



**Makale v Wambugu & 3 others (Environment and Land Case
001 of 2022) [2025] KEELC 6655 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6655 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 001 OF 2022**

AE DENA, J

OCTOBER 3, 2025

BETWEEN

MISHI ABWAO MAKALE PLAINTIFF

AND

JOSEPH GICHUKI WAMBUGU 1ST DEFENDANT

MWANAIKI ATHMAN ZONDO 2ND DEFENDANT

**KWALE LANDS ADJUDICATION & SETTLEMENT OFFICER 3RD
DEFENDANT**

KWALE LAND REGISTRAR 4TH DEFENDANT

JUDGMENT

1. The Plaintiff avers by a plaint dated 14/01/2022 that she is the lawful beneficial proprietor of all that piece of land known as Kwale/Kombani Settlement Scheme/1541 (suit property) having purchased it from Nassoro Ali Mwasalimu in the year 2015 pending official government adjudication and issuance of title for the Kombani Settlement Scheme Adjudication Section. She claims that the title to the suit property was unlawfully and fraudulently registered by the 3rd and 4th defendants to the 2nd Defendant who sold it to the 1st Defendant. The suit property is now unlawfully and fraudulently registered in favor of the 1st Defendant. That the Defendants conspired to steal the same from the Plaintiff.
2. The Plaintiff prays as follows; -
 - i. Land title No. Kwale/kombani Settlement Scheme/1541 be recalled and surrendered by the 1st Defendant to the Land Registrar's office Kwale and the names of the 1st Defendant Joseph Gichuki Wambugu be removed and cancelled by the 4th Defendant therefrom and the 4th Defendant be ordered to register the names of the Plaintiff as proprietor of Title No. Kwale/ Kombani Settlement Scheme/1541.



- ii. That the 1st Defendant be ordered to return and surrender Title No. Kwale/Kombani Settlement Scheme/1541 within 7 days from the date of the Order failing which the names of the 1st Defendant in Title No. Kwale/ Kombani Settlement Scheme/1541 be declared to stand rescinded, revoked and cancelled from the register of Lands at Kwale Lands Registry and the Land Registrar Kwale be ordered to effect such vacation revocation and cancellation of the names of the 1st Defendant Joseph Gichuki Wambugu from Title Kwale/Kombani Settlement Scheme/1541.
- iii. That the Land Registrar Kwale County be ordered to forth with cancel and remove the names of Joseph Gichuki Wambugu from Title No. Kwale/Kombani/Settlement Scheme/1541 and register the names of the Plaintiff Mishi Abwao Makale as the lawful and valid proprietor of Title No. Kwale/Kombani Settlement Scheme/1541.
- iv. The 1st, 2nd, 3rd and 4th Defendant's jointly and severally pay damages as pleaded to the Plaintiff for loss and suffering and denial from the use of the land and inconvenience occasioned to the Plaintiff.
- v. The Honourable Court be pleased to grant any other further Orde rand relief as may be just in the circumstances.
- vi. The costs of this suit and interest on damages as awarded in paragraph 15 above be borne by the Defendants jointly and or severally.

Plaintiffs Evidence

3. The Plaintiff called 3 witnesses in support of her case.
4. PW1 was Hadija Sarai Makale the plaintiff's mother. She testified pursuant to a Power of Attorney from the plaintiff whom she informed the court lives in the USA. The witness adopted the contents in the plaint, the plaintiffs witness statement filed on 14/01/21 and her own statement dated 15/9/24 as her evidence in chief. It was her evidence that she is familiar with the suit property having visited it several times. Firstly she was accompanied by Nassoro Mwasalimu the owner and the Chief Kombani to identify the boundaries. Thereafter on 8/01/2015 a sale agreement was executed between the said owner and the plaintiff and payment of Kshs 380,000/- made. They then entered the property then known as No. 398 Gidoomal Farm and deployed a worker who used to cultivate therein.
5. PW1 informed the court the 2nd defendant owned the adjacent plot to the suit property and had shown them her boundaries and was also aware that the plaintiff had purchased the adjacent suit property. That the said Gidoomal farm was adjudicated became Kwale Kombani Settlement Scheme. Upon adjudication and survey in 2016 the same was earmarked beacons 1251-1254. That despite delay on issuance of titles the suit property was registered as Kwale Kombani SS/1541 but was currently registered under the 1st defendant.
6. According to PW1 the land was stolen from the plaintiff who though featured in the physical plan and was present during adjudication, title was issued to the 2nd defendant who already had her own plot. PW1 asserted she too was present during the adjudication and saw the 2nd defendant standing at her adjacent plot. The 2nd defendant never claimed the plaintiffs plot then. That in 2021 upon discovery that the 2nd defendant had title to the suit property the adjudication officer, Sub chief, the 2nd defendant and Mr. Nassoro visited the suit property. That at the site the 2nd defendant confessed that she did not know how the title ended up in her name when the land did not belong to her. That she had another title for a neighbour making 3 titles in her name.



