

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT GARISSA**

**ELC CASE NO. E005 OF 2022**

**KYALO**  
**MULINGE.....PLAINTIFF**

**VERSUS**  
**GRACE KARAMBU.....**  
**DEFENDANT**

**JUDGMENT**

1. The Plaintiff, Kyalo Mulinge, commenced this suit by way of a Plaint dated 29<sup>th</sup> June 2022 seeking the following reliefs:

**1) This Honourable Court be pleased to give an order of permanent injunction that the Defendant do vacate the property TRCG/MDG/R124.**

**2) That the Defendant do pay rent arrears totalling Kshs. 290,000/=.**

**3) That the cost of this suit be borne by the Defendants.**

#### **4) General damages.**

2. The Plaintiff's case, as set out in the Plaint, is that he is the lawful owner of Plot No. TRCG/MDG/R/124 (hereinafter **"the suit plot"**), having purchased it from one Adhan Omar Abagana at a consideration of Kshs. 38,000/-. He avers that the plot measures approximately 50 feet by 100 feet. Upon purchase, he applied for and was issued with an allotment letter by the then County Council of Tana River on 15<sup>th</sup> October 2010.
3. The Plaintiff contends that he thereafter developed the property by constructing a two-roomed house and fencing it with barbed wire. In July 2010, he averred he entered into a tenancy arrangement with one Daniel Mulinge, his brother, at an agreed monthly rent of Kshs. 5,000/-. He stated the said Daniel honoured the tenancy obligations until June 2017, when he informed him that he would no longer pay rent and that he had left the Defendant, Grace Karambu, residing on the premises. The Plaintiff averred that despite several notices to vacate, the Defendant had

unlawfully continued in occupation of the suit property without paying rent, thereby accruing arrears of Kshs. 290,000/- as of May 2022.

4. The Plaintiff averred that the Defendant's continued occupation of the house was illegal and had caused him loss and inconvenience, and that unless restrained by an order of this Court, he would continue to suffer financial loss and mental anguish.

5. The Defendant, Grace Karambu, filed a Statement of Defence and Counterclaim dated 14<sup>th</sup> December 2022 in which she denied the Plaintiff's claim in its entirety and urged that the suit be dismissed with costs. In her Counterclaim, she asserted that she was a co-owner of the suit plot, which she claimed to jointly own with her estranged husband, Daniel Muia Mulinge, who is the Plaintiff's brother.

6. The Defendant averred that she and Daniel Muia acquired the main plot from the Plaintiff in 2009 and later acquired

an additional plot to construct a toilet from one Adhan Omar Abagana, a neighbour and the original owner of the plot. She asserted that together with her estranged husband, they developed the property by constructing a residential house and a toilet, and that she has been in actual possession and has resided thereon since 2011, together with her two children.

7. The Defendant further averred that she was married to Daniel Muia in 2009 under customary law, and that the suit plot constituted their matrimonial home and joint investment. She added that she had consistently paid land rates to the County Government of Tana River and that her husband deserted the matrimonial home in 2016, leaving her in exclusive possession.

8. It is her case that the issue of ownership of the suit property had previously featured in the Garissa Chief Magistrate's Court, Children's Case No. 17 of 2016, and Criminal Case No. E513 of 2022.

9. In her Counterclaim, she seeks the following reliefs:

- 1) A declaration that the suit property is jointly owned by herself and her estranged husband, Daniel Muia Mulinge;**
- 2) A declaration that she possesses a legitimate matrimonial beneficial interest in the property known as Plot No. TRD/232/08/11;**
- 3) A permanent injunction restraining the Plaintiff, his dependents, agents or servants from interfering with her quiet possession of the suit property;**
- 4) Costs of the suit and counterclaim with interest; and**
- 5) Any other relief the Court may deem fit to grant.**

### **Evidence of the Parties**

10. The Plaintiff, Kyalo Mulinge, testified as PW1. He stated that he purchased the suit plot and subsequently

constructed a building on it. Upon his transfer from the area, he stated he leased the premises to his brother, Daniel Muia, in 2009. The Plaintiff further stated his brother relocated to Makueni in December 2012 but continued to pay rent to him until 1<sup>st</sup> July 2017.

11. The Plaintiff testified that after his brother ceased paying rent, he requested the Defendant, who had remained in occupation, to either continue paying rent or vacate from the premises. However, the Defendant neither paid nor responded to his demands. He further stated that on 16<sup>th</sup> June 2022, his manager informed him that the Defendant had commenced new construction works on the property. He testified that he instructed that the matter be reported to the Directorate of Criminal Investigations (CID), which was done, and also directed that an official search be conducted, which confirmed that he was still the registered owner of the plot. His advocate subsequently wrote to the police concerning the unauthorized construction, and the works were stopped.

