



REPUBLIC OF KENYA



**Mukoma v Kariuki & 4 others (Environment and Land Case E170 of 2018)
[2025] KEELC 6525 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6525 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E170 OF 2018
FM NJOROGE, J
SEPTEMBER 30, 2025**

BETWEEN

JOHN IRUNGU MUKOMA PLAINTIFF

AND

SIMON KARANJA KARIUKI 1ST DEFENDANT

THE HON ATTORNEY GENERAL 2ND DEFENDANT

CABINET SECRETARY, MINISTRY OF LANDS 3RD DEFENDANT

PERMANENT SECRETARY, MINISTRY OF LANDS 4TH DEFENDANT

THE LAND REGISTRAR, NAIROBI 5TH DEFENDANT

JUDGMENT

1. The Plaintiff filed an amended plaint dated 24/8/2020, seeking judgment be entered against the Defendants for: -
 - i. Revocation/cancellation of the title deed issued to the 1st Defendant;
 - ii. Registration of a new title in the name of the Plaintiff by the 5th Defendant;
 - iii. Costs.
2. The Plaintiff's case was that on 28/8/2008, the 2nd – 5th Defendants unlawfully had the 1st Defendant registered as the owner of the plot identified as Title Deed No. Lamu/Hindi Magogoni/404 (the suit property) and issued him with a title thereto. The Plaintiff averred that he approached the National Land Commission to intervene but its mandate expired before it could complete the investigation.
3. In his amended defence dated 23/6/2023, the 1st Defendant averred that he was lawfully allocated the suit property by the government which also issued him with ownership documents. He added that his



was the first registration. The 1st Defendant narrated that he entered the suit property on or about the year 1995 when it was uninhabited and continued to reside thereon until sometime in 2016 when the Plaintiff showed up, laying claim to it. He pleaded that the Plaintiff's suit is statutorily time barred and prayed that judgment be entered against the Plaintiff for: -

- a. A permanent injunction restraining the Plaintiff by himself, his agents, servants, assigns, representatives or any other person claiming under him from adversely laying erroneous claims of ownership, trespassing, encroaching, entering, alienating, interfering, transferring, wasting, clearing bushes, digging foundations, disposing of, leasing, charging and from commencing or continuing to construct and/or erect any temporary or permanent structure or from adversely dealing all that parcel of land known as Lamu/Hindi Magogoni/404.
- b. A declaration that the 1st Defendant is the rightful owner of all that parcel of land known as Lamu/Hindi Magogoni/404 and the Plaintiff be compelled to give vacant possession of the parcel of land to the 1st Defendant.
- c. An order compelling the removal and/or lifting of the caution lodged and registered against the suit property by the Plaintiff on 15/5/2018.
- d. Costs of this suit.
- e. Any further or other relief as the honourable court may deem necessary to grant.

The Evidence

4. The Plaintiff testified as the only witness in support of his case. He adopted his witness statement dated 22/8/2018 as his evidence in chief and produced the documents in the list of documents evenly dated as PEXH 1-16. He told the court that his certificate has never been revoked and implored that the 1st Defendant's certificate of title be revoked. During the cross-examination by Ms. Minyazi, counsel for the 1st Defendant, the Plaintiff told the court that he was issued with a letter of offer dated 29/2/1996 and managed to make payment for the suit property on 18/10/1996. He was issued with a certificate of outright purchase upon payment. He testified that he did not live on the suit property for security purposes, but that he would visit the same regularly and ultimately constructed a fence. He added that the 1st Defendant's title has no record in the Nairobi Ministry of Lands but only in Lamu. The Plaintiff added in re-examination, that his letter of offer was never cancelled and that there only exists a small hut on the suit property.
5. Similarly, the 1st Defendant was the sole witness in support of the defence case. He adopted his witness statement dated 23/5/2019 as his evidence-in-chief and produced the documents in the list of documents dated 23/5/2019 as DEXH 1-9, and those in the supplementary list dated 23/6/2023 as DEXH 10-12. During the cross-examination by Ms. Ng'ang'a, counsel for the Plaintiff, the 1st Defendant told the court that he was given the suit property by a certain task force upon an application made in 1985. He conceded that his statement read that he was given the suit property in 2000. He added that he was first given a letter of offer (DEXH 2) upon which he paid Kshs. 4500/- and issued with a receipt dated 24/1/2001 (DEXH 4). He added that the payment was for plot no. 487/404. He insisted that he was given a letter of allotment upon payment of the aforesaid amount, and that he continued to make payments at Mokowe Settlement Office. He told the court that he resided on Plot No. 404 with his family.



Plaintiff's Submissions.