7. PW1 added that the 2nd Defendant admitted she sold the suit property to the 1st Defendant and had no answer to why she never returned the titles but opted to sell. PW1 reported the matter to DCI Kwale where three meetings were held in her presence and that of the 1st and 2nd Defendants where the 2nd Defendant admitted the suit property did not belong to her. The 1st defendant insisted he held valid title upon purchase of the land. Parties did not agree and were advised by the Land adjudication office to approach court thus the present proceedings. She informed the court that as at her last visit to the property on 12/5/2024 the 1st Defendant had put up a perimeter wall around the property in place of the initial barbed wire fence.
8. Cross examined by Mr. Otieno who held the brief of Mr. Aminga for the 1st and 2nd Defendant PW1 stated that before purchase Nassoro had no letter of allotment or title deed but showed them a letter from the chief confirming he was the owner of the land. She conceded she discovered the 2nd Defendant's registration 6 years after purchase by the Plaintiff. PW1 stated she did not know Mwanajuma Nyamawi and could not confirm if she was the bonafide owner of the suit property.
9. The witness stated she had not constructed anything on the suit property though they used to do farming. That the 1st Defendant was currently in occupation. That the caution she registered was after the 2nd Defendant had obtained title and sold the property to the 1st defendant.
10. Cross examined by Mr. Waga for the 3 and 4th Defendant, she confirmed they were claiming plot No. 398 which upon survey became plot 1541. PW1 conceded that based on the letter dated 28/9/23 from the Land Adjudication Office and accountability list, plot 1541 is in the names of Mwanaidi Athman Zondo the 2nd defendant. That there was no one living on suit property currently and clarified in re-examination that the 1st defendant has constructed structures in a neighbouring plot.
11. PW2 was Amiri Idi Mwangomberwa. He adopted his witness statement dated 10/5/22 and affirmed its content. According to his witness statement he served as Chairman of the Local Waa Location Settlement Committee for the Kombani Settlement Scheme. That the Committee maintained a register of the names of the allottees and their plot beacons. That the committee together with the survey officials physically inspected every plot in the scheme to verify the ownership before recording them in the committees register.
12. The statement confirms the plaintiff as owner recorded as No.53 on the Committee register of allotment. That there was no objection to this allocation. That the issuance of the title of the same to the 2nd Defendant was not lawful as she had no capacity to sell or transfer the same. He also confirmed he was a witness to the sale agreement between the plaintiff and Nasoro Ali Mwalimu.
13. Cross examined by Mr. Aminga the witness testified he knew the 2nd Defendant very well and who was allocated a plot in the scheme. He could not remember the plot number. That he did not know Mwanajuma and has never seen her. That after adjudication while titles were issued to allottees the Plaintiff was not issued with one, instead it was issued in the name of the 2nd Defendant. He confirmed he received a complaint from the Plaintiff after titles were issued and not before then. That the committee used to keep a register but the 2nd register didn't have the Plaintiff's name.
14. Upon further cross examination by Mr. Waga he asserted that based on what the Committee did on the ground, the 2nd Defendant had her own land neighbouring the suit property. He was physically involved in the exercise.
15. The witness indicated in re-examination that he was available on the ground together with the surveyors and the 2nd Defendant did not make a claim over the suit property.



16. PW3 was Rashid Juma Mwamsema a resident of Kombani. He testified that he knew both the plaintiff and 2nd Defendant. That he was the secretary to the allocation committee. He met the 1st defendant only once at the DCI where the 2nd Defendant stated she got the titles by bad luck and 1541 was not her title. He adopted his witness statement dated 10/5/22 as his evidence in chief.
17. Cross examined by Mr. Aminga PW3 confirmed from paragraph 8 of his witness statement that plot 398 was recorded under the Plaintiff though he did not see any adjudication record in favor of the Plaintiff. He told the court he could not remember the size of plot 398. He also did not know the size for plot 1541.
18. Cross examined by Mr. Waga PW3 told the court there was adjudication in 2006 which was nullified and redone in 2016. That plot 398 was under the 2006 adjudication. That there were many people that got multiple titles. Though it was resolved that the titles be returned, the 2nd Defendant did not.
19. The witness clarified that the DCI were investigating title 1541. The Defendant admitted before DCI 1541 did not belong to her. That he was present during the entire survey preceding issuance of title. That he served in both the 2006 and 2016 committee. That on the ground Mishi and Nassoro both claimed plot 1541. That the 2nd Defendant was not present though she was latter given her plot which neighbours 1541.
20. PW4 was Nassoro Ali Mwasalimu a resident of Kombani since his birth in 1968. He affirmed he sold land plot 398 to the plaintiff and signed the sale agreement dated 8/01/2015. He did not have title then but the same was under Gidomaal. That he together with the Plaintiff were present during survey when the beacons were recorded. That allotees waited for titles and the 2nd Defendant never claimed plot 398. The title came out in the 2nd Defendant's name who later indicated she was ready to refund money to the Plaintiff since she had sold the land. PW4 however informed her that since he was through with the Plaintiff the 2nd Defendant should approach her directly. The witness adopted his witness statement dated 10/5/22.
21. Cross examined by Mr. Aminga PW4 testified that though the 2nd Defendant wanted to refund the money PW1 refused demanding the suit property. He confirmed that his statement referred to Mwanajuma but insisted he did not know her. He affirmed that according to the sale agreement he was selling plot 398, the size of the land was not indicated but it was a portion of his land. That he was present during adjudication and he understood the process. That the 2nd Defendant was an immediate neighbour to the plot PW4 sold to the Plaintiff. He reiterated that while he was not involved in generating the new numbers, plot 398 was the same as the plot he sold to the Plaintiff.
22. Cross examined by Mr. Waga the witness agreed he did not have any document to show he was allocated plot 1541 but insisted that his evidence is that this was a settlement scheme.
23. He clarified in re-examination that the plot 398 he sold to the Plaintiff was initially Gidoomal farm and he was given the same as a resident of Kombani. What he sold to the Plaintiff tallied with what is on the ground. He didn't know who changed the title into the 2nd Defendant. He pointed that the accountability list did not disclose the maker. He was present during adjudication and no one produced the 2nd Defendant ID as standing in for her. That he was at the DCI when the 2nd Defendant told the investigators the land, she sold to the 1st Defendant was not her land.
24. With the above the plaintiff's case was marked as closed.



