



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Baya (Suing as the Administrator of the Estate of Baya Msanzu) v Chai (Land Case E094 of 2021) [2025] KEELC 4152 (KLR) (21 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4152 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
LAND CASE E094 OF 2021
EK MAKORI, J
MAY 21, 2025

BETWEEN

JULIUS SAFARI BAYA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF BAYA MSANZU) PLAINTIFF

AND

JOSEPH NZARO CHAI DEFENDANT

JUDGMENT

1. The lawsuit was initiated by a plaint dated October 12, 2017, in which the Plaintiff seeks the following reliefs:
 - a. A declaration that the agreement for the sale of a portion of the suit property to the Defendant, executed on February 2, 2001, between the Defendant, Joseph Nzaro Chai, and Tabu Baya, is null and void from the beginning.
 - b. A declaration that the decision of the defunct Bahari Land Disputes Tribunal in Bahari Land Disputes Case No. 44/05/08, which ruled in favor of the Defendant for one acre of land, and the subsequent adoption of that decision as judgment by the Magistrate's Court on November 20, 2008, in Kilifi SPM Land Dispute Case No. 40 of 2008, was null and void due to a lack of jurisdiction.
 - c. A declaration that the transfer of the entire suit property to the Defendant, along with the resulting registration of the Defendant as the absolute owner of the suit property, is null and void.
 - d. An order directed to the Land Registrar of the Kilifi Land Registry to cancel the registration of the suit property, known as Title No. Kilifi/Matsangoni/459, in the name of the Defendant, Joseph Nzaro Chai, and to reissue the title in the name of the Plaintiff, Julius Safari Baya, as the administrator of the estate of the deceased Baya Msanzu.



- e. Vacant possession of the property in question, identified as Title No. Kilifi/Matsangoni/459, the demolition of any structures erected by the Defendant on the property, and the eviction of the Defendant from the property.
 - f. Costs of this suit, including interest at court rates.
 - g. Any other relief that this court may consider to grant.
2. The Defendant, Joseph Nzaro Chai, actively participated in this case by submitting a statement of defense dated January 6, 2022.
 3. The Plaintiff, Julius Safari Baya, testified as PW1 and adopted his written statement dated November 12, 2021, as his main testimony, presenting exhibits No. 1 to 10 attached to his list of documents dated November 12, 2021.
 4. The Defendant, Joseph Nzaro, testified as DW1 and adopted his written statement filed on January 11, 2022, as his chief testimony, producing Exhibits No. 1 to 7 attached to his document list dated January 4, 2022.
 5. The Plaintiff is the administrator of the estate of Baya Msanzu, the original registered owner of the suit land. The Plaintiff submitted a copy of the grant of letters of administration. The suit land is described as Title No. Kilifi/Matsangoni/459, and the Plaintiff presented a copy of the title deed. Currently, the suit land is registered in the Defendant's name. The Plaintiff submitted a copy of an official search certificate and a green card for the title, which indicates the current registration status. The Plaintiff asserts that the Defendant fraudulently acquired the registration of the suit land, either through fraud or mistake.
 6. The court's determination will rely on the presented evidence. Key issues include: the validity of the sale agreement for one acre of land between the Defendant and Tabu Baya; the defunct Bahari Land Dispute Tribunal's jurisdiction over the Defendant's claim; the alleged fraudulent acquisition of the suit land's registration by the Defendant; the Plaintiff's entitlement to reliefs; and costs of the suit.
 7. The parties submitted their written arguments, citing relevant laws and case law for the court's consideration, and the court is grateful.
 8. Mr. Shujaa, learned counsel for the Plaintiff, argues that the agreement to sell 1 acre of the suit land between the Defendant and Tabu Baya is undisputed but invalid. On February 2, 2001, the Defendant agreed to sell 1 acre of the disputed land for the sum of Ksh. 8000. A review of the sale agreement shows that the vendor, Tabu Baya, did not sign the agreement. During cross-examination, the Defendant admitted that a son of Tabu Baya, named James Thoya, signed the sale agreement on behalf of Tabu Baya because she was not present when it was executed.
 9. He further stated that the Defendant did not present evidence showing that the aforementioned son had the authority from Tabu Baya to execute the sales agreement. The Defendant also admitted under cross-examination that Tabu Baya did not receive the purchase price from the Defendant. They indicated that James Thoya accepted the purchase price.
 10. Counsel, therefore, submits that the sales agreement violates the provisions of Section 3(3)(a) and (b) of the Law of Contract Act, Chapter 23 of the Laws of Kenya, as well as Section 38(1) of the Land Act No. 6 of 2012.
 11. Furthermore, Counsel argues that the Defendant acknowledged during cross-examination that when the sale agreement was executed, the suit land belonged to the deceased Baya Msanzu, who passed away