12. In cross-examination, the Plaintiff stated that the sale agreement he relied upon did not bear a title heading and did not specify the location of the property but, it described the plot as measuring 50 by 100 feet and was dated 10<sup>th</sup> June 2008. He confirmed that Titus Mwangangi (PW2) handwrote the agreement and, that the seller signed by writing his name.

13. Regarding the tenancy, the Plaintiff confirmed that the agreement referred to Plot No. TRCG/MDG/R/124 and acknowledged that since purchasing the property in 2008, he had never personally occupied it. The Plaintiff affirmed that the Defendant had lived on the plot since 2010. He admitted that his brother and the Defendant had a child together but denied that they were husband and wife. The Plaintiff stated that he was paid rent last in 2017 and it was then that his brother informed him that he had separated with the Defendant and that he would no longer continue paying rent for the plot.

14. Titus Wambua testified as PW2. He stated that both the Plaintiff and Daniel Muia were his cousins and that he came to know the Defendant in 2017 when she was residing in a house at Madogo. He recalled that between 2010 and 2012, the Defendant and Daniel lived together in the same house at Madogo, after which Daniel was transferred to Makueni in 2012.

15. PW2 testified that he was involved when the Plaintiff purchased the suit plot from Adhan Omar in 2008. He testified that in 2022, the Plaintiff called him and informed him that there was someone constructing on his plot at Madogo and when he visited the site on 17<sup>th</sup> June, he found workers building an additional house thereon. He reported the matter to the Police, resulting in the Defendant's arrest, although the court later rejected the charge sheet.

16. The witness affirmed that the Plaintiff had never resided on the plot since purchasing it in 2008. He denied the Defendant's assertion that the Plaintiff sold the

property to his brother in 2009/2010. He however affirmed the Defendant and Daniel Muia started residing in the house that he said was constructed by the Plaintiff in 2010.

17. Daniel Muia testified as PW3. He stated that the Plaintiff, Kyalo Mulinge, was his elder brother. He told the Court that he first met the Defendant in 2007 while he was working in Garissa. He denied ever marrying her, whether under customary law or otherwise, and clarified that although they had been acquainted, there was no marriage ceremony conducted either in Meru or in Machakos.

18. He testified that at the time, he occupied a house within the Public Works compound in Garissa and was also engaged in running a business that included a bar, a hotel, and a butchery at the Public Works canteen. He denied that the Defendant assisted him in managing any of those businesses between 2008 and 2011. He further denied that he and the Defendant jointly purchased a plot or a house at Madogo.

19. PW3 explained that he entered into a lease agreement with his brother, the Plaintiff, for occupation of the suit plot. He stated that the Defendant was not involved in that arrangement and that they never acquired the property together. He denied constructing any building or extending the toilet on the plot and stated that he had never dealt with Adhan Omar, the person who sold the property to the Plaintiff.

20. PW3 confirmed that he connected electricity and water to the premises for his own convenience and that in 2012, he invited the Defendant to reside with him at the suit property, but he later relocated to Makueni in December of the same year and left the Defendant at the premises. He acknowledged that he and the Defendant had one child, born on 7<sup>th</sup> February 2012, but their relationship deteriorated soon thereafter.

21. PW3 confirmed that the Defendant had filed proceedings against him in Garissa Children's Case No. 17 of 2016, and

that on 19<sup>th</sup> August 2019, they recorded a consent in those proceedings. He also noted that the Children's Court had barred him and the Plaintiff from evicting the Defendant from the suit plot.

22. PW3 denied any collusion with the Plaintiff to remove the Defendant from the property. He maintained that he was a tenant of the Plaintiff and that there existed no marriage between him and the Defendant. The witness denied that the Defendant had any proprietary in the suit property.

23. The Plaintiff called the Senior Physical Planner, Tana River County and Land Administration Department, who testified as PW4. He confirmed that the document marked as Exhibit PEX5 was a copy of an allotment letter issued by the former Tana River County Council in favour of Josphat K. Mulinge. An objection was, however, raised on the admissibility of the document on the ground that it was a copy, and the Court upheld the objection, disallowing its production.

24. PW4 was referred to Exhibit PEX3, which he identified as a letter of temporary occupation emanating from the County Department of Lands and Planning. He confirmed that it was a formal letter of allotment duly signed and bearing reference number TRCG/LPP/19605. He stated that the reference number was system-generated and could only be issued once an application had been made by the prospective allottee. He explained that a letter of allotment would not issue unless the supporting documents were verified and found to be genuine.