1st and 2nd Defendants' case

25. The 1st and 2nd Defendants responded to the suit vide a defence dated 9/02/2022. They denied the allegations of fraud in acquisition of the suit property. That the title issued to the 2nd Defendant and then sold to the 1st Defendant was a valid title. They had no role in acquiring the same other than as citizens being granted title after due payment. Further that the 1st Defendant is a bonafide purchaser for value. That the Plaintiff was guilty of laches and not entitled to the remedies sought.
26. DW1 was Joseph Gichuki Wambugu the 1st Defendant. A businessman in real estate and hospitality. DW1 adopted the witness statement dated 4/3/2022 as his evidence in chief. He informed the court that he is the registered owner of plot 1541 which he purchased from the 2nd Defendant who had previously sold to him plot 1282 which he both fenced as the two were adjacent. Before purchase he confirmed ownership at the Land adjudication office as well as from a green card. That upon transfer he obtained a green card showing him as the registered owner. The witness highlighted all the supporting documents in respect of the transaction between him and the 2nd Defendant which he also produced as DW1 EX 1-4.
27. The witness added that before these proceedings there were no claims against the parcel. He was latter summoned to DCI where he recorded a statement together with neighbours and the 2nd defendant and where he met the plaintiff for the 1st time. He denied participating in fraud noting that he had known the 2nd Defendant and her extended family who owned neighbouring plots. That the 2nd Defendant informed him about the Dzuya family who used to cultivate on the land whom she termed as interested parties. That he presented the said family to the land settlement office to confirm the status of the register and found the parcel was in the name of the 2nd Defendant.
28. DW1 also testified that the bus stage known as mduruma referred to Mwanajuma of the said Dzuya family that used to cultivate on the suit property. That he met PW4 for the time at the DCI. PW4 also tried to sell the suit property before adjudication to the Dzuya family. According to DW1, PW4 never owned any land and the entire block was owned by the 2nd Defendant's family.
29. Upon cross examination by Mr. Asige DW1 affirmed the correctness of contents of his witness statement. He confirmed the suit property was in a settlement scheme and the plots were issued to residents of the area. That he was not a resident of Kombani. He had not presented to court the title of the previous owner of plot 1541 as well as his title which was in the custody of AFC being collateral for a loan of Kshs 6million. DW1 affirmed his witness statement did not mention the names Mwanajuma Mduruma and Dzuya family. He did not find it necessary to include them.
30. DW1 further admitted he signed the acknowledgement of final payment dated 20/10/2020 with Mwanajuma Dzuya Nyamawi for the reason that the 2nd Defendant introduced them as interested parties. That he did not buy the land from them but they signed for their own historical purposes. He agreed Mwanajuma was not registered as an interested party against the property. That the Kshs.150,000/- referred in the acknowledgement note was received under a petty cash voucher which he did not find necessary to present to the court. He told the court he was the one who drafted the acknowledgement note. That though the subchief was to witness he never showed up. That during search at the adjudication office the Dzuya family did not feature in the register. That the 2nd Defendant never told the DCI the plot did not belong to her but also pointed that at the DCI everyone recorded their statement individually.



31. The witness reiterated that based on the documentation the 2nd Defendant was the legal owner of the suit property. He indicated the charge has not been discharged as there is an outstanding Kshs 3.8 million payable within the next 1 year.
32. Cross examined by Mr. Waga DW1 stated at the land adjudication office he was not informed of any complaint against the suit property. He only came to know of the issues when he was summoned to the DCI when he had already bought the land and obtained title. He reiterated he was an innocent purchaser who was also guided by the documents from the government. That no criminal charges have been preferred against him or the 2nd Defendant.
33. DW1 clarified in re-examination that the title of the previous owner was surrendered to the land office. Mwanajumas interest was not a registrable interest and has not complained about him owing her any money. That it was not a requirement in law that he should be a resident of Kombani and live in the land he owns. That he could not vouch on the correctness of the content of the 2nd Defendants witness statement. That he paid the Dzuyas as a precaution.
34. DW2 was Mwanajuma Dzuya Nyamawi. She told the court she used to live in Kombani for about 10 years with her husband Dzuya (now deceased) and with some of her children. She and her husband bought the land from Nassoro for Kshs 30,000/-. Her husband died after 5 years but she continued cultivating the land. Her child fell ill at her home in Ndavaya and she had to leave. The 2nd Defendant was her neighbour and she requested her to step in for them during adjudication. Later the 2nd Defendant informed her that Nassoro had stolen the land and there was no space for her. The title was issued in the 2nd Defendant's name and DW2 was not pleased but they later agreed with her she would give her money on selling the land.
35. DW2 informed the court the land was sold to the 1st defendant and she was present. She witnessed the 2nd Defendant receiving money but she did not know the amount. The buyer 1st Defendant gave her a gift in the form of money.
36. Cross examined by Mr. Asige the witness testified that the 2nd defendant gave her a gift of 25,000/- because she had lived on the land for 10 years. That during adjudication the 2nd Defendant registered the land as her own. That when she and her husband purchased the land from Nassoro it became their land. The 2nd Defendant confessed at Kwale in the presence of the DCI that the land was not hers. She did not know how much the 2nd Defendant was paid by the 1st Defendant. The witness was not present during adjudication but the 2nd Defendant. The 2nd Defendant informed her about the title coming out in her name though not immediately.
37. Cross examined by Mr. Waga the witness told the court her land was consolidated with the 2nd Defendant and her relative's land. She paid Nassoro Kshs.30,000/- which he has never refunded. That the 2nd Defendant told her Nassoro had conned her by selling the 2nd Defendant's land. She was aware that the land belonged to the 2nd Defendant.
38. The witness clarified in cross examination that she was contented with the Kshs.25,000/- and had no grudge against the 2nd Defendant.

The 3rd and 4th Defendants Case

39. The 3rd and 4th Defendants responded to the suit through Statement of Defence 24/08/2022. It is averred that the defendants are not privy to the transaction that led to the acquisition of the suit property. The particulars of illegality and fraud are denied. They exercised their duty under the [Land adjudication Act](#) in good faith and the suit should be defeated by dint of the provisions of section 52 of



the Society's Act Cap 108 of the Laws of Kenya. Further that the court lacked jurisdiction to determine the matter by dint of section 9(2)(3) of the Fair Administrative Action Act 2015 and article 159(2) (c) of the Constitution of Kenya 2010.

