

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC NO. 211 OF 2015

BAHATI CHARO	1ST
PLAINTIFF/APPLICANT	
ANDERSON JAMHURI	2ND
PLAINTIFF/APPLICANT	
DANCAN KARISA MWINYI	3RD
PLAINTIFF/APPLICANT	
SHILLINGI MWINYI	4TH
PLAINTIFF/APPLICANT	
VERSUS	
KARISA AMIN RAMADHAN	1ST
DEFENDANT	
HEIDE MARIE GAPNER	2ND
DEFENDANT	
DIRECTOR OF LAND ADJUDICATION & SETTLEMENT	3RD
DEFENDANT	
LANDS REGISTRAR, KILIFI	4TH
DEFENDANT	
THE HON. ATTORNEY GENERAL	5TH
DEFENDANT	

RULING

1. The subject of this ruling is a Notice of Motion application dated 11th July

2025 in which the Plaintiffs seek the following reliefs:

- 1) THAT the Honourable Court be pleased to order and direct the 1st and 2nd Defendants to forthwith surrender to this Honourable Court and/or to the 4th Defendant (Lands Registrar, Kilifi County) the original title deed for land parcel KILIFI/MAVUENI 'B' SETTLEMENT SCHEME/1188, in compliance with the decree issued herein on 23rd January 2024;**
- 2) THAT in default of the immediate and complete surrender of the original title deed pursuant to Order 1 above, the 3rd and 4th Defendants, Director of Land Adjudication and Settlement and Lands Registrar, Kilifi County, respectively, be ordered to dispense with the production of the title deed for KILIFI/MAVUENI 'B' SETTLEMENT SCHEME/1188 and forthwith implement the decree issued on 23rd January 2024**

by rectifying the register and registering the Plaintiffs as proprietors of KILIFI/MAVUENI 'B' SETTLEMENT SCHEME/1188, and issue a new title deed in the Plaintiffs' names, notwithstanding the failure or refusal of the 1st and 2nd Defendants to surrender the original title;
3) THAT the costs of this Application be provided for.

2. The motion which is brought under the provisions of Section 31 of the Land Registration Act, 2012 and Sections 1A, 1B and 3A of the Civil Procedure Act is based on the grounds listed therein and those in the supporting affidavit sworn on even date by **Bahati Charo**, the 1st Plaintiff. He stated therein that despite service of the decree issued herein on 23rd January 2024 and numerous requests, the 1st and 2nd Defendants have refused and continued to neglect to surrender the original title for **Kilifi/Mavueni 'B' Settlement Scheme/1188** (hereinafter also referred to as "*the suit property*") thereby frustrating the implementation of the court's orders and decree.
3. He annexed a copy of the decree issued on 23rd January 2024, forwarding letter, and correspondence and various notices.
4. The 1st Defendant opposed the application. He filed a Replying Affidavit which he swore on 9th October 2025 wherein he deposed that that the application was grounded on misrepresentation of material facts and was intended to mislead the Court. He recalled that the Applicants had earlier filed an Amended Plaint dated 18th September 2020 seeking, *inter alia*, rectification of the register on allegations of fraud. He deposed that pursuant to directions issued by the Court on 23rd January 2024, a

verification exercise was conducted by the Land Registrar, the Land Adjudication Office and the Survey Office on 14th November 2024, culminating in a report recommending that both parties retain the parcel numbers allocated to them within the scheme subject to possible shifting or amendment on the map as guided by the Court. A copy of that report was annexed as **“KAR-2”**.

5. He further relied on a letter dated 15th October 2024 from the Kilifi Sub-County Surveyor, which confirmed the existence of extensive discrepancies within the Kilifi/Mavueni “B” Settlement Scheme, acknowledged that he had extensively developed the suit land, and indicated that the Survey Office was unable at the time to effect any rectification. A copy of that letter was annexed as **“KAR-3”**.
6. The Respondent deposed that neither the Court order nor the subsequent reports sanctioned cancellation or surrender of his title as alleged by the Applicants. He added that it was publicly acknowledged, including by the Director of Land Adjudication & Settlement and the MAVUENI “3B” Land Group Committee, that the entire settlement scheme suffered systemic adjudication and allotment anomalies warranting a scheme-wide rectification rather than the isolated cancellation sought against him. Copies of the relevant correspondence were annexed as **“KAR-4”**
7. He contended that granting the orders sought would have prejudiced him and would have afforded the Applicants a second bite at the cherry outside the statutory adjudication framework, notwithstanding express

institutional acknowledgment of a broader rectification mandate. He urged the Court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

8. Having carefully considered the Application, the Supporting Affidavit, the Replying Affidavit together with the annexures thereto, the sole issue for determination is whether the application is merited.
9. The issue that was identified in the judgment in this case for determination was whether the 1st and 2nd defendants fraudulently acquired the suit property, whether they are holding the property in trust for the plaintiffs and whether the Kilifi Land Registrar should be ordered to amend and rectify the record by registering the plaintiffs as owners of Kilifi Mavueni “B” Settlement Scheme/1188. It was established at the hearing that the plaintiff was in possession of the suit property. The plaintiff had been issued title to plot no 1103, a plot he was not in physical occupation of. By the time of issuance of that title, he was in occupation of the suit property. On the other hand, though the defendants were issued with title to the suit property occupied by the plaintiff, they were in occupation of plots no 1206 and 1207 in the same scheme.
10. Both parties were therefore issued with titles for land that they were not in occupation of at the time, and this court found in its judgment that the issue of fraud does not thus arise.

11. The present complaint by the Applicants in their application is that the 1st and 2nd Defendants had refused to surrender the original title document for Kilifi/Mavueni “B” Settlement Scheme/1188 notwithstanding the decree issued on 23rd January 2024, and that such refusal has impeded the implementation thereof. The remedy sought in the application is, first, an order compelling surrender, and second, in the alternative, that the Land Registrar and Director of Land Adjudication proceed to register the Plaintiffs and issue them with a new title notwithstanding such non-surrender.
12. Upon consideration of the record, it is clear that pursuant to the decree of 23rd January 2024, the matter was referred to the technical officers namely, the Land Registrar, the Land Adjudication Office and the Survey Office, for a **verification exercise** of the parcels within Mavueni “B” Settlement Scheme, specifically plot numbers **188,1203,1206** and **1207**. It was equally not in dispute that the said verification was undertaken and concluded on **14th November 2024** and culminated in a recommendation that both parties retain the parcel numbers allocated to them within the scheme, subject to any adjustments or shifts on the map as may be directed.
13. In addition, the communication from the Kilifi Sub-County Surveyor dated 15th October 2024 confirmed the existence of systemic discrepancies within the entire settlement scheme, acknowledged development on the disputed parcel, and expressly stated that the office

was not in a position to carry out rectification at that time. Correspondence from the Director of Land Adjudication and from the MAVUENI “3B” Committee further acknowledged that the anomalies affecting the scheme were not isolated to the parties herein but were broad and scheme-wide in nature.

14. Against that backdrop, nothing in the decree of 23rd January 2024 or in the subsequent expert report directed or mandated the cancellation, surrender or nullification of the 1st and 2nd Defendant’s title. To the contrary, the post-decree process favored preservation of allocations subject to a broader rectification framework. In those circumstances, and in view of the express verification record, I am not persuaded that the Applicants have laid any factual or legal foundation to warrant issuance of an order compelling surrender of the title or directing unilateral rectification of the register in the manner sought.

15. The Motion dated 11th July 2025 is therefore devoid of merit. It is hereby dismissed with costs.

Dated, signed and delivered at Malindi on this 4th day of November, 2025.

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi Njoroge".

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**