



REPUBLIC OF KENYA



KENYA LAW
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**Fischer v Fischer & another (Civil Suit 186 of 2021)
[2025] KEELC 5976 (KLR) (4 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 5976 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
CIVIL SUIT 186 OF 2021
AE DENA, J
SEPTEMBER 4, 2025**

BETWEEN

FELIX FISCHER PLAINTIFF

AND

DAVID ADRIAN FISCHER 1ST DEFENDANT

KEZIA WANGUI FISCHER 2ND DEFENDANT

JUDGMENT

1. This suit was commenced through a plaint filed on 2/3/2020 and dated 27/02/2020. The Plaintiff avers that by agreements dated 2017 and 2018, he agreed to sell to the Defendants the land parcel Kwale/Diani Complex/1009 at the price of Euros 50,000 with this price being offset from the rent after the Plaintiff transfers the property to the Defendants. The Plaintiff avers that he did transfer the property to the Defendants. However, the Defendants have failed to perform their part. The Plaintiff craves for the suit property to revert to him among other orders.
2. The 1st Defendant did not respond to the suit. On 16/03/2023 Ms. Wambua holding the brief of Mune Katuu informed the court that they had on 22/9/2020 filed a replying affidavit wherein the 1st Defendant admits that the suit be allowed. Ms. Kamau for the 1st Defendant had no objection to the 1st Defendant relying on the same. The hearing proceeded on this understanding.
3. The 2nd Defendant filed through the firm of Nyambura Kamau Advocates responded by a Defence dated 22nd June 2020. It is averred that the purchase price was to be offset from rent collected from the property within a period of 12 years in irregular payments with no specific date of commencement of the payments. That there has been no breach of the agreement as the agreement is still in force and payment can be made anytime within the agreed 12 years payment period. That the transfer was not pegged in the payment of the purchase price since it predated the loan agreement. That the claim for cancellation of transfer of title deed is misguided and baseless in law.



4. I must also note that the 1st Defendant after the close of the Plaintiff's case filed an application dated 22/5/2023. The same sought leave of the court to amend the defence by introducing a counterclaim. The application was dismissed through a ruling delivered on 15th February 2024.

Hearing and Evidence of the Parties.

5. The matter was heard viva voce on 16/3/2023 and 26/09/2024. The Plaintiff was represented by Ms. Wanjiku holding the brief of Mr. Obonyo, the 1st Defendant by Mr. Oyas holding the brief of Ms. Katuu and the 2nd Defendant by Ms. Nyambura.

Plaintiff's Evidence

6. The Plaintiff gave evidence as PW1. He adopted his witness statement dated 13/11/2019 as his evidence in chief and produced the documents listed in the Plaintiffs List of Documents dated 27/2/2020 (Pex 1-9). He confirmed the 1st Defendant was his son. He told the court the 2nd Defendant was his son's wife but the two were in the process of obtaining a divorce and were no longer living together.
7. Referring to the agreements produced PW1 testified that 4-5 years following the same he had not received a single cent. He told the court that the Defendants were to start payment immediately and continue for the next 12 years. That he holds the original title to the property in the Defendant's names returned to him after the Defendants failed to pay. There was no hope for payment.
8. Cross examined by Ms. Kamau, PW1 testified that he transferred the property based on the agreement dated 5/7/2018 which he entered into freely. On being referred to both agreements dated 18/12/2017 and 5/7/2018 he affirmed their contents. He confirmed there was no date given for commencement of the payments for the purchase price. According to PW1 it would be wrong to state that the Defendants were not in breach since his son indicated they would not be able to make monthly payments. He denied he wanted the suit to revert to him because the Defendants were no longer together as husband and wife. He confirmed his son was collecting the rent to date.
9. PW1 indicated in re-examination that the 10 – 12 years meant payment during that period. He clarified that the bigger objective of the agreement dated 18/12/2017 was inheritance. The 1st agreement had already laid a foundation for the 2nd agreement. That the reason for filing the suit was because the Defendants are not able to pay the price.
10. The Plaintiff's case was marked as closed.
11. Counsel for the 1st Defendant did not cross examine the witness at the instance of the court as the 1st Defendant had admitted the Plaintiff's claim. The 1st Defendant did not testify neither did he call any witness.

