this matter.
11. From the affidavit sworn by Sophia Abdillahi Chacha, she discloses that she purchased the suit properties and was issued the title documents legally and lawfully. Any other titles issued to the current applicants are null and void since the suit property was private and could not have been acquired compulsorily without compensation and allotted to the applicants.
12. Regarding this matter, a plaint was filed in July 2014. Summons were issued and served on the defendants on August 25, 2014. The firm of Michira Messah entered an appearance for the 7th, 8th, 9th, and 10th defendants; later parties consented to a caution being registered concerning dealings on the land in question on August 27, 2014, and subsequently a consent was entered to have this matter determined by the judgment in ELC Petition No. 11 of 2012.
13. The Respondents contend that the judgment in that petition has long been enforced, which is a fact the applicants are aware of. They also have not applied to set aside the orders in that petition.
14. The respondent asserts that the applicants have been aware of the matter, which they referenced in Milimani in African Banking Corporation Limited v Zeitus Holdings Limited and 5 others [2021] eKLR. (Majanja J.)
15. The respondent states that Malindi ELC No. 3 of 2024, which is pending before my colleague Njoroge J., relates to the same subject and arises from the decision in the Milimani matter, and that the applicants have been aware of the consent in this matter all along.
16. In Kenya, a consent judgment—being a judgment entered into by the agreement of all involved parties—may be annulled under certain specific circumstances. These circumstances encompass



situations where the consent was procured through fraud, misrepresentation, error, or if the agreement contravenes public policy. The grounds for voiding a consent judgment are analogous to those that permit a court to rescind or annul a contract.

17. There is a broad spectrum of decisions on this issue, dating back to the case of *Flora N. Wasike v Destimo Wamboko* [1987] eKLR, including, for example, *E.T. v Attorney General and another* [2012] eKLR, where the court made the following observations regarding the significance of consent orders/judgments and the general practice of setting them aside:

“Compromises negotiated and agreed upon by the parties to litigation are favoured and encouraged by the courts and parties are bound to abide by them and since they have the force of law, no parties can discard them unilaterally. I, therefore, hold that the Agreement subject of the preliminary objection is a valid agreement signed by parties where each party took a benefit that has now been endorsed by a court.

47. The law concerning the status of consent orders has been stated in several cases among them *Flora Wasike v Destimo Wamboko* (supra) where the Court of Appeal stated as follows, ‘It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried ..... In *Purcell vs. FC Trigal Ltd* (1970) 3 All ER 671, Winn LJ said at 676: “It seems to me that if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

48. This general principle is so well established in our legal system and this court cannot by a judicial side wind disregard it. See the case of *Hirani v Kassam* [1952] 19 EACA 131, *Brooke Bond Liebig Ltd v Mallya* [1975] EA 266, *Diamond Trust Bank of Kenya Limited v Ply and Panel Limited & Another* [2004] EA 31, amongst others.”

18. In Kenya, a consent order or judgment entered by an advocate on behalf of a client is generally binding; however, there are certain exceptions. An advocate has implied authority to settle a case on behalf of their client, although this authority may be limited if the opposing party is aware of these restrictions. A consent order can be revoked if it was obtained through fraud, misrepresentation, or if the advocate lacked the necessary authority, especially if the other party was aware of this deficiency. In the case of *Kenya Commercial Bank Ltd v Specialised Engineering Co Ltd* [1982] KLR 485, Harris, J. held, among other things, that:

“1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.

2. A duly instructed advocate has an implied general authority to compromise and settle the action, and the client cannot avail himself of any limitation



by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side."

19. Significantly, the consent judgment in question is claimed to have been entered by an advocate, whom the applicant argues they never instructed.
20. Faced with such a scenario where a party claims that he never gave instructions to counsel to settle a case on his behalf, the burden falls on the party to prove that he did not.
21. It should be noted that we are dealing with a consent entered into sometime in 2015; it has now been over 10 years. The judgment based on that consent has long been enforced. According to the respondent's statements, the substratum of the suit property has changed; other parties are said to have purchased some of the suit properties.
22. It has been brought to the fore that the applicants have been aware of this judgment and the effect of the ELC Petition No. 11 of 2012, one of the cases cited is African Banking Corporation Limited v Zeitus Holdings Limited and 5 others [2021] eKLR. I can see that paragraph 12 of the judgment reads:

"It is not in dispute that the titles to the suit properties in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were cancelled by the court in ELC Petition No. 11 of 2012, which found that the said suit properties belonged to a third party. I have read the judgment, and I find that the Defendants were not parties to the said suit. Further, the judgment does not mention the Defendant's adversely. What the court found in that case is that the 6<sup>th</sup> Defendant amongst other persons issued two title documents in respect of the suit properties contrary to the provisions of sections 10(2) (B) and 32(1)(i) of the Registered Lands Act(repealed)."
23. Following the Milimani judgment, the applicants were required to indemnify the bank. They have sued Mr. Michira, claiming they gave him no authority to consent on their behalf. This is in Malindi ELC No. 3 of 2024, where they seek Mr. Michira to indemnify them stemming from the Milimani judgment.
24. The situation here is that it is unclear why the applicants, who have been aware of the consent judgment in place since 2015, have never applied to set it aside or challenge the judgment in ELC Petition No. 11 of 2012. Mr. Michira's claim that he never entered into the said consent remains a mere defense and preposition. It has not been verified in a hearing under oath, and nothing has been presented to this court to prove that Mr. Michira has been subject to any criminal or professional investigation indicating he was acting beyond instructions or was fraudulent in entering the consent. The question remains: what have the applicants been waiting for since 2015 to approach the court to set aside the impugned consent judgment? Could it be a client-advocate conflict that has gone sour? I am unable to determine that at this point.
25. In my view, I am not persuaded that the consent judgment needs to be set aside. The application to set aside the consent judgment entered on 18th June 2015, dated 26th April 2024, is dismissed with costs on the grounds stated.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON 10<sup>TH</sup> JULY, 2025.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Mr. Binyenya for the Plaintiff**



**Dr. Gitau for the 7th and 8th Defendants**

**Happy: Court Assistant**

**In the Absence of:**

**Mr. Lusamba for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants**

