



**Kaingu & another v Ali (Environment and Land Case  
180 of 2020) [2025] KEELC 5107 (KLR) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5107 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 180 OF 2020**

**SM KIBUNJA, J**

**JULY 9, 2025**

**BETWEEN**

**KHADIJA CHARO KAINGU ..... 1<sup>ST</sup> PLAINTIFF**

**PETER KAZUNGU KALAMA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ADAM ISSACK ALI ..... DEFENDANT**

**JUDGMENT**

1. The plaintiffs filed their claim against the defendant through the plaint dated the 8<sup>th</sup> October 2020, seeking for:
  - a. “An order directing cancellation of the land register against title Mombasa/Ziwa la Ng’ombe/1XX7, if any and enter the name of the plaintiffs by reconstructing the green card and issue a title deed in their favour.
  - b. An order of permanent injunction restraining the defendant, his servants, relatives and or personal representatives or any person claiming through him from charging, selling, accessing and or interfering with the peaceful occupation of the plaintiffs whatsoever.
  - c. Costs of this suit.”

They averred that they settled in Bombululu, at a place that came to be known as Ziwa la Ngombe Squatter Settlement Scheme sometime in 1981. That sometime in 2002 the Director of Land Adjudication and Settlement declared that the registration exercise of those occupying portions of land there would be done through Ziwa la Ngombe Settlement Scheme Land Committee. That though they had lived there for 21 years, they were not registered with their portion, which was instead fraudulently registered with the defendant as parcel No. Mombasa/Ziwa la Ng’ombe/ 1XX7, the



- suit property. The plaintiff pleaded particulars of the fraud at paragraph 5, inter alia stating that the defendant colluded with the Mombasa Land Adjudication and Settlement Officers, and the Land Registry officials to obtain title for the suit property; that the defendant never presented himself before Ziwa la Ng'ombe Settlement Scheme Land Committee which was mandated to come up with a list of genuine squatters. The plaintiffs alleged that at all material times they have been in possession of the suit property, and that the defendant has been asked before to surrender his title for cancellation but he refused, and hence this suit.
2. The defendant opposed the plaintiffs' claim through his statement of defence dated 24<sup>th</sup> November 2020 denying all allegations and stated that the suit is res judicata as the issues herein have already been dealt with in MOMBASA ELC 172 OF 2014, Adam Issack Ali versus Sachiel Ndoli Anyanga & Khadija Charo Kaingu, through which the plaintiffs were evicted from the suit property. He maintains that he followed due procedure without any collusion to obtain title to the suit property and added that this suit is only intended to delay the execution process in the above suit.
  3. During the hearing, the 2<sup>nd</sup> plaintiff testified as PW1, and relied on his witness statement dated 25<sup>th</sup> January 2021 and list of documents dated 8<sup>th</sup> October 2021. He testified that the 1<sup>st</sup> plaintiff is his younger sister and that the defendant had come with an allotment letter dated 15<sup>th</sup> February 2002, and made a complaint against the 1<sup>st</sup> plaintiff who was charged in Mombasa criminal case No. 1049 of 2011, which was dismissed. That the defendant then filed Mombasa ELCC No. 172 of 2014, against 1<sup>st</sup> plaintiff and one Sachiel Ndoli Anyanga which was also dismissed. PW1 testified that he did a search and found that the suit property had no green card. He added that the suit property and parcel 1XX2 are in different positions on the ground. During cross-examination, PW1 acknowledged knowing one Mohammed Hassan, who later testified as DW1. He denied that they came to the suit property from another place, insisting that he has lived on the suit property for over 20 years of 55 years. He elucidated the fact that the 1<sup>st</sup> plaintiff had left for Bungoni area, which is about 5 Kilometers from the scheme, but that she returned and settled at the scheme in 2002. He denied that they settled on the suit property after the adjudication process was complete, insisting that they were living on the suit property when adjudication was going on. PW1 added that the 1<sup>st</sup> plaintiff had received an offer letter for the suit property but it later got lost. That at the time of adjudication, the 1<sup>st</sup> plaintiff was living with her husband, who was the 2<sup>nd</sup> defendant in Mombasa ELCC No. 172 of 2014, but they are now separated. He added that he wrote letters dated 9<sup>th</sup> May 2014 and 8<sup>th</sup> September 2015 complaining about the defendant having acquired title to the suit property on 14<sup>th</sup> March 2014. He admitted that the 1<sup>st</sup> plaintiff was arrested and charged in the a criminal case after the defendant complained to the police about her living on the suit property. He insisted that although the defendant allegedly received a letter of offer for the suit property, he paid for plot 1XX2, and that the subsequent change to plot No. 1XX7, suit property, was fraudulently done by the defendant. He denied that they had been evicted from the suit property.
  4. The 1<sup>st</sup> plaintiff testified as PW2. She denied ever living in Bungoni insisting that she has only lived in Bombolulu. That the defendant found her already living at the suit property where she was born. She described the coconuts trees on the suit property that were planted by her father. She elucidated that the defendant's actions have been inimical towards her and she has really suffered for a long time. She stated that she refused to sign an agreement for a promise to leave the suit property. That after her husband left, she has been taking care of the children on the suit property. On cross-examination, PW2 testified that her parents lived at the scheme and that after she was married she lived with her husband at her parent's house. She stated that during adjudication, a representative from the Lands Registry informed her that the title for the suit property was not ready and that her father was following up on the same. She also alleged that she could not trace the letter of offer of the suit property that her