Defence Evidence

12. DW1 was Keziah Wangui the 2nd Defendant. She told the court the Plaintiff was her father-in-law and the 1st Defendant her husband though they were ongoing divorce proceedings. She confirmed entering into the agreement dated 5/7/2018 which she asserted had no conditions on how the purchase price was to be paid other than the loan agreement. That the property was transferred into her name and the 1st Defendant though not paid for because the Plaintiff was her father-in-law. It was her testimony that the idea was to gift the Defendants the property to ensure it remains in the family. That the Plaintiff was not able to manage the property because he wanted to undertake another business in Romania.



13. DW1 also testified that the loan agreement was signed after the transfer. That she has no control over the management of the property including rent which was being collected by the 1st Defendant. That she was not getting any share thereof. That she never gave any formal authorization to the 1st Defendant on the management of the property. That she only came to know that the 1st Defendant was not servicing the loan when the suit was filed.
14. DW1 added that when she became aware of the issues, she sued the Plaintiff in ELC 047 of 2022. However, the suit was dismissed because of the present proceedings. That her marriage to the 1st Defendant broke in 2019 and there has been no communication on this issue since then. She has been barred from entering the suit premises. The witness adopted her witness statement dated 15/01/2021 as her evidence in chief and produced the documents in the list of documents dated 1/12/2020 (DW1 Ex 1-5).
- 15.. Cross examined by Ms. Wanjiku DW1 reiterated she was still married to the 1st Defendant and her marriage had not yet been officially dissolved. She did not have access to the account which was collecting rent. On being referred to paragraph 5 of her witness statement she conceded that they opened a joint bank account. She confirmed she has bank statement upto the year 2019. She was last in Kenya in 2024 but didn't get into the premises. She denied signing the agreement dated 8/12/2017 and stated she was not relying on it. She asserted she was not entitled to inheritance because she did not sign the agreement.
16. The witness testified further that she had knowledge of the account but has never remitted any money to the Plaintiff for the loan since she never received any rent. The Plaintiff cannot annul the agreement since they had 12 years to remit the money. She affirmed she didn't have evidence to show that the Plaintiff wanted to give them the land because he wanted to go to Romania. That the title cannot be challenged for failure to comply with the agreement. She was not aware of the 100,000 Euros mentioned in the agreement dated 18/12/2018.
17. Cross examined by Mr. Oyas she conceded she had not filed a Marriage certificate in court. The security for the loan was the 12 years repayment. To get good title they were to renovate and fully repay the loan. She confirmed she had no evidence to confirm the 1st Defendant withdrew money from the joint account. She also had no evidence to show who was collecting rent. She agreed that in a joint account none of the parties could do anything without the consent of the other.
18. DW1 clarified she was not divorced. That parties never agreed on when the loan repayments would commence. The title predated the loan agreement.
19. The 2nd Defendants' case was marked as closed.

Submissions

20. The court issued directions on filing of final submissions. The Plaintiff's submissions are dated 25/10/2024 and the 2nd Defendants 19/11/2024. The 1st Defendant did not file submissions.

Plaintiffs Submissions

21. The Plaintiff's submissions were filed by the firm of Lawrence Obonyo Legal Advocates. The same identified three issues for determination namely, whether the 1st and 2nd Defendants acquired good title? Whether both the Inheritance Agreement and Loan Agreement stood vitiated and Whether the Plaintiff is entitled to the reliefs sought in the Suit.



22. It is submitted that the Plaintiff led evidence that for both the 1st and 2nd Defendants to hold an indefeasible title, it was essential for them to service the loan. That it is undisputed that the ownership of the title deed was pegged on remitting a consideration of 50,000 Euros, secured as a loan from the Plaintiff. That to date despite the Defendants enjoying the proceeds of the rental income, and the facilities therein, they have never remitted a dime to the Plaintiff. It is submitted that the root of the Defendants' title is invalid for failure on the part of the Defendants to meet their obligations under the agreements. Reference is made to the provisions of Section 24, 25, and 26 of the [Land Registration Act](#) on the circumstances under which a title may be vitiated and the case of *Munyu Maina =Vs= Hiram Gathina Maina* (2013) eKLR, Civil Appeal No.239 of 2009.
23. It is contended that indeed both contracts were vitiated by the acts and omissions of both the 1st and 2nd Defendants who were bound by the terms of the contract but chose not to fulfil their part of the bargain. That at the heart of this suit is the principle that Courts cannot rewrite the terms of a contract between parties and is limited to enforcing the terms as agreed by the parties. To buttress this position the court is referred to *Fina Bank Limited vs. Spares & Industries Ltd* [20001 eKLR and *Sammy Japheth Kavuku vs. Equity Bank Ltd & Another* [2014] eKLR.
24. Rehashing the prayers sought it is asserted that a contract consists of three fundamental elements; offer, acceptance and consideration. That consideration never passed and in essence, the 1st and 2nd Defendants proprietary rights did not crystalize over the suit property. Therefore, the Plaintiff retained the legal and equitable interest in the suit property that ought to be protected by this Honourable Court. That the Defendants are guilty of frustrating the agreements and their hands are tainted. It is submitted that the Plaintiff is entitled to the orders sought.
25. On costs of the suit it is submitted that the Plaintiff having proved his case on a balance of probabilities being the successful party and pursuant to Section 27 of the [Civil Procedure Act](#) they are entitled to the costs of the suit.