25. PW4 testified that the applicant in this instance had presented a sale agreement dated 10<sup>th</sup> June 2008 in support of the application. He added that the letter of allotment indicated that the plot had been surveyed and a plan prepared. He stated that the applicant had paid land rates for the years 2022 and 2023, though he did not produce receipts for application or registration fees. He confirmed that at the time of the allotment, there were existing developments on the land, but there was no record of any approved building plans. He noted that there

was no written acceptance of the allotment, as required under the grant's conditions.

26. In re-examination, PW4 explained that the reference number in the letter of allotment serves to identify the specific plot and that their records contain corresponding details of the parcel. He clarified that plots within the County are allocated either on the basis of documented transactions or through direct allocation by the County Government.

27. The Defendant, Grace Karambu, testified as DW1. She stated that she resided in Madogo, where she operates a business. She confirmed that she was the Plaintiff's Sister-in-law, having been married to his brother, Daniel Muia. She testified that she lives on the suit plot together with her two children.

28. The Defendant told the Court that she and her husband purchased the suit plot from the Plaintiff in 2010 and that they jointly constructed the house standing thereon. She

explained that at the time they purchased the plot, she and her husband were running a canteen business at the Public Works compound in Garissa, operating a club, a butchery, and a hotel. She stated that she came to Garissa in 2007 and had resided there ever since. According to her, they initially lived within the Ministry of Works compound before relocating to Madogo in 2011 after acquiring and constructing a house on the suit plot.

29. The Defendant further testified that they also bought an additional portion of land from Adhan Omar for the construction of a toilet and bathroom. She stated that when her husband later abandoned the matrimonial home in 2016, the Magistrate's Court ruled that she should continue residing on the suit property with their children.

30. In cross-examination, the Defendant stated that she was married to Daniel Muia in 2007 and that they went to his home in Machakos in 2009. They lived together from 2007 to 2018 and had two children, one of whom passed away. She further testified that she had another child prior to the

marriage, whom her husband accepted and raised as his own.

31. The Defendant stated that they purchased the suit property from the Plaintiff in 2010 for Kshs. 38,000/-, paid in cash, and that both contributed to the purchase and subsequent construction. She, however, explained that her husband relocated with the original sale agreement. She stated that they had witnesses at the time of purchase, though none testified in these proceedings.

32. The Defendant added that while the canteen business was registered in her husband's name, she was responsible for operating the kitchen and butchery. The electricity connection was registered in her husband's name, but she was the one who paid the bills. She further stated that they purchased the additional plot from Adhan Omar for Kshs. 5,000/-, which her husband paid in cash.

33. Adhan Omar Abagana testified as DW2. He stated that he resided at Madogo and knew the Plaintiff, the Defendant,

and Daniel Muia. He testified that he sold land to the Plaintiff, Kyalo Mulinge, but noted that the Plaintiff had never taken possession or occupied it. According to him, it was Daniel Muia and the Defendant who built the house on the suit plot together. He explained that he sold an additional portion of land to Daniel for Kshs. 5,000/-, to enable him to construct a toilet.

34. In cross-examination, DW2 reiterated that he sold the main portion of the land to the Plaintiff for Kshs. 38,000/-, and later sold an extra piece to Daniel for Kshs. 5,000/-. He said he did not know the relationship between the Plaintiff and Daniel at the time, but knew the Defendant and Daniel as husband and wife because they lived together on the property.

35. The testimonies of Albanus Kitheka (DW3), Joel Mungathia (DW4), and Moses Warui (DW5) all supported the Defendant's account regarding her marital relationship with Daniel Muia and their joint acquisition and development of the suit property.

36. They each confirmed that the Defendant and Daniel Muia lived together as husband and wife from around 2009; DW4, who is the Defendant's elder brother, testified that he was personally present when Daniel Muia was introduced to the Defendant's family and he affirmed that Daniel during one of the occasions gave his acceptance of the Defendant's child that she had from a previous relationship.

37. The three witnesses (DW3, DW4 and DW5) further testified that Daniel and the Defendant jointly operated a business at the Ministry of Works canteen in Garissa, consisting of a bar, hotel, and butchery. DW3, who worked for them as a manager, stated that the business proceeds were used to purchase and develop the plot at Madogo, where Daniel constructed a house for the Defendant and their family. DW5, a former resident within the Ministry of Works compound, corroborated this, adding that Daniel had informed him of the purchase and his intention to build the house for the Defendant.