- on January 15, 2000. Therefore, it is clear that Tabu Baya did not own the suit land. This was the reason for the inclusion of the phrase in Kiswahili: 'kwa niaba ya familia ya Baya Msanzu Chea' in paragraph 5 of the sale agreement.
12. The counsel concludes that the suit land was owned by Baya Msanzu, who was deceased at the time. Since the Defendant did not provide evidence showing that Tabu Baya was the appointed administrator of his estate, the sale agreement was null and void. It did not confer any proprietary interests in the 1-acre parcel of land to the Defendant, in light of the provisions of Section 45 (1) of the *Law of Succession Act*, Chapter 160 of the laws of Kenya.
 13. Additionally, counsel asserted that the defunct Bahari Land Dispute Tribunal lacked jurisdiction to hear the Defendant's claim due to insufficient authority conferred under Section 3(1) of the Land Disputes Tribunal *Act No. 18 of 1990* (repealed). The Defendant's claim before the tribunal involved a dispute over the contract for the sale and transfer of land. It did not pertain to dividing or determining boundaries to land, nor was it a claim to occupy or trespass on land. Although the dispute fell outside its purview, the Tribunal nonetheless attempted to award the suit land to the Defendant. The decision was then transmitted to the Magistrates Court at Kilifi for adoption and judgment.
 14. Counsel for the Plaintiff asserted that the role of the Magistrates Court in this matter was limited to adopting the Tribunal's decision and entering judgment based on it, according to the provisions of Section 7 of the Act, regardless of its merits. Although no appeal was lodged against the aforementioned decision, this court is not precluded from noting that the proceedings and decision originate from an inferior Tribunal and are not binding on this court. Moreover, the proceedings and decision are null ab initio; any action based on them is also a nullity. Additionally, the law clearly states that an order made without jurisdiction is null and void ab initio. If an act is null and void, then it is a nullity in law, and any action taken in reliance on it is likewise null and void. The Tribunal had no jurisdiction to entertain the Defendants' claim, so its decision was null and void for lack of jurisdiction, and the adoption of its decision by the Magistrates Court was inconsequential. The decision remained a nullity. The subsequent adoption of its decision by the Magistrates Court did not confer validity upon it.
 15. Mr. Shujaa contended that the evidence shows the suit land was registered in the Defendant's name following the mentioned decision and the Defendant's application to transfer the suit land. A copy of the green card (Exhibit No.6) indicates at entry No.5 the court order's registration on November 24, 2020, and at entry No.6, the Defendant's registration as the owner of the suit land.
 16. Counsel stated that, based on the evidence presented, it is also clear that at the time of the dispute before the Tribunal in 2008, the suit land was already registered in the name of Baya Msanzu. However, no administrator of his estate was included in the dispute. The person sued before the Tribunal was Tabu Baya, who was not the administrator of the deceased's estate but the registered owner of the suit land; see the ratio in *Isaya Masira Momanyi v Daniel Omwoyo & Another* [2017] eKLR.
 17. Counsel further submits that the registration of the entire suit land in the name of the Defendant was obtained through fraud for the following reasons. The Defendant's claim before the Tribunal was for a 1-acre parcel of land. Still, when he decided to transfer the case from the Tribunal to the Magistrates Court for adoption and judgment, he applied for the transfer of the entire parcel of land measuring 3.5 acres, rather than just the subdivision and transfer of the 1 acre he claimed to have purchased from Tabu Baya. The Plaintiff produced copies of the Defendant's application to the Court for the transfer of the suit land to himself, the Defendant's application for review to correct the parcel number, and a copy of the Court's Order for the transfer of the suit land as Exhibits Nos. 8, 9, and 10, respectively. The Plaintiff submits that this is a clear case of fraud given that the Defendant was aware, from his testimony and the agreement for sale, that he had purchased only a 1-acre parcel of land, yet he applied for the