2nd Defendant's submissions

26. The 2nd Defendant's submissions were filed by the firm of Nyambura Kamau Advocates. It is contended that this case is not about fairness or justice. It is about retaliation, exclusion and an attempt to undo a gift that was lawfully completed. That the 2nd Defendant seeks nothing more than what is rightfully hers, the 50% interest in the suit property. That she has been ready to fulfill her financial obligations and has acted in good faith throughout from the time she entered into the loan agreement. It is urged that the law does not permit one party to renege on a valid and completed transfer simply because relationships have soured. Nor does it allow a father and son to collude to dispossess a co-owner of her rights for personal reasons. It is urged that the 2nd Defendant is entitled to have her rights as a co-owner of the suit property respected and protected by the court.
27. The issues identified by the 2nd Defendant largely echo the issues identified by the Plaintiff.
28. It is submitted that the Defendants acquired good title to the suit property because the Plaintiff, as the previous proprietor, voluntarily initiated and executed the transfer and ensured its registration in the joint names of the Defendants.
29. Citing Section 26 of the [Land Registration Act](#) it is asserted that this registration constitutes conclusive evidence of ownership where the Defendants acquired indefeasible title, protected by law under Article 40 of the [Constitution](#) and Section 25 of the [Land Registration Act](#). The title can only be defeated on proof of fraud or misrepresentation involving the registered proprietor or evidence that the title



was acquired illegally, unprocedural or through a corrupt scheme. Reliance is placed on case of Joseph Kiprotich Bor v Tabutany Chepkoech Chebusit [2021] eKLR,

30. It is further submitted that the Plaintiff has not alleged or proven, that the transfer was procured through fraud, misrepresentation, coercion or undue influence. That Plaintiff's argument that the Defendants lack good title due to non-payment of the purchase price is misplaced since transfer of the property was not conditional upon full payment. The Plaintiff willingly transferred ownership to the Defendants before receiving any money. Reliance is placed on the Court of Appeal decision in Mwangi v Kiiru [1987] eKLR, and Alice Wambui Njoroge v Jackson Kamau Ndegwa [2017] eKLR.
31. The 2nd Defendant urges that any dispute regarding payment are contractual in nature and do not affect the validity of the title. The Plaintiff's remedy, if any, lies in enforcing the payment terms, not in seeking to nullify the title as held in Samuel Murigi Waigwa v Francis Babu Mwangi [2021] eKLR.
32. It is submitted that the agreements can only be vitiated if factors such as fraud, duress, undue influence, mutual mistake, misrepresentation or a fundamental breach are established. That no evidence has been presented to suggest duress, coercion or undue influence in their execution. The court is referred to the case of African Cotton Industries Limited v Rural Development Services Limited [2021] eKLR.
33. It is contended that the 1st Defendant's failure to remit rental income to the Plaintiff does not render the agreements impossible to perform. Instead, it appears designed to frustrate the agreement and disadvantage the 2nd Defendant, likely due to the breakdown of her marriage to the 1st Defendant. This Honourable Court can enforce compliance by ordering the 1st Defendant to remit rental proceeds to the Plaintiff.
34. Rehashing the particulars of breach of agreement pleaded by the Plaintiff and reviewing them against the terms of the agreement it is submitted that, the Plaintiff's claim of non-payment is premature and does not constitute a breach for the reason that there was no strict schedule for repayment. That the Defendants are still within the agreed repayment period, which has not yet lapsed and therefore the agreements cannot be deemed breached based on the Plaintiff's impatience or subsequent change of mind.
35. It is further urged that possession was lawful under the terms of the agreement and was not contingent on prior full payment of the purchase price.
36. On whether the Plaintiff is entitled to the orders sought it is submitted that based on the foregoing the Plaintiff is not entitled to the prayers sought in the suit.
37. On costs referring to Section 27 of the *Civil Procedure Act*, it is submitted the 2nd Defendant has demonstrated, to the required standard, that she has not breached any contractual or legal obligation against the Plaintiff. Therefore, the 2nd Defendant is entitled to the costs of this suit.