40. DW5 was Nicholas K. Sanya Land Adjudication & Settlement Officer in Kwale. He produced the documents listed in the list of documents dated 28/9/2023 on behalf of the 3rd and 4th Defendants. He told the court that according to the accountability list the suit property belongs to the 2nd Defendant. He only had the accountability list because the Kombani scheme was undertaken under Rapid Results Initiative. The list was prepared and submitted for title preparation. That they received a complaint about the suit property but advised the individuals to come to court as the property was already registered and therefore no longer under their jurisdiction.
41. Cross examined by Mr. Asige the witness indicated he was not involved in the survey exercise. The scheme did not go through the normal process of adjudication. Everything was done by the headquarters. The complaint was lodged when the land was already registered and the same would fall under the Land Registrar Kwale. That if the 2nd Defendant denied the plot was hers there are mechanisms for her to return the land by swearing the same under oath and or execute transfer in favor of the complainant. In the absence of these the court can compel her to do so subject to there being sufficient evidence.
42. DW5 admitted that the search dated 28/9/23 is not signed. The accountability list is also not signed and comprises only 4 pages of list of names. One of the pages bears 'Kombani Settlement Scheme'.
43. Cross examined by Mr. Aminga the witness stated the source of the accountability list was Land adjudication Settlement Office Kwale and confirmed the list is an extract of the whole document. The two exhibits were forwarded by WhatsApp from Mr. Karanja their coordinator in Nairobi. The exercise was under a presidential directive undertaken by a multi-agency team. The complaint was a general complaint just like any other that can arise in a scheme.
44. The witness reiterated in re-examination that the documents he produced were from their office
45. The 3rd and 4th Defendants' case were closed.
46. The 2nd Defendant testified on her own behalf and adopted her witness statement dated 18/3/2022 as her evidence in chief. She confirmed selling the suit property to the 1st Defendant and received Kshs.1.2 million. That at the time of sale there was no one claiming the land. That she is the one who permitted Mwanajuma to cultivate the land free of charge who tilled the land until she got tired and returned it to her. However, she gave Mwanajuma Kshs.20,000/- as way of thanking her because they used to cultivate together. She confirmed receiving the entire purchase price in the agreement of sale dated 30/10/2020 and had no complaint against the 1st defendant in this regard. That she never admitted to DCI the land was adjudicated to her by mistake. She told the court they had agreed with Mwanajuma that the land would be adjudicated to the 2nd Defendant.
47. On cross examination by Mr. Asige the witness affirmed the contents of her witness statement that stated she knew Mwanajuma as the legal and beneficial owner of the land and also as the owner of the land (1541). She conceded that the statement did not mention she had given the land to Mwanajuma to cultivate. That she remembers informing the DCI the land belonged to Mwanajuma. That at adjudication she rightly gave her details because the land had been given to her family by their patriarchs. She was not given the same individually.



48. Cross examined further by Mr. Waga the 2nd Defendant indicated that there had been a previous complaint against the parcel but she did not know the complainant which she clarified in re-examination was the Plaintiff.
49. The 2nd Defendant reiterated in re-examination that she is the one who allowed Mwanajuma to cultivate on the land. Mwanajuma never complained.
50. DW6 was Omari Athmani Mwasanite a resident of Kombani. He adopted his witness statement dated 18/3/2022 as his evidence in chief. That he owned land in Kombani and the 2nd Defendant was his neighbour and sister. That Mwanajuma came looking for land together with her husband and was allowed to use the suit property by the 2nd Defendant. That he was summoned to DCI following a complaint by Nassoro.
51. Cross examined by Mr. Asige the witness confirmed he was not present when Mwanajuma borrowed the land from the 2nd Defendant. That it is the 2nd Defendant who told him about it. That he was not on-site during survey of the Gidoomal farm and specifically the suit property.
52. Upon further cross examination by Mr. Waga the witness stated he has his own land and the 2nd Defendant had her own land. They were neighbours and he got the land from Gidoomal.
53. The 1st and 2nd Defendants' case were marked as closed.

Submission

54. The court issued directions on the filing of submissions and parties complied albeit outside the timelines given by the court. Since judgement was deferred at the instance of the court and the same being available on record, the court shall deem them as duly filed in the interests of justice. The 3rd and 4th Defendants did not file submissions.

Plaintiffs' submissions

55. The Plaintiffs' submissions are dated 5th June 2025. Rehashing the plaintiff's case as pleaded and the evidence led both documentary and oral in support thereof and as against the defendant's case and evidence led it is submitted that the Plaintiff lawfully purchased what is now Plot Title No. Kwale/ Kombani Settlement Scheme/ 1541 from PW3, Nassoro Ali Mwasalimu and was entitled to have the same registered in her favour pursuant to the survey and adjudication exercise.
56. It is asserted that although the 1st Defendant alleges to have purchased the suit property plot from the 2nd Defendant he knew or had reason to know that the same did not belong to the 2nd Defendant and that is the reason why the 1st Defendant sought DW4, Mwanajuma Dzuya Nyamawi to cover up and sanitize the fraudulent sale and purchase thereof. The Acknowledgment of Final Payment dated 29.10.2020 is termed as irrefutable evidence of the conspiracy between 1st Defendant, 2nd Defendant and Mwanajuma Dzuya Nyamawi, to defraud the Plaintiff of the registration and issuance of title to Plot No. 1541 in favour of the Plaintiff. That the alleged beneficiary interest of Mwanajuma Dzuya Nyamawi was not disclosed or registered against the title.
57. It is further submitted the transfer dated 30th October in 2020 produced by the 1st and 2nd Defendants is a Transfer of land Title No. Malindi/Ramada/05 and not the suit property.
58. Referring to the provisions of section 26(1), section 80 of the *Land Registration Act* and Article 40 of the *Constitution* of Kenya 2010, it is urged that the evidence confirm beyond doubt Plot No. 1541 was unlawfully, fraudulently, illegally, unprocedurally and corruptly registered first in favour of the 2nd



Defendant in June 2018 and later to the 1st Defendant in November 2020. That the same should be impeached and cannot be afforded constitutional protection.