6. Counsel for the Plaintiff framed two issues for determination- whether the Plaintiff is the legal owner of land parcel Lamu/Hindi Magogoni/404; and whether the 1st Defendant has good title to the suit property.
7. On the first issue, counsel for the Plaintiff submitted that her client was issued with a letter of offer in 1996 and subsequently a certificate of outright purchase through the Settlement Fund Trustees (SFT). She contended that the 1st Defendant alleged to have been allocated the suit property in 2000 but he had failed to produce a letter of allotment. Counsel noted that the green card indicates the register was opened on 10/6/1999, suggesting that by the time the 1st Defendant claims to have been allocated the land, a title had already been issued in favour of the SFT. Furthermore, there was no transfer document showing how the suit property was transferred from the SFT to the 1st Defendant. Counsel therefore urged that the Plaintiff was the lawful owner, having been allocated the land prior to its registration in the name of the SFT.
8. On the second issue, counsel for the Plaintiff submitted that the 1st Defendant's title was marred by irregularities from the point of alleged allocation to the issuance of title. She contended that although the 1st Defendant claimed to have charged the suit property on 23/2/2006 (DEXH3), the title deed on record indicates that it was not issued until 28/8/2006, raising a clear inference of fraud. Additionally, counsel pointed out that the letter of offer relied upon by the 1st Defendant pertains to a different parcel, namely Plot No. 487/404, and not the suit property. It was her position that the 1st Defendant had failed to demonstrate how he lawfully acquired the title and urged the court to cancel the same. In support of her submission, she cited *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, where the Court emphasized the duty of a title holder whose title is challenged to demonstrate the legality of its acquisition.
9. Regrettably, as at the time of writing this judgment, the 1st Defendant had not filed any written submissions despite having been granted an opportunity to do so.

Analysis And Determination

10. I have carefully considered the pleadings, the oral and documentary evidence presented, and the written submissions filed by counsel for the Plaintiff. The following issues arise for determination:
 - i. Whether the Plaintiff is the legal owner of land parcel Lamu/Hindi Magogoni/404;
 - ii. Whether the 1st Defendant holds a valid and lawful title to the suit property.
11. The Plaintiff's claim is anchored on a letter of offer dated 29/2/1996 and a certificate of outright purchase issued upon full payment on 18/10/1996. A copy of the green card confirms that the suit property was first registered in the name of the Settlement Fund Trustees (SFT) on 10/6/1999, consistent with the Plaintiff's case. The Plaintiff maintains that his allocation was never revoked, and he continues to assert a legal right over the land.
12. The letter dated 16/12/2021 from the Ministry of Lands confirms that the Plaintiff was initially offered the suit property and paid for it outright on 18/10/1996. It further alleges that the Plaintiff breached conditions of the Settlement Fund Trustees (SFT) scheme, leading to a notice being issued and the land subsequently reallocated to the 1st Defendant on 27/1/2000. While it is not inherently irregular for a discharge of charge to be registered years after issuance of title, especially in settlement schemes, the process must be lawful and properly documented.



13. In this case, the conditions the Plaintiff is alleged to have breached were not specified, nor was any evidence presented of a formal notice of breach, a revocation of the Plaintiff's allocation, or a valid transfer instrument from the SFT to the 1st Defendant. In the absence of such documentation, the reallocation process appears procedurally flawed and lacking in transparency. Furthermore, there is a notable inconsistency between the Ministry of Lands letter dated 16/12/2021, which states that the suit property was reallocated to the 1st Defendant on 27/1/2000, and the letter of offer produced by the 1st Defendant, which is dated 27/4/2000. No explanation has been provided to reconcile this discrepancy, further casting doubt on the legitimacy of the reallocation process. The burden to demonstrate lawful acquisition of title rested with the 1st Defendant, particularly once the Plaintiff produced a prior allocation and evidence of payment.
14. Moreover, while the 1st Defendant's letter of offer refer to the suit property, the exhibited deposit receipt relate to a different parcel, Plot 487/404. The green card clearly shows that the SFT was the registered owner before title was issued to the 1st Defendant. In *Munyu Maina v Hiram Gathiha Maina* [supra], the Court of Appeal emphasized that where the root of a title is challenged, the title holder must go beyond the title and demonstrate that the process of its acquisition was lawful. This was not done.
15. In view of the foregoing, I opine that registration of the suit property to the 1st Defendant was irregular. The Plaintiff's claim succeeds. Consequently, I issue the following final orders:
 - a. The title deed issued to the 1st defendants is hereby revoked;
 - b. The 2nd – 4th defendants shall act in concert with the Chief Land Registrar and the Land Registrar Lamu to rectify the land register by expunging the registration of the 1st defendant and subsequently registering the plaintiff as owner of the land known as and they shall also issue him with a title deed;
 - c. The 1st defendants shall bear the plaintiff's costs of the suit and the 2nd – 5th defendants shall bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF SEPTEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

MLD ELCPETE013/24-JDGT/DF-02.09.24/FH-11.03.25/LH-15.05.25/DJ 16.09.25F. Page 3 of 3