Issues for Determination

38. I have carefully considered the pleadings, examined the evidence together with the submissions of the rival parties and analysed the law applicable. The court identifies the following issues for determination;
-
 - a. Whether the 1st and 2nd Defendants have breached the agreements dated 18/12/2017 and 5/7/2018
 - b. Whether the Plaintiff is entitled to the prayers sought in the suit
 - c. Who should bear the costs of this suit?



Whether the 1st and 2nd Defendant have breached the agreements dated 18/12/2017 and 5/7/2018

39. My review of the plaint shows that this suit was filed for the main reason that the 1st and 2nd Defendants defaulted and or refused to pay for the purchase of the suit property as per the agreements executed by both parties. It is pleaded by the Plaintiff at paragraph 4 of the plaint that pursuant to the agreements entered into between the Plaintiff as vendor and the defendants as purchasers, the parties agreed on a purchase price of Euros 50,000 translating to Kshs 6,000,000/-. The said price was to be offset from the rent accrued from the property after the Plaintiff transfer of the suit property to the Defendants. His understanding was that the Defendants would make efforts to pay the purchase price.
40. It is for the above reasons that the Plaintiff sought an injunction stopping the Defendants from dealing with the suit property in whatever manner, nullification of the transfer document/title deed and for declaration that the ownership be reverted to the Plaintiff as the previous proprietor.
41. It is not in dispute that the Plaintiff was the initial owner of the Kwale/Diani Complex 1009 the suit property. It is also not in dispute the 1st Defendant is the Plaintiff's son. It is also not in dispute that two agreements feature in this dispute one is dated 18/12/2017 and the other 5/07/2018. These agreements were produced as part of PW1 exhibits in support of his case.
42. The particulars of breach are outlined in paragraph 6 of the plaint and I will reproduce them verbatim this being the crux of this litigation.
- i. Failure to pay the purchase price,
 - ii. Transferring the title to their names while refusing to pay the full purchase price, and
 - iii. Taking possession of the property without clearing the purchase price.
43. It is trite that he who alleges must prove as stipulated under Section 107(1)(2) of the *Evidence Act*, which provides that (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
44. The Plaintiff's evidence is that he has never been paid a single cent towards the purchase price. The 1st Defendant admitted in a replying affidavit sworn on 22nd September 2020 thus;-
- it is true that we breached the terms of the agreement since we have not remitted any payments to the plaintiff to date'.
45. Let me point out that my review of the affidavit shows that it is sworn by David Adrian Fischer the 1st Defendant. There is no deposition that it is being sworn with the authority of the 2nd Defendant. The 1st Defendant cannot therefore be alleging to make depositions for both the Defendants. I will therefore attribute the deposition admitting the breach only to the 1st Defendant.
46. The 2nd Defendant's case is that there is no breach because there were no specific timelines given for commencement of payments and infact they had a whole 12 years to do this.
47. The first document is dated 18 December 2017 titled "Agreement regarding early inheritance." It states inter alia that the Plaintiff wishes to transfer his property in Ukunda (the suit property) to his son together with his wife Kezia Wangui Fischer the 1st Defendant and 2nd Defendant respectively with all buildings and facilities. The value of the property is estimated at 150,000 Euros. The document states that in order to keep the transfer costs low, the selling price is set at 50,000 Euros and the remaining amount of Euros 100,000 is a gift or an early inheritance to the 1st Defendant from his father. What



was to be paid as purchase price (Euros 50,000) would be granted as a loan and the interest rates and repayment would be regulated by a later loan agreement as soon as the property has been transferred.