father was given after his death. She acknowledged that she knew Mohamed Hassan. She claimed the defendant had bought the suit property but she does not know who the vendor was.

5. In his defence, the defendant called Mohamed Hassan, who testified as DW1. He stated that he is 72 years old, and has known the defendant since he was 15 years old, and that they belong to the same clan. He testified that the scheme was created during President Moi's time but titles were issued during President Uhuru Kenyatta's tenure. That the defendant received a letter of allotment dated 15<sup>th</sup> February 2002 and paid the fees required and a receipt was issued, and thereafter the title was processed and issued on 14<sup>th</sup> March 2023. He informed the court that the suit property was never sold. He added that the plaintiffs came with her mother to the suit property and built a house, and that when the defendant was given the suit property, the 1<sup>st</sup> plaintiff was living across the road, while the defendant's father was living near the suit property. That it is when the 1<sup>st</sup> plaintiff and her mother moved onto the suit property, that the defendant reported to the police and chief. DW1 stated that he attended a meeting where the chief ordered the plaintiffs to vacate from the suit property, but they refused. That thereafter, the defendant filed a civil suit where the plaintiffs were ordered to vacate and their houses be demolished. That the houses were demolished but plaintiffs came back on the suit property and constructed semi-permanent house where they reside to date, after the defendant travelled to India for treatment. On cross-examination, DW1 stated that although the 1<sup>st</sup> plaintiff was residing on the suit property, her father had a plot next to the suit property. That the 1<sup>st</sup> plaintiff came onto the property after the death of her husband and that only the government could confirm whether or not the defendant obtained title lawfully. That the receipt he had, serial number 507877, dated 25<sup>th</sup> June 2002 is for plot No. 1XX2, and not that he did not have a payment receipt for parcel No. 1XX7, suit property. He confirmed that the defendant never lived on the suit property, but had a structure and wires around it. He added that the defendant used to live in his two roomed house on his plot. He also agreed that there is nowhere in the chief's letter dated 7<sup>th</sup> September 2009 where the 1<sup>st</sup> plaintiff signed up and agreed to vacate the suit property. He added that he was not present when the plaintiffs' houses were demolished.
6. The defendant testified as DW2, and relied on his statement dated 2<sup>nd</sup> December 2020, and produced his title deed dated 14<sup>th</sup> March 2014 as exhibit. He stated that he was issued with an allotment letter dated 15<sup>th</sup> February 2002. That upon making the payment, he was issued with a receipt dated 25<sup>th</sup> June 2002. He added that parcel No. 1XX7 was the new number for the suit property, which was parcel No. 1XX2 at the allotment stage. He stated that the plaintiffs were not on the suit property when he was given the property. That sometime in 2009 the plaintiffs came at night and damaged all the properties he had on the suit property, and he reported to the chief and police. That the plaintiffs were summoned for a dispute hearing meeting and given seven days' notice to vacate through a letter dated 7<sup>th</sup> September 2009, which was signed by all the parties. That the plaintiffs refused to vacate and he had them charged in criminal case No. 230 of 2010 in which the court ordered the plaintiffs to vacate. After the plaintiffs refused to vacate, he sued them in Mombasa ELCC No. 172 of 2014, where eviction order against the plaintiffs was issued. However, the plaintiffs came back on the suit property later and instituted this suit. On cross-examination DW2 stated that he had stayed on the suit land for around seven years before the allotment letters were issued. He denied knowledge that the coconut trees on the suit property were planted by the plaintiffs' father. He added that he had built a structure and a yard which is named "Adam Issack" yard, on the suit property. That the receipt issued for the payment required under the allotment letter was in respect of parcel No. 1XX2, which was the number in the allotment letter, that was later given a new parcel number 1XX7. He admitted he did not know the orders issued in the criminal case, but stated the orders issued were in respect of parcel No. 1XX2, whose new number was 1XX7. He added that he was living on the suit property when he was issued