- transfer of the entire suit land measuring 3.5 acres. In his testimony, the Defendant stated that he was only occupying a 1-acre parcel of land within the suit land and that it was the Plaintiff's responsibility to initiate the subdivision. The Defendant's claim that he transferred the entire suit land to himself so that he could later cause a subdivision of the 1 acre does not eliminate the fraud. It all serves to prove that he deliberately caused the fraudulent registration of the suit land in his name.
18. Counsel contended that although Section 26(1) of the *Land Act* No. 3 of 2012 protects the sanctity of title, a Court cannot protect title to land that has been obtained illegally or fraudulently. The sanctity of title should not be used as an avenue for unjust enrichment. Such a title remains subject to challenge on the grounds of fraud or misrepresentation in which the party is proven to be involved, or where the title has been acquired illegally, unprocedurally, or through a corrupt scheme.
 19. Furthermore, Article 40(6) of *the Constitution* of Kenya states that the protection of the property right, as enshrined under Article 40, does not extend to any property that is found to have been unlawfully acquired. Section 80(1) of the *Land Registration Act* empowers this court to order the rectification of the register by directing the cancellation of the registration. The Plaintiff asserts that the protection afforded by subsection 2 of the Act is not available to the Defendant because the Defendant not only had knowledge of the fraud but also was the person who instigated it, leading to the request for rectification. He is the person who applied for the transfer of the entire suit land, despite knowing that he had allegedly purchased only a 1-acre parcel of land. Additionally, the Defendant was aware all along that the owner of the suit land was deceased, both at the time of making the agreement for sale and at the time of commencing the dispute before the Tribunal. The Defendant also knew, when applying for the transfer of the suit land into his name, that the suit land was registered in the name of the deceased, who was not a party to the proceedings before the Tribunal.
 20. Therefore, counsel submits that the Defendant's purported transfer of the entire suit land belonging to a deceased person to himself, without the involvement of the deceased's personal representative, constituted fraudulent dealings regarding the suit land. No court should sanction the acquisition of title to land if it was obtained through fraud. The Plaintiff relies on the decision in the case of *Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others* [2015] eKLR for the proposition that courts should not provide refuge for any fraudster who uses forgery, deceit, or any form of trickery to acquire a legal and valuable title deceitfully taken from a legally innocent registered proprietor.
 21. Mr. Omondi, representing the Defendant, asserted that the Land Dispute Tribunal's decision was read and adopted by the Magistrate Court on November 20, 2008. The tribunal's decision was presented as evidence by the defendant, who stated that he was granted 1 acre carved out of the suit property. Therefore, the court's decision to award the entire property to the Defendant and direct him to subdivide it should not be a burden for him. Furthermore, the Defendant has never attempted to dispose of, acquire, or occupy any additional portion of land other than his duly acquired 1 acre. Attempts to subdivide the suit property were unsuccessful because the Plaintiffs were unwilling to comply. Therefore, the decision of the Magistrate Court was not obtained through fraud.
 22. The issues in this suit are interconnected, stemming from the LDT's decision as adopted by the Magistrates Court after the defunct Bahari Land Disputes Tribunal ruled in favor of the Defendant for one acre of land in the Bahari Land Disputes Case No. 44/05/08. This decision was made by the Magistrate's Court on November 20, 2008, in Kilifi SPM Land Dispute Case No. 40 of 2008. Questions of fraud, misrepresentation, or mistake also arise regarding the award process. The LDT's award is challenged for lacking jurisdiction. It is alleged to be fraudulent, as it granted the Defendant 3.5 acres instead of one acre, to the detriment of the dependents of the deceased's estate.



23. The jurisdiction of the Land Disputes Tribunal was established under Section 3(1) of the Land Disputes Tribunal Act 1990 (Cap 303A) (repealed), which states as follows:

“Subject to this Act, all cases of a civil nature involving a dispute as to—

- a) the division of, or the determination of boundaries to land, including land held in common;
- (b) a claim to occupy or work land; or
- (c) trespass to land shall be heard and determined by a Tribunal established under section 4.”