59. On the 1st Defendant's plea of innocent purchaser for value without notice of other claims over the suit property it is submitted that based on the analysis the same has not met the requirements set out by the Court of Appeal in *Katende V Haridar & Company Limited* [2008] 2 E.A.173. The court is urged to order rectification of the register and Order that Title to Plot No. 1541 be registered and issued in favour of the Plaintiff.

The 1st and 2nd Defendants' Submissions

60. The 1st and 2nd Defendants' submissions are dated 17th June 2025.
61. Three issues were identified for determination namely 1) whether the Plaintiff did acquire the subject property from Nassoro Ali Mwasalimu (PW3), 2) If so, whether the said property was subsequently registered and allocation made in favour of 2nd defendant and 3) whether the 2nd Defendant did irregularly sell and transfer the property to the 1st Defendant under circumstances amounting to fraud and collusion with the 3rd and 4th Defendants.
62. It is submitted that there is no clear nexus between plot 398 (whose size is unknown but was admittedly the subject of conversion into a Settlement Scheme) and 1541. Parcel 1541 measures 0.22 Ha (approximately half an Acre) as opposed to 1 1/2 Acres. There is nothing tangible to make this Court hold that plot 398 which the Plaintiff allegedly bought from 2nd defendant is the same plot 1541 which the 1st Defendant bought from the 2nd Defendant.
63. That neither the 2nd Defendant nor Mwanajuma Dzuya Nyamawi have a claim against the other.
64. The Defendants urge that there is no dispute that the 1st defendant paid the full purchase price for the property and subsequently had it transferred into his names. The 1st Defendant owns another property adjacent to the suit property and performed due diligence before purchase.
65. It is contended that the evidence of the 3rd and 4th Defendants is both in favour of the 2nd Defendant and demonstrates the process as having been above board. That the particulars of fraud and collusion remain mere allegations and the court should not engage in a wild goose chase to speculate over an administrative process in the absence of tangible evidence.
66. Citing the Supreme Court decision in Petition No. 8 of (E010) of 2021(2023) (30KLR) *Dina Management Limited vs County Government of Mombasa & 5* which set out the parameters for a Court to consider in determining a bona fide Purchaser it is submitted; -

The 1st Defendant acquired land from the 2nd Defendant who was the first allottee from the Government. The 3rd and 4th Defendants have supported the 1st Defendant's case and cast no aspersions on the adjudication process. There is nothing further the 1st Defendant ought to have done and failed to do as far as due diligence is concerned.

67. It is urged that Section 15 & 16 of the *Land Adjudication Act* provides for the resolution of disputes. Conflicting claims to an interest in land are determined under the Act. There is no indication as to whether the Plaintiff herein did invoke the Provisions of the Act since Equity aids only the vigilant.
68. In conclusion the 1st and 2nd Defendants submit that the Plaintiff has failed to satisfy on a balance of probabilities that she held beneficial interest in the suit land and is not entitled to any of the prayers sought. The case ought to be dismissed with costs.



Analysis and Determination

69. I have carefully considered the pleadings, examined the evidence together with the submissions of the rival parties and analyzed the law applicable. This court postulates that the following issues commend determination; -
1. Whether the plaintiff has a beneficiary interest in the suit property to warrant registration of the same into her name.
 2. Whether the 2nd Defendant irregularly and fraudulently acquired the suit property.
 3. Whether the 1st Defendant is a bonafide purchaser
 4. Is the plaintiff entitled to the orders sought?
 5. Who bears the costs of this suit?
70. My understanding of this dispute is that the plaintiff claims she is the one entitled to be registered as the lawful absolute proprietor of the land parcel Kwale/Kombani Settlement Scheme/1541 for the reasons that she purchased the same from one Nassoro Ali Mwasalimu way before the its registration under the Kombani Settlement Scheme. She discovered after adjudication and survey that the title was fraudulently registered in the names of the 2nd Defendant with collusion of the 3rd and 4th Defendants. That the 2nd Defendant knowing that the parcel did not belong to her proceeded to sell and transfer it to the 1st Defendant with collusion of the 3rd and 4th defendants.
71. On the other hand, the 1st Defendants' case is that he is an innocent purchaser for value without notice of the adverse claims herein. He bought the parcel from the 2nd Defendant upon due diligence and confirmation of title by the 4th Defendants and is the duly registered proprietor of the suit property. The 1st and 2nd Defendants deny they were involved in fraud resulting in the acquisition of the suit property.

Whether the plaintiff has a beneficiary interest in the suit property to warrant her registration of the same into her name

72. The burden of proof in civil cases is on a balance of probabilities and it is on the person who alleges. Section 107 1) (2) of the *Evidence Act* stipulates as follows; -
- (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.
73. In the case of *Stephen Wasike Wakhu & Ano. Vs. Security Express LTD* (2006) eKLR the court commenting on the provisions of section 107 posited that a party seeking justice must place before the court all material evidence and facts which if considered in light of the law would enable the court to arrive at the decision as to whether the relief sought is available.
74. The burden lay on the plaintiff to provide sufficient evidence to prove their claim on ownership of the suit property as pleaded. PW1 produced a set of 14 documents as listed in the list of documents dated 14/01/22, 7/11/2023 and 15/5/2024. I will refer to some of the documents in the course of this decision.