with a letter of allotment, but does not live on it currently. That the yard on the suit property is used as a business premises for sale of charcoal and timber.

7. The court issued directions on filing and exchanging submissions on the 6<sup>th</sup> November 2024, 18<sup>th</sup> February 2025 and 7<sup>th</sup> April 2025 but only the 2<sup>nd</sup> plaintiff filed his dated 5<sup>th</sup> December 2024, which the court has considered.
8. The issues for the court's determinations are as follows:
  - a. Whether the plaintiffs have established existence of any legal interest over the suit property.
  - b. Whether the defendant's registration with the suit property was procedurally, lawfully and legally procured.
  - c. Who pays the costs in this suit?
9. The court has carefully considered the parties' pleadings, oral and documentary evidence tendered by PW1, PW2, DW1 and DW2, submissions by the 2<sup>nd</sup> plaintiff and come to the following determinations:
  - a. This being a civil case, the outcome has to be on a preponderance of evidence or on a balance of probabilities. This legal position is confirmed by the rules of evidence that he who alleges must prove, as seen in the case of *Springboard Capital Limited versus Njenga & Another (Civil Appeal 14 of 2024)* [2024] KEHC 7013 (KLR) (14 June 2024) (Judgment). The 1<sup>st</sup> plaintiff claims to have been born on the suit property and was married and lived there and after separation, she remained on the same land. She is over 40 years and therefore she has had possession for over 40 years. The documents provided in support of the plaintiffs' evidence are letters written by the District Adjudication and Settlement officer, S.A Mchombo on 19<sup>th</sup> May 2014, requesting the Mombasa Land Registrar not to issue title over the property as there was a pending complaint. The letter also indicated that the Settlement Scheme Committee was deliberating on the matter and would come up with a recommendation. Mr. Chombo also wrote another letter dated 8<sup>th</sup> September 2015 informing the 1<sup>st</sup> plaintiff and the defendant that the title to the suit property was erroneously issued to the defendant.
  - b. On the other hand, the defendant admitted that the letter of allotment he produced dated 15<sup>th</sup> February 2002 was for plot No. 1XX2 and the payment receipt he was issued with was for plot No. 1XX2. However, and interestingly the title that he was issued with on 14<sup>th</sup> March 2014 was for the suit property, parcel No. 1XX7. Though, the acreage remains the same, at 0.02 hectares, and the defendant maintained that the title number was changed from No. 1XX2 to 1XX7, he but did not tender any documentary evidence in support of the process leading to that change. Section 26 of the *Land Registration Act* Chapter 300 of Laws of Kenya states that a title is only prima facie proof of ownership, and can be challenged where fraud and or irregularity was committed or due procedure was not followed.
  - c. The plaintiffs have pleaded fraud and set out the particulars of fraud in their plaint. In the case of *Central Kenya Ltd versus Trust Bank Limited & 4 Others*, Civil Appeal No. 215 of 1996; [1996] eKLR the Court of Appeal determined that:

“The appellant has made vague and very general allegations of fraud against the respondents. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the appellant in this case than in an ordinary civil case.”