24. The court concurs with the arguments presented by the Plaintiff’s counsel regarding the importance and context of the jurisdictional issue. The judicial authorities, such as *Owners of the Motor Vessel Lilian “S” v Caltex Oil (Kenya) LTD* 1989 KLR 1 and *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited and 2 others* [2012] eKLR, clearly demonstrate the repercussions of actions undertaken in the absence of jurisdiction. The cases of *Macfoy v United Africa Co. Ltd* 1961 3 All ER 1169, *Re Continental Credit Finance Ltd* [2003] 2 EA 399, when considered in conjunction with *Jonathan Amunavi v The Chairman Sabatia Division Lands Dispute Tribunal & Another*, *Kisumu Civil Appeal No. 256 of 2002* (unreported), along with Section 3(1) of the Land Disputes Tribunal Act, and acknowledging that the sale agreement contravened the Law of Contracts Act and the Succession Act on transactions involving the estate of a deceased person, lead to the indisputable conclusion that the ruling issued by the now-defunct Bahari Land Disputes Tribunal, as endorsed by the Kilifi Magistrates Court, was rendered without proper jurisdiction.

25. The jurisdiction of the Magistrates’ Court under the Land Disputes Tribunal Act (repealed) was defined by Section 7 of the Act, which states:

“The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate’s court together with any depositions or documents which have been taken or proved before the Tribunal.

- (2) The court shall enter judgement in accordance with the decision of the Tribunal and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the *Civil Procedure Act*.”

26. The aforementioned provision of the law is articulated in mandatory terms, and the court affirms that upon receipt of the referenced documents by the Magistrates Court, there exists no discretion concerning the entry of judgment in alignment with the Tribunal’s award. Furthermore, apart from the role designated under Section 7 of the Act, Section 3 (9) explicitly provided that the Magistrate’s Court possessed no jurisdiction or authority regarding matters addressed in paragraphs (a) to (c) of subsection (1).

27. The aforementioned position is substantiated by the findings of the Court of Appeal in the case of *Florence Nyaboke Machani v. Mogere Amosi Ombui & 2 others*, *Civil Appeal 184 of 2011* [2014] eKLR, wherein the Court concurred with the Superior Court’s findings regarding the role of Magistrates’ Courts when presented with an application for the adoption of an award from the Land Disputes Tribunal. The Court articulated its stance as follows:

“Once the award of Borabu Land Disputes Tribunal was adopted as a judgment of Senior Resident Magistrate’s Court at Keroka, it ceased to exist on its own. It cannot be the subject



of a declaration. And even if it remained alive of what use will it be to declare it a nullity if the decree ensuing therefrom, by SRM's court at Keroka does not face the same fate. The plaintiff has not invited this court to do so. I am sure that he was aware that that would have been an uphill task. The award having become a judgment of the court of competent jurisdiction can only be varied, vacated, set aside or reviewed either by the same court or by an appellate court in appropriate proceedings. That has not been done by the SRM's court at Keroka nor have I been asked to do so in this suit. In any event I do not think that the SRM's court at Keroka has jurisdiction under the Land Disputes Tribunals Act to review, vary, rescind, vacate and or set aside an award filed. The role of that court is merely to adopt the award as a judgment of the court on application and thereafter issue a decree. It has no jurisdiction to examine the award in order to satisfy itself whether it is bad in law and therefore void ab initio”

28. It is evident from the aforementioned that the jurisdiction of the Magistrates Court was confined to the provisions specified in Section 7 of the Land Disputes Tribunal Act.
29. The Land Disputes Tribunal Act, pursuant to section 8(1), stipulates that an appeal from the Tribunal's decision is directed to the Provincial Appeals Committee, whose decision is conclusive. Additionally, a party may invoke the jurisdiction of the High Court under section 8(9) of the Act on matters of law solely within 60 days from the date of the contested decision. Moreover, while the matter remains pending, a party may seek judicial review orders from the High Court to assess procedural correctness or address any jurisdictional overreach by the Land Disputes Tribunal.
30. The Court concludes that the Land Disputes Tribunal Act furnishes a detailed and comprehensive mechanism for dispute resolution. Had the Plaintiff herein perceived the Tribunal's decision as unjust, and had they adhered to the prescribed process, the issues presented in this suit would have been duly heard and resolved in accordance with the law. Sections 8 and 9 of the Land Disputes Tribunal Act, being the operative provisions, stipulate the following:

“Section 8 (1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.

Section 9 -Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of: Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved”.
31. Based on the matters presented before this court, the award was forwarded to the Magistrates Court, where it was adopted as the judgment of said court. It has been enforced. No appeal was preferred as provided in the repealed Act. The Plaintiff did not appeal to the Appeals Committee within the thirty-day timeframe stipulated, nor did the Plaintiff appeal at any other time. Instead, the matter was submitted to the Magistrates Court, as provided under Section 7 of the Act. The court read the elders' award to the parties and adopted it as a judgment of the court. The Court then informed the parties of their right to appeal within 30 days. By failing to adhere to the entire dispute resolution process as provided by law, the court concludes that the Plaintiff cannot rightfully claim entitlement to the orders sought in this suit. Furthermore, the suit herein suffers from laches and delays; it aims to address issues raised before the Tribunal in 2008.