38. Collectively, the testimonies of these witnesses presented a consistent narrative that the Defendant and Daniel Muia were married under customary law, lived together as husband and wife, and jointly invested in the acquisition and development of the suit property using proceeds from their business ventures.

### **Parties Written Submissions**

39. The Plaintiff filed written submissions dated 20th August 2025. Counsel for the Plaintiff identified five issues for determination touching on the ownership of the suit property; the existence of a tenancy relationship, the claim for rent arrears; validity of the Defendant's Counterclaim; and the reliefs sought.

40. On ownership, Counsel submitted that the Plaintiff had adduced credible documentary and oral evidence demonstrating that he is the lawful owner of Plot No. TRCG/MDG/R/124, having purchased it from Adhan Omar in 2008 and later obtained a letter of allotment from the

Tana River County Council. It was argued that under **Section 26(1) of the Land Registration Act**, a registered proprietor's title is prima facie evidence of ownership and can only be challenged on grounds of fraud or misrepresentation, which were neither pleaded nor proved by the Defendant. Counsel relied on the case of **Munyu Maina v Hiram Gathiha Maina (2013) eKLR**, emphasizing that once the Plaintiff's root of title was established, the burden shifted to the Defendant to disprove it which she failed to do.

41. On the tenancy, Counsel for the Plaintiff submitted that the Defendant's occupation of the premises arose from a tenancy arrangement between the Plaintiff and his brother, Daniel Muia, who was paying monthly rent of Kshs. 5,000/-. The Defendant, having been left in the premises after Daniel vacated, continued as a tenant but defaulted in paying rent from 2017 onwards. Counsel argued that the tenancy satisfied the requirements of **Section 3(1) of the Law of Contract Act**.

42. Regarding the claim for rent arrears, Counsel maintained that the Defendant's continued occupation without payment constituted unlawful enrichment and that the arrears of Kshs. 290,000/- had been specifically pleaded and proved.

43. On the Defendant's counterclaim, Counsel submitted that it was predicated on an alleged marriage and claim for matrimonial property. Yet, the Defendant failed to establish proof of marriage under either the Marriage Act or customary law. It was contended that even assuming a marriage existed, she had failed to prove contribution towards the purchase or development of the property as required under **Section 14 of the Matrimonial Property Act, 2013**. Counsel argued that reliance on electricity bills or a single rent receipt did not meet the threshold of ownership contribution.

44. Counsel for the Plaintiff submitted that the Plaintiff had discharged his evidentiary burden under **Sections 107 to 109 of the Evidence Act**, having proved ownership,

tenancy, and rent arrears. The Court was urged to enter judgment in favour of the Plaintiff as prayed and to dismiss the Defendant's Counterclaim with costs.

45. The Defendant filed written submissions dated 24<sup>th</sup> September 2025. Counsel for the Defendant submitted that the Plaintiff's claim was founded on forged and unreliable documents. It was argued that the Plaintiff admitted that the tenancy agreement relied upon was not executed on the date it purported to have been signed, and that the reference number TRCG/MDG/R/124 was generated only in 2022, long after the alleged agreement. Counsel further submitted that the witness statement purportedly filed by Adhan Omar in support of the Plaintiff's case was disowned by him at the hearing, confirming that he had never made such a statement. It was contended that these inconsistencies rendered the Plaintiff's documentary evidence suspicious as they could be products of forgery.

46. Counsel further submitted that the Plaintiff's assertion that he had built a house on the land was false, since Adhan Omar testified that the house standing on the suit plot had been constructed jointly by the Defendant and Daniel Muia. It was argued that the Plaintiff's testimony, as well as that of Daniel Muia, was riddled with contradictions and perjury, undermining their credibility.

47. Counsel further submitted that the allocation of the plot to the Plaintiff by the County Government of Tana River was irregular and unlawful, since the power to allocate public land vested in the National Land Commission. Even if the allocation was deemed valid, Counsel contended that the Plaintiff failed to comply with the mandatory conditions of allotment which include; application for allocation, payment of requisite fees, acceptance of the offer, and settlement of annual land rates.

48. Counsel argued that the Plaintiff's claim was motivated by malice, coming shortly after the Defendant filed Garissa Children's Case No. 17 of 2016 against Daniel Muia, in which the Children's Court restrained both the

Plaintiff and Daniel from removing the Defendant from the suit property. The suit, it was submitted, was therefore a collusive attempt to defeat the Defendant's occupation rights.

49. Counsel maintained that the Defendant had demonstrated both direct and indirect contribution towards the acquisition and development of the property, which was bought and built during the subsistence of her marriage to Daniel Muia using proceeds from their joint business at the Ministry of Works canteen. The Defendant also proved that she had connected water and paid rates for the plot.