75. The Plaintiff's case is that she purchased a portion of a surveyed but unregistered land measuring approximately one and half acres curved from land known as Gidoomal plot Number 398 from the lawful owner Nassoro Ali Mwasalimu for Kshs. 380,000/-. An agreement for sale titled 'The Agreement of exchanging plot from one another' dated 8/01/2015, Acknowledgement of Receipt of Payment dated 8/01/2015 and Folio extract from Register of Allotment of Kwale Kombani Settlement Scheme.
76. Based on the evidence adduced in court it is not in dispute the suit property Kwale/Kombani Settlement Scheme/1541 was birthed from Gidoomal farm in Kombani Waa location Kwale County, which was put up for adjudication and settlement under the Kombani Settlement Scheme by the Government of Kenya. This is confirmed in the letter dated 25/02/2019 addressed to the Assistant County Commissioner Matuga Sub County Kennedy N.G Njenga Senior Assistant Director of Land Adjudication & Settlement produced by PW1. The letter states that land was previously LR. No. Kwale/Tiwi Block/18- Gidmal. From this letter therefore plot 398 is a portion of the said larger land and my understanding is that the suit property is just but a portion curved out from the said plot 398.
77. Section 3(3) of *Law of Contract Act* provides that –
- No suit shall be brought upon contract for disposition of land unless, the contract which the suit is founded upon is in writing, signed by all parties thereto and the signature of each party has been attested by witnesses who is present when the contract was signed.
78. I have reviewed the document titled 'The Agreement of exchanging plot from one another' dated 8/01/2015. I had no qualms with the title of the document as what is pertinent is the content which clearly depicted there was a purchase between one Nasoro Ali Mwasalimu owner of the plot and buyer of the plot Mishi Abwao Makale and a purchase price. The document is signed by the two parties in the presence of their witnesses. The document therefore met the requirements of the law.
79. The Plaintiff was also to prove the root of her title. It is important to note that she bought unregistered land. In the case of *Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR Onguto J (May his soul rest in peace) addressed the issue of determining ownership of an unregistered parcel of land, he stated that:

“In determining the above issue, it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history. The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an un broken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title paramount certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’”: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437. The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant's beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease



agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al”.

80. ‘The Agreement of exchanging plot from one another’ dated 8/01/2015 speaks to the above dictum. However, the agreement perse would not suffice, for the court must also establish that Nasoro Ali Mwasalimu was seized of capacity to sell the alleged portion of the land to the plaintiff in other words owned the said portion. PW1 asserted in cross examination that while the vendor did not have a letter of allotment, he had a letter from the Chief confirming he was the owner of the plot.
81. The above letter was produced as PW1 Exh 2. It is dated 8/01/2015 signed by Mohamed C. Gakurya Chief WAA location. The content is in Kiswahili and confirms Nasoro Ali Mwasalimu as owner of plot Gidoomal 398 as listed in the list of the shamba. I note that the authenticity of the chief’s letter has not been questioned by the defence witnesses before court. The said Nasoro Ali Mwasalimu testified as PW4 and confirmed selling the plot to the Plaintiff.
82. There was an effort to show that the same plot was sold to Mwanajuma Dzuya Nyamawi (DW2) and her husband by Nassoro but there was no documentary proof to confirm that the plot was sold to Mwanajuma. Mwanajuma stated in her evidence in chief that she bought the land from Nassoro which then would mean she was acknowledging that Nassoro owned the plot 398. DW2 testified in cross examination that she knew the suit property belonged to the 2nd defendant which was a contradiction to her own witness statement. While the said Mwanajuma testified that the land was hers it baffled the court that under cross examination she did not even know what was allegedly received on her behalf as the purchase price by the 2nd defendant allegedly on her behalf. I will revisit Mwanajumas testimony later in this judgement.
83. It was alluded by the 1st defendant during his testimony that the entire block was owned by the 2nd Defendant’s family but no proof was adduced in court. Infact my reading of the 2nd Defendant witness statement which she adopted does not indicate the entire block was owned by her family. She confirmed that Nassoro owned a plot not far from hers.
84. The 1st Defendant produced a letter dated 10/8/2021 addressed to J. S. Asige counsel on record for the plaintiff alluding to double dealing where the said Nassoro is said to have sold the land to several other people including his neighbour. The defendant did not call this neighbour to corroborate the information.
85. As it is the court was only left with the Chiefs letter dated 8/01/2015 signed by Mohamed C. Gakurya Chief WAA location which was uncontroverted to confirm that Nassoro was the owner of the plot 398 and had capacity to sell its entirety and or a portion thereof.
86. Based on the foregoing it is the finding of this court that the plaintiff has demonstrated a beneficial interest in the suit property.
87. Having made the above finding, the question that must be addressed by the court is why then wasn’t the plaintiff registered as the absolute proprietor?

Whether the 2nd defendant irregularly and fraudulently acquired the suit property.

88. The Plaintiff’s case and evidence is that upon purchase of the portion from Nassoro she waited for her title but the same came out in the 2nd Defendant’s name. According to PW1 she was present during survey of the land accompanied by Nassoro and the Plaintiff her daughter. The plaintiff’s case is that Plot No. 398 in Gidoomal Farm was assigned beacons nos. 1251; 1252; 1253 and 1254. This was



supported by PW1 exh 4 which is a folio extract from the register item 53 listed as Mishi Abwao Makale and who is the plaintiff herein.