48. Pursuant to the above arrangement the suit property was indeed transferred to the Defendants and they became registered as proprietors on 7th February 2018. In essence David Fischer performed his part of the bargain as per his wishes. The agreement dated 18th December 2017 largely contains the wishes of the father to transfer the suit property to the son and his wife the 2nd Defendant. I will at this point add that the Plaintiff recognised the 2nd Defendant as his son's wife and I will not venture into efforts by the 1st Defendant to discredit this. It is also clear from the above agreement that there were no obligations attributed to the Defendants at this point. All they were to do was await the loan agreement which is clearly stipulated would be done as soon as the property is transferred.
49. The Plaintiff alleges that the Defendants were in breach ostensibly by transferring the title to their names while refusing to pay the full purchase price. This allegation cannot hold any water. No payment was required to be made upon registration of the transfer. A party is bound by the terms of the agreement and both counsels alluded to this. See *Fina Bank Limited vs. Spares & Industries Ltd* [2000] 1 eKLR and *Sammy Japheth Kavuku vs. Equity Bank Ltd & Another* [2014] eKLR all cited by the Plaintiff.
50. In any event PW1 confirmed in cross examination that he transferred the property based on the agreement which he entered into freely. For me the Plaintiff freely transferred the property to the Defendants as per his wishes, the Defendants cannot have transferred the property to themselves.
51. I will now look at the document dated 5 July 2018 titled "Loan Increase" to determine if the Defendants failed to pay the purchase price as claimed in the first ground of the breaches but having in mind that the 1st Defendant has conceded breach. This agreement is between Felix Fischer the Plaintiff (Lender) and David & Kezia Fischer (Borrower) these are the Defendants herein. The same is signed by all the three parties. The loan of Euros 50,000 has been increased to Euros 75,000.
52. It is not in dispute that this is the loan agreement that was to be done as soon as the property was transferred. This agreement bears the terms of the repayment of the purchase price. At clause (3) it is provided that
- "The loan will be paid back in irregular and variable instalments probably in the 10 to 12 years. This can be in Switzerland by repayment in CHF or by Ksh of the rental income from the property, which can be offset against the cost on the international direct aid."
53. In his direct evidence PW1 informed the court that the Defendants were to start payment of the purchase price immediately and continue for the next 12 years. But clearly the above clause is silent on the commencement date. PW1 confirmed in cross examination upon being shown the agreements that no date has been given for commencement of the payments for the purchase price. DW1 testified that there was no commencement date.
54. What about the 10-12 years period? It would appear the expectations of PW1 were that he would be receiving the monies upon execution. I respectfully agree with the interpretation mooted by the 2nd Defendants' submissions. The loan agreement allowed the purchase price of 50,000 Euro's to be paid in adjustable instalments over 10 to 12 years, with payments tied to the suit property's rental proceeds. The words 'in the 10 to 12 years' left the repayments flexible. Moreover, no strict schedule has been provided for the 1st instalment or deposit including the subsequent instalments stretching for the 12 years.



55. As rightfully urged the court cannot rewrite the agreement of the parties especially in the instant case where PW1 confirms that he signed the agreement freely. The court must make its determination within the confines of the agreements as presented. Anything that may have been agreed orally will not suffice.
56. Additionally if the Defendants had upto 12 years to repay the loan then any claim for repayment before this period would be premature. This suit was filed in the year 2020 which is about two years into the signing of the loan agreement. My hands are tied and I would not hold the 2nd Defendant liable.
57. Having noted the foregoing the court declines to find in favor of the Plaintiffs that the 2nd Defendant was in breach of the agreement by failing to pay the purchase price. The court is conscious of the 1st Defendant's admission to the claim though.
58. The Plaintiff also blames the Defendants for taking possession of the property without clearing the purchase price. In my view this allegation has already been dealt with under the foregoing analysis. The agreement was freely signed. I had no evidence before court that the Defendants took possession forcefully. Moreover, the loan agreement reveals that it would cover repairs and renovations and if this is the case then the claim is misplaced in my view. My thoughts were how were the repairs to be undertaken without first taking possession and how was the property going to be managed and rent collected in the absence of possession for the period given.
59. This judgement will be incomplete if the court does not address the issue of whether the Defendants acquired a good title. Both parties addressed the court on the issue. Counsel for the Plaintiff has rightly submitted that under the provisions of section 26 of the Land Registration Act a certificate of title shall be taken by all courts to be prima facie evidence that the person named as proprietor is the absolute an indefeasible owner of such land except if the proprietor was a party to the fraud or misrepresentation leading to issuance of the certificate of title or where the certificate of title has been acquired illegally, unprocedural or through a corrupt scheme.
60. I will deal with this issue from the perspective of the pleadings. The Plaintiff demands repudiation and cancellation of the transfer and title deed. I will not belabor this point for the reason that my analysis foregoing speaks to this issue. It is clear that the Plaintiff suit is premised on breach of the agreements herein. There are no allegations of fraud or illegalities pleaded against the Defendants in obtaining the title.
61. In Nizar Viram t/a Kisumu Beach Resort Vs Phoenix of East Africa Assurance Co. Ltd (2004) eKLR cited by the 1st Defendant, the Court of Appeal stated thus; -

