



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

OF KENYA AT MALINDI

ELC CASE NO. 102 OF 2018

KENYA AFRICAN NATIONAL UNION.....

PLAINTIFF

-VERSUS-

EMMANUEL ZIRO LUGHANJE AND 6

OTHERS.....DEFENDANTS

JUDGMENT

1. The Plaintiff filed this suit asserting ownership of all the property on Plot No. 4090, including any improvements made thereon, along Malindi-Mombasa Road in Malindi Town within Kilifi County. This property is commonly known as the KANU Office.

2. Around September 1, 2008, the 2nd to 7th Defendants allegedly signed a Sale Agreement fraudulently to sell the KANU Office to the 1st Defendant for Kshs. 1,000,000,

without written approval from the National Executive Council.

- 3.** The Plaintiff asserts that the alleged sale proceeds were never transferred to them as required by its Constitution and that the purported sale was fraudulent and involved illegalities.
- 4.** The 1st Defendant entirely relies on its Statement of Defense, along with the Counter-Claim dated April 16, 2021, and on its list of supporting documents.
- 5.** At the conclusion of both the Plaintiff's and the Defendant's cases, the parties were instructed to file written submissions; they complied. The court appreciates the submissions of both counsels, Mr. Ole Kina for the Plaintiff and Mr. Omwancha for the Defendants, for their thorough and thoughtful consideration of the issues in this case.
- 6.** The Plaintiff's witness, Joseph Kasena Yeri, PW1, who manages the Plaintiff's Malindi Branch properties, testified that the alleged sale to the 1st Defendant by branch officials was invalid under the Plaintiff's Constitution, which requires approval from

the KANU National Governing Council and Trustees. He claimed the Malindi Branch officials lacked the authority to sell the property, rendering the transaction fraudulent.

- 7.** The defense called Emmanuel Ziro Lughanje, DWI, who testified that he bought the house from the Plaintiff through its officials. He was shown a letter confirming the sellers were Plaintiff officials, but had no proof they had authority from the Plaintiff's National Executive Council, which needed to approve the sale.
- 8.** Francis Chengo Ngowe, DW2, testified that he was an official at the Plaintiff's Malindi branch involved in selling the disputed house to PW1. He stated that branch officials are authorized to conduct sales and that they had written to KANU headquarters about it. When no response was received, they proceeded with the sale to prevent the house from being auctioned off. He admitted that the sale minutes lacked consensus but claimed that the opponents to the sale were impostors, not legitimate branch officials.
- 9.** Based on the materials before me, the issues I lay out for the court's decision are whether the Agreement to sell the disputed

property was fraudulent, whether the Defendants should pay mesne profits, whether the counterclaim is valid, and who should bear the costs of the main suit and counterclaim.

10. On September 1, 2008, the 1st Defendant purchased the property in question, which is a house without land, from the 2nd to the 7th Defendants, who allegedly acted as the authorized agents of the Plaintiff. The 1st Defendant immediately took physical possession of the premises.

11. The Plaintiff now seeks to challenge the validity of the transaction between the 1st Defendant and the 2nd to the 7th Defendants on the grounds of fraud, as described in paragraph 12 of the Plaint, as follows:

a) Executing an agreement to transfer the KANU office without written approval from the National Executive Council.

b) Failing to remit the proceeds of the alleged sale to the office of the National Executive Council.

c) Claiming to sell the property without proof of payment of the purchase price.

d) 2nd to 7th defendants, collecting rent from the tenants after selling the property to the 1st defendant.

e) The 1st Defendant and his father, Mr. Japhet J. Lughanje, who was the Plaintiff's Malindi Branch Chairman at the time, colluded to transfer the property without following the Plaintiff's established procedures; and

f) The 2nd Defendant executed subsequent tenancy agreements on behalf of the Plaintiff's Malindi Branch despite having already illegally sold the said property to the 1st Defendant.

12. As submitted by Mr. Omwacha on behalf of the Defendants, allegations of fraud are serious and generally require strict pleading and proof beyond the ordinary balance of probabilities, see **Emfil Limited v Registrar of Titles Mombasa and 2 others [2014] eKLR.**

13. Besides claiming alleged fraud, the Plaintiff provided no evidence except that the 1st Defendant bought the house exploiting his father's position as the Plaintiff's Malindi branch

Chairman.

14. Instead, the Plaintiff argues that the sale violated property disposal rules outlined in the Plaintiff's Constitution because Branch Officials lacked authority from the National Executive Council and Trustees to sell the house, as stated in Article 27 of the Plaintiff's Constitution.

15. A contract must have a legal purpose to be valid. An illegal contract offers no enforceable rights or obligations and has no legal effect. If a contract is explicitly or implicitly unlawful, it cannot be enforced, and neither party can derive benefits from it. A contract created unlawfully is void, and neither party gains rights from it.

16. In this case, the Plaintiff has demonstrated that the 2nd to the 7th Defendants had no legal capacity to sell the house in question since there was no approval from the National Executive Committee or its Trustees as provided under Article 27 of the Plaintiff's Constitution, which provides:

17. The Plaintiffs' case will succeed since the sale agreement between the 1st Defendant and the Plaintiffs' officials, named

as the 2nd to 7th Defendants, did not follow the procedure specified in Article 27 of the Plaintiff's Constitution. That article vested the power to sell the Plaintiff's property in the Trustees appointed by the National Executive Council, making the sale under the agreement dated September 1, 2008, and the transfer thereto null and void.

18. On the issue of mesne profit, I notice that the court had earlier directed the rent arrears to be remitted to the Plaintiff upon this court's consideration of the contempt proceeding. I will not make any findings under this head.

19. The plaint having succeeded in the manner stated above, the counter-claim stands dismissed.

20. Regarding costs, I will order the Defendants to bear the costs for the Main suit and the counterclaim.

Dated, signed, and delivered virtually at Malindi on this 8th day of October, 2025.

**E. K. MAKORI
JUDGE**

In the presence of:

Mr. Kandia for the Plaintiff

Mr. Omwancha for the Defendants