32. This court is obligated to adhere to the ruling of the Court of Appeal in *Catherine C Kittony v Jonathan Muindi Dome & 2 others* [2019] eKLR, wherein the court examined a dispute analogous to the one presented in this case, and it determined:

“The Land Dispute Tribunal had mechanisms to deal with outcomes such as the one rendered by the 2nd respondent. The award by the 2nd respondent ceased to exist upon adoption by the court as its judgment and a decree. The award cannot be challenged by filing a fresh suit as it is trite law that where a statute establishes a dispute resolution mechanism that mechanism must be followed and exhausted, where a party fails to do so he cannot be heard to say that his rights were denied.”

33. The court further observed that:

“In the instant appeal, it is not in dispute that the appellant was aggrieved by the decision of the 2nd respondent. However, instead of lodging an appeal before the Provincial Appeals Committee constituted for the province in which the land which was the subject matter of the dispute was situated and if still dissatisfied to appeal to the High Court on a point of law (see: Section 8(1) and (9) of the Land disputes Tribunal Act) or institute judicial review proceedings to quash the decision by the 2nd respondent as it was alleged that it acted in excess of its jurisdiction in making the award, the appellant opted to file a fresh suit before the ELC which was not in order. See also *Speaker of National Assembly v Njenga Karume* [2008] 1 KLR. We reiterate that if indeed the appellant did not agree with the decision of the 2nd respondent and wished to challenge it, it behooved her to follow the route prescribed by the Land Disputes Tribunals Act before proceeding anywhere else.”

34. The identical issue was addressed in the decision of the case of *Florence Nyaboke Machani* (supra), wherein the esteemed judge in the case articulated the following:

“..... It is trite law that a valid judgment of a court unless overturned by an appellate court remains a judgment of court and is enforceable, the issue of jurisdiction notwithstanding. The plaintiff had all avenues to impugn the award as well as the judgment. He did nothing. As sarcastically put by counsel for the defendants in his submissions, the plaintiff chose to sleep on his rights like the Alaskan fox which went into hibernation and forgot that winter was over. In the meantime, the 1st defendant’s rights to the suit premises crystallized. Equity assists the vigilant and not the indolent. The plaintiff has come to court too late in the day and accordingly, the declaratory relief must fail. I doubt that even the remedy of the declaration is available to the plaintiff to impugn a valid court judgment and decree.”

35. Furthermore, this court determines that the legal status of decisions rendered by the Land Disputes Tribunals constituted under the repealed Land Disputes Tribunal Act is governed by Section 23(3) of the *Interpretation and General Provisions Act* (Cap 2). In the matter of *Sally Jemeli Korir and Another v William Suter & 2 others* [2020] eKLR, the court ruled that:

“Section 23(3) (e) of the *Interpretation and General Provisions Act* preserves and protects decisions and awards made by the defunct Land Disputes Tribunals. Similarly, it preserves and protects judgments adopted and pronounced by Magistrates’ Courts within the



framework of the repealed Land Disputes Act. They remain valid judgments of the courts. The resultant decrees remain valid binding instruments capable of execution.”

36. In conclusion, the issues presented by the current lawsuit should have been resolved through the comprehensive mechanisms established in the repealed Act. Matters concerning fraud, misrepresentation, or mistake ought to have been thoroughly examined, as emphasized herein. In light of the LDT's decision, the Defendant is rightfully entitled to one acre of the disputed property, which is acknowledged here. No appeal was filed. This court's jurisdiction has been improperly invoked, as it generally lacks the authority to review decisions made by the defunct LDT in the manner extrapolated in this lawsuit. This court cannot invalidate the agreement herein for the reasons I have stated elsewhere in this judgment. Besides, the Defendant took possession of the one-acre property in 2001. Equity will not permit the eviction of the Defendant at this juncture due to the passage of time. The Plaintiff's suit is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 21ST DAY OF MAY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Shujaa for the Plaintiff

Ms. Buluma for the Defendant

Happy: Court Assistant