89. Nasoro (PW4) testified that he was indeed present during the survey and the 2nd Defendant never claimed the portion. The 2nd Defendant did not confirm that she claimed the property firstly for herself or her family or even for Mwanajuma.
90. It is not in dispute that a local Committee (Local Waa Location Allocation Settlement Committee) was in place to assist in the Kombani settlement program. This is also confirmed in the letter dated 25/02/2019. Amiri Idii Mwagomberwa the Chairman testified before court as (PW3). PW3 affirmed he was on the ground together with the surveyors and the 2nd Defendant whom he knew very well did not make a claim over the suit property.
91. Moreover the 2nd Defendants' evidence had a lot of inconsistencies. Her own witness statement which she adopted categorically stated that the suit property belonged to Mwanajuma her neighbour and not herself. This resonates with the evidence that she did not claim the suit property at adjudication.
92. According to Mwanajuma Dzuya witness statement dated 18/03/2022 she was informed by the 2nd Defendant that the property was registered under the 2nd Defendant who ... 'actually confirmed that she had three title deeds and she assumed that her property had been subdivided.' Again, this confirms that Mwanaidi never claimed the suit property during adjudication on behalf of Mwanajuma assuming the request made to her by Mwanajuma is true. I say assuming so because Mwanaidi did not categorically state in her witness statement that she was requested as such but stated she was advised to step in good faith.
93. Moreover, the title that came out had no endorsement that she was holding it in trust for Mwanajuma. Mwanajuma testified in cross examination by Mr. Asige that the 2nd Defendant did not inform her immediately the title came out in her name but only did so later. So where is the good faith on the part of the 2nd Defendant amidst the allegations by her witnesses that she stepped in for Mwanajuma in good faith. The evidence of the very person she is said to have stepped in for negates the alleged 2nd Defendant's good faith in acquiring the suit property. She stated in her evidence in chief that she was not happy that the title came out in Mwanaidi's name, meaning her expectation was that the title would come out in her name (Mwanajuma's name).
94. Hard pressed in cross examination by Mr. Asige the 2nd Defendant affirmed the contents of her witness statement that she knew Mwanajuma as the legal and beneficial owner of the land and also as the owner of the land (1541). She conceded that her statement did not mention she had given the land to Mwanajuma to cultivate. She indicated she remembered informing the DCI the land belonged to Mwanajuma.
95. But I must add and agree with the plaintiffs' submissions that the introduction of Mwanajumas ownership into this entire matrix was a sham. If it was planned then the said Mwanajuma and the 2nd Defendant failed to sustain the narrative during cross examination. She and the 2nd Defendant failed to create confidence in the court that she was the owner of the land and that the Defendant stepped in good faith for her.



96. To me the actions of the 2nd Defendant were very dishonest as will be seen later in this judgement in the documents she facilitated Mwanajuma to sign. Black's Law Dictionary 9th Edition indeed defines 'fraud' as: -

“A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.”

97. I think I have said enough to demonstrate why the court must make a finding that the 2nd Defendant dishonestly and fraudulently acquired the suit property.

98. In view of the foregoing analysis what would be the fate of the 1st defendant who holds title registered in his name allegedly as an innocent purchaser.

Whether the 1st Defendant is a bonafide purchaser

99. Who is an innocent purchaser for value? The court in the case of Lawrence Mukiri vs The Attorney General & 4 others (2013) eKLR defined a bona fide purchaser for value as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. That the purchaser must prove he holds a certificate of title, He purchased the property in good faith, He had no knowledge of the fraud, The Vendor had apparent valid title, He purchased without notice of any fraud and that he was not a party to any fraud. Indeed, this was drawn from Uganda Court of Appeal in Katende v Haridas and Company Ltd. [2008] 2 E.A 173.

100. The Supreme Court of Kenya in Petition No. 8 of (E010) of 2021(2023) (30KLR) Dina Management Limited vs County Government of Mombasa & 5 stated thus; -

[90] The Black's Law Dictionary 9th Edition defines a bona fide purchaser as: “One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

(91) The Court of Appeal in Uganda in Katende v Haridar & Company Ltd [2008] 2 E A 173, defined a bona fide purchaser for value as follows: “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that: (1) he holds a certificate of title; (2) he purchased the property in good faith; (3) he had no knowledge of the fraud; (4) he purchased for valuable consideration; (5) the vendors had apparent valid title; (6) he purchased without notice of any fraud; and (7) he was not party to the fraud.

101. The Apex Court added; -

(92) On the same issue, the Court of Appeal in Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 [2015] eKLR stated as follows:

“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a VALID and LEGAL title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”



102. The current registered owner of the suit property is the 1st Defendant as evidenced in the Green Card opened on 29/6/2018 produced by DW1. Entry No.3 & 4 thereof reveal that as at 10/11/2020 Joseph Gichuki Wambugu was the registered proprietor. Title was issued on the same day.
103. The *Land Registration Act* speaks to a title deed being conclusive evidence of ownership of land unless the same has been procured through fraud or misrepresentation. Section 26 (i) provides: -
- “The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except –
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
104. The 1st Defendant’s title is being challenged by the plaintiff. The Court of Appeal in *Munyu Maina v Hiram Gathiba Maina* Civil Appeal No. 239 of 2009 [2013] eKLR, where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.
105. To establish whether the 1st defendant is a bona fide purchaser for value therefore, the court must first go to the root of the title, right from the first allotment. Also see *Dina Management Ltd* Supra.
106. For me I think the 1st defendant failed to demonstrate his innocence in this purchase. The introduction of the acknowledgement of final payment dated 29/10/2020 which DW1 confirmed in cross examination he drafted and also executed raised eyebrows. My review of the agreement reveals it read thus; -
- ‘This agreement is entered for and on behalf of the family of Mwanajuma Dzuya Nyamawi, who claim to be the beneficiary of this land. The family members are present and do here by (sic) witness this agreement’
107. The inclusion of the above clause does not resonate with the rest of the content of the agreement since the Vendor who is the 2nd defendant is confirming receipt of the full purchase price. The Dzuyas are just witnesses and it does not state they are receiving any money and the extent of their beneficial claim. DW1 testified that he paid money to the Dzuyas as a precaution. The agreement only states they are witnesses. He did not produce the payment voucher either.
108. The court found it perturbing why DW1 had to take precaution if he was sure that the 2nd defendant was the owner of the suit property.
109. It is noteworthy the above alleged payment predated his registration as proprietor having been made on 29/10/2020 and the registration on 10/11/2020 meaning to him it was material to the transaction. Yet DW1 did not find it necessary to include the information about the Dzuya family in his witness statement as he stated in cross examination by Mr. Asige.