Firstly, there is no denying that there were no particulars supplied in the defence pleading under Order VI rule 8(1) which requires in mandatory terms that:

every pleading shall contain the necessary particulars of any claim defence or other matter pleaded including, without prejudice to the generality of the foregoing: -

- (a) particulars of anyfraud on which the party relies.
- (b) Where a party pleading allegesfraudulent intention..... particulars of the facts on which the party relies.”

In the absence of such pleading, the insurer is not at liberty to agitate the allegation of fraud or fraudulent intention. Fraud is a serious quasi – criminal imputation and it requires more than proof on a balance of probability though not beyond reasonable doubt. Sufficient



notice and particulars must therefore be supplied to the party charged for rebuttal of such allegation.’ (Emphasis is mine).

62. The court has already enumerated why it has made a finding there was no breach. Consequently, there would be no basis upon which to grant the prayers sought by the Plaintiff.
63. What orders then would suffice in the present circumstances in view of the fact that the agreements are not denied? Further the 1st Defendant has admitted to his father’s claim. The court cannot close its eyes to this admission. I will also not delve into matrimonial property issues if this is what was expected by the Plaintiff and 1st Defendant, it is not my jurisdiction. PW1 confirmed that the 1st Defendant is the one collecting the rent to date. DW1 agreed in court that she never remitted any money because she never received any rent. It is submitted that she is ready to pay her 50% share of the loan proceeds. I will steer off this proposal because the title is silent on the shares. In any event it is her submission through counsel that the Plaintiff’s remedy, if any, lies in enforcing the payment terms and not cancellation of the titles.
64. I have read the persuasive decision of my brother Eboso J in Samuel Murigi Waigwa v Francis Babu Mwangi [2021] eKLR. I agree with the findings. The court also appreciates that every case is decided on its merits and facts. In the present case I have already noted that payments were to be effected over the period of 12 years. Further there is an admission of the Plaintiff’s claim by the 1st Defendant.
65. PW1 produced a copy of the transfer of land registered on 7/2/2018 (PEx 5) in favor of David Adrian Fischer and Keziah Wangui Fischer. He also produced a title deed issued on 7/02/2018 (PEx6) showing the two as the absolute proprietors of the suit property. A certificate of official search dated 26/6/2019 confirms this registration. The title therefore must be rectified by dint of the admission on the part of the 1st Defendant by replacing the name of David Adrian Fischer with that of the Plaintiff. I find support in both the provisions of section 80 of the Land Registration Act and section 13 (5) of the Environment and Land Court Act which empowers me to make any order and grant any relief as the court deems fit and just.
66. The following orders therefore issue to dispose of this suit;-
1. The 1st Defendant having admitted to the Plaintiff’s claim vide the replying affidavit sworn on 22nd September 2020 this court enters judgement in favor of the Plaintiff as against the 1st Defendant.
 2. In view of 1 above the Land Registrar Kwale shall rectify the title parcel Kwale/Diani Complex/1009 by deleting the name of David Adrian Fischer as one of the proprietors and replacing the same with Felix Fischer, Swiss PP No. 10576398.
 3. The Plaintiff’s suit against the 2nd Defendant is hereby dismissed with costs to the 2nd Defendant.

Orders accordingly.

JUDGEMENT DATED SIGNED AND DELIVERED THIS 4TH DAY OF SEPTEMBER 2025.

HON. LADY JUSTICE A.E DENA

JUDGE

4.9.2025

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of: -
Mr. Otieno Holding brief for Mr. Obonyo for the Plaintiff



No appearance for the 1st Defendant

Ms. Nyambura for the 2nd Defendant

Asmaa Maftah – Court Assistant