Further, in the case of Richard Akwesera Onditi versus Kenya Commercial Finance Co. Ltd, Civil Appeal No. 329 of 2009 the Court of Appeal of Eastern Africa expressed itself on the issue as follows:

“Needless to say, fraud and collusion are serious accusations and require a very high standard of proof, certainly above mere balance of probability, and the bare allegations put forward by the appellant do not therefore avail him.”

The plaintiffs’ case from their pleadings is that the defendant acquired the title over the suit property fraudulently. That though the defendant claimed that he was a squatter at Ziwa la Ngombe Settlement Scheme, he never presented himself before the Settlement Scheme Committee for his claim to be registered, but colluded with the Land Adjudication and Settlement Officers and Land Registry Officers to obtain title over the suit property that was meant to be their entitlement having occupied it for over 20 years.

- d. The procedure for allocation of lands back in 2002 was provided for in several statutes such as the Government Lands Act Chapter 280 of Laws of Kenya, (repealed), Trust Lands Act Chapter 288 of Laws of Kenya, (repealed) and *the Constitution* itself. However, it is important to note that the title over the suit property was not issued until 14th March 2014, which brings into operation the post 2010 Constitution land laws. It is not in dispute that the plaintiffs are currently living on the suit property that was even admitted by DW1. What is also clear is that the parcel number 1XX2 in the allotment letter under which the defendant trace his title is different from the parcel number 1XX7 in the title deed. The burden of proving that the changes made on the title reference from number 1XX2 to 1XX7 was regularly and lawfully done lay on the defendant. The defendant made blanket statements that the parcel number changed from parcel 1XX2 to 1XX7, and while he knew his title was under challenge, he did not deem it necessary to summon a Land Adjudication and Settlement Officer and or the Land Registrar to come and help the court understand how the change on the reference number from 1XX2 to 1XX7 occurred. It is important to observe that the defendant had through the application dated 3<sup>rd</sup> December 2021 sought to inter alia have this suit struck out for being res judicata the decision in Mombasa ELCC No. 172 of 2014, but it was dismissed vide the ruling delivered on 20<sup>th</sup> July 2022, where the court concluded that that other suit’s judgement was in respect of plot No. 1XX2 and that there is no relationship between that plot reference and 1XX7, which is the suit property herein. I see no reason to depart from that finding of fact, and the court therefore finds that the plaintiffs have proved fraud on the part of the defendant in the acquisition of title to the suit property.
  - e. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the events unless where for good cause the court orders differently. In this suit, the plaintiffs have successfully proved their claim against the defendant and are therefore, entitled to the costs.
10. From the foregoing determinations, the court finds the plaintiffs have proved their claim to the standard required of balance of probabilities. The court therefore enters judgement for the plaintiffs and against the defendant and orders as follows:
- a. An order is hereby issued directing the Land Registrar to cancel the defendant’s name from the land register of land parcel Mombasa/Ziwa la Ngombe/1XX7, and enter the names of the plaintiffs as joint proprietors and issue a title deed in their favour.
  - b. An order of permanent injunction is hereby issued restraining the defendant, his servants, relatives and or personal representatives or any person claiming through him from charging,



selling, accessing and or interfering with the plaintiffs' peaceful occupation of the suit property whatsoever.

- c. The Deputy Registrar to ensure a certified copy of this judgment is served upon the Mombasa County Land Registrar for their further necessary action as directed in (a) above.
- d. The defendant to bear the costs of the plaintiffs.

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 9<sup>TH</sup> DAY OF JULY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

IN THE PRESENCE OF:

PLAINTIFFS : Present

DEFENDANT : No Appearance

SHITEMI-COURT ASSISTANT.

S. M. Kibunja, J.

ELC MOMBASA.