110. Further DW1 produced Agreement for Sale dated 30th October 2020 which date is after the one dubbed Acknowledgement of the final payment agreement (29/10/2020). I make this observation because the sale agreement does not at all make a disclosure of the arrangements with the Dzuya family which by this time had already been disclosed to him. Why the silence?
111. Further DW1 could not give any good explanation why the Chief who could have been the only independent person to the agreement and whom he had put as a witness did not sign the Acknowledgement of the final payment agreement. The fact that he did not show up was not convincing given the circumstances of the case. There was still an opportunity to go back to the chief's office.
112. All the above raised a doubt in the courts mind as to the bonafides of the 1st Defendant in the acquisition of the suit property.
113. Consequently, I hold the view that the 1st defendant did not obtain the title in a genuine manner as he took part in trying to sanitise his transaction by colluding with the 2nd Defendant.
114. The other test is that for the plea of bonafide purchaser to be available one must show they obtained good title. I have already discussed elsewhere in this judgement that the 2nd Defendant dishonestly acquired the suit property which she admitted did not belong to her. The 1st Defendant root of title is traced to the 2nd Defendant and therefore it cannot stand the test of a good title. Even assuming he may not have participated in the 2nd Defendants initial acquisition Section 26(1)(b) does not require the title holder to have participated provided that the title was acquired through a corrupt scheme. A corrupt scheme involves dishonest conduct. In any event I have shown the 1st Defendant participated in trying to sanitize his purchase.
115. It is therefore the finding of this court that the 1st Defendant is not a bonafide purchaser. As a result, his title cannot be protected by the court. In this regard the court is further guided by the Supreme Court holding in *Dina Management Limited (Supra)* where the Apex court held thus'-
- (111) Article 40 of the *Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of the *Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.
116. I also find support in the Court of Appeal dictum in the case of *Wambui Vs Mwangi & 3 Others* (Civil Appeal 465 of 2019) (2021) KECA 144 (KLR) where it was held that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedurality or otherwise a product of a corrupt scheme.
117. The court has noted the defendant's submission that there is no clear nexus between plot 398 (whose size is unknown but was admittedly the subject of conversion into a Settlement Scheme) and the suit property. That the plots could be different. Based on the evidence this was not an issue. All the witnesses supporting the 2nd Defendant case were clear that it is the same suit property. PW4 reiterated that the property he sold and the one on the title tallied. This evidence was not controverted by any tangible evidence that the properties in the title and the one on the ground did not tally. On the issue of the size it will remain the size in the title document issued which is the property the plaintiff is claiming.



118. The court must also interrogate the behaviour of the 3rd and 4th Defendants who filed a joint statement of defence. Nicholas Sanya Land Adjudication & Settlement Officer in Kwale testified on behalf of these defendants. He admitted in cross examination that he was not present during the survey. The court therefore could only rely on the evidence of those who were present during the survey to help in determining the ownership before the titling. These included the Chairman (PW2 and Secretary (PW3) of the local committee tasked with helping on the identification on the ground.
119. Mr. Sanya's evidence was that the scheme was done under RRI initiative, and that the exercise was not conducted in the normal manner since everything was done by the headquarters. I think having considered the totality of the evidence in court there was no evidence upon which I could hold the 3rd and 4th Defendants liable for the reason that I have already shown where the blame lies. It is not the Kombani Settlement Scheme that is under scrutiny in this matter but an individual claim therein.

Is the plaintiff entitled to the orders sought?

120. The next question for consideration by the court then is whether the plaintiff is entitled to the prayers sought in the plaint. The reliefs sought by the plaintiff have been highlighted at the beginning of this judgement.
121. Clearly the 1st Defendants title cannot be sustained and remain in the parcel register and all entries attendant to it must be rectified by cancellation. Indeed, section 80 of the [Land Registration Act](#) has clothed the court with power to cancel any titles acquired through fraud.
122. Section 80 of the [Act](#) provides that: -
- “Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
123. I have seen the prayer (iv) for damages for loss and suffering and denial from the use of the land and inconvenience occasioned to the Plaintiff. The claim is pleaded at paragraph 15 of the plaint. The rule as to special damages is that the same must be specifically pleaded and strictly proved see [Equity Bank Ltd vs Gerald Wangomb'e Thuni](#) [2015] eKLR). No evidence was led in support of this claim. The court will not belabour the point. It is declined.
124. The upshot of the foregoing is that the Plaintiffs have provided sufficient evidence to prove their claim on ownership of the suit property as against the 1st and 2nd Defendant. I am inclined to find that the Plaintiffs have discharged the burden of proving their case on a balance of probabilities as required in law as against the 1st and 2nd Defendants.
125. Judgement is hereby entered for the plaintiff against the 1st and 2nd defendant jointly and severally in the following terms; -
- i. Land title No. Kwale/kombani Settlement Scheme/1541 be recalled and surrendered by the 1st Defendant to the Land Registrar's office Kwale and the names of the 1st Defendant Joseph Gichuki Wambugu be removed and cancelled by the 4th Defendant therefrom and the 4th Defendant be ordered to register the names of the Plaintiff as proprietor of Title No. Kwale/ Kombani Settlement Scheme/1541.
 - ii. That the 1st Defendant be ordered to return and surrender Title No. Kwale/Kombani Settlement Scheme/1541 within 60 days from the date of this judgement failing which the names of the 1st Defendant in Title No. Kwale/ Kombani Settlement Scheme/1541 be



declared to stand rescinded, revoked and cancelled from the register of Lands at Kwale Lands Registry and the Land Registrar Kwale be ordered to effect such vacation revocation and cancellation of the names of the 1st Defendant Joseph Gichuki Wambugu from Title Kwale/Kombani Settlement Scheme/1541.

- iii. That the Land Registrar Kwale County be ordered to within expiry of the 60 days above cancel and remove the names of Joseph Gichuki Wambugu from Title No. Kwale/Kombani/ Settlement Scheme/1541 and register the names of the Plaintiff Mishi Abwao Makale as the lawful and valid proprietor of Title No. Kwale/Kombani Settlement Scheme/1541.
- iv. The costs of this suit be borne by the 1st and 2nd Defendants jointly and or severally.

Orders accordingly.

JUDGEMENT DATED SIGNED AND DELIVERED THIS 3RD DAY OF OCTOBER 2025.

HON. LADY JUSTICE A.E DENA

JUDGE

03.10.2025

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of: -

Mr. Asige for the Plaintiff

Mr. Aminga for the 1st & 2nd Defendant

No appearance for the 3rd & 4th Defendant

Daniel Disii – Court Assistant

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