50. The Defendant's Counsel thus urged the Court to find that the Defendant has a legitimate matrimonial beneficial interest in the suit property, to dismiss the Plaintiff's claim, and to allow the Defendant's Counterclaim with costs.

## **Analysis and Determination**

51. Having carefully considered the pleadings, the evidence adduced by both parties, and their respective written submissions, the Court identifies the following issues for determination:

**i) Whether it was the Plaintiff or the Defendant jointly with Daniel Muia who owned Plot No. TRCG/MDG/R/124 (the suit plot)?**

**ii) By whom was the house on the suit land constructed?**

**iii) Whether the Defendant was a tenant on the suit premises and if any rent arrears were owned by her to the Plaintiff?**

**iv) What reliefs, should the Court grant?**

52. It is not disputed that indeed the Plaintiff purchased a plot at Madogo in 2008 from one Adhan Omar Abagana. The said Adhan Omar testified as DW2 on behalf of the Defendant and he confirmed that he indeed sold the plot

in dispute to the Plaintiff for Kshs 38,000/- in 2008. The only point of divergence is that the Defendant pleaded and testified that the Plaintiff in 2009 sold the plot to her husband, Daniel Muia who was the Plaintiff's brother, and that they (Defendant and Daniel Muia) constructed their matrimonial home on the plot and moved in and started residing in the house in 2010/2011. The Defendant at the time was in a relationship with Daniel Muia and was living together with Daniel Muia at the latter's house within the Ministry of Public Works compound in Garissa. Daniel Muia in spite of denying he and the Defendant were married, affirmed that they were living together and that they moved together to Madogo and resided in the house on the plot in dispute until 2012 when he stated, he moved out of Garissa to work at Makueni.

53. Although the Plaintiff stated that after he bought the plot from Adhan Omar Abagana (DW2) he constructed a house thereon which he rented to his brother for Kshs 5,000/- monthly, he led no evidence to demonstrate that he actually constructed any house on the plot. To the

contrary, the Defendant led evidence to the effect that it was her and Daniel Muia who constructed a house on the plot after they bought the plot from the Plaintiff. In particular, Adhan Omar Abagana who sold the plot to the Plaintiff, was emphatic that it was the Defendant and Daniel Muia who built a house on the plot that he had sold to the Plaintiff, and moved in and were living as husband and wife. Adhan Omar further explained that Daniel Muia approached him later to sell him an additional plot to put up a bathroom/toilet and he sold him an additional plot for which he was paid Kshs 5,000/- as consideration. If the Plaintiff was the one who constructed the house on the plot, DW2 having been the one who sold the plot to him would definitely have noticed him. DW2 struck me as a truthful witness and I accept his evidence as truthful. He dealt with the Plaintiff, the Plaintiff's brother and the Defendant. He had no reason to favour any of the parties. He himself was residing at Madogo and he could easily have noticed whatever was happening at the suit plot.

54. The Plaintiff in his evidence stated that he leased his brother the house he had constructed at Madogo on the plot he had bought from DW2. He produced a tenancy agreement supposedly made on 1<sup>st</sup> July 2010. The tenancy agreement describes the property as TRCG/MDG/R/124. It is noteworthy that the purchase agreement dated 10<sup>th</sup> June, 2008 did not have any reference relating to the plot that was sold to the Plaintiff. The Plaintiff tendered in evidence a copy of what was said to be a letter of allocation dated 15<sup>th</sup> October 2016 which carried a reference No. TRD/232/08/11 and further also produced a letter of temporary occupation dated 24<sup>th</sup> February 2022 which referred to the plot as TRG/MDG/R/124. Quite evidently the plot had not been registered with the County in July 2010 when the tenancy agreement is said to have been entered into. Besides, the prefix TRCG refers to Tana River County Government which had not been established until 2013 when the Counties were inaugurated. The tenancy agreement dated 1<sup>st</sup> July 2010 appears to have been manufactured with an eye on these proceedings whereby the Plaintiff

and his brother, Daniel Muia, colluded with the object of wrestling the suit plot from the Defendant.

55. I am mindful that the plot in question is unregistered and therefore ownership can only be deduced by scrutinizing the trail of any available evidence and evaluating and analysing any oral evidence presented. The ownership documents furnished by the Plaintiff were obtained long after the sale transaction. The person who sold the plot was availed as a witness and testified on behalf of the Defendant as DW2. His evidence being a person who was on the ground and dealt with both the Plaintiff and the Defendant was critical. I have already stated I considered him a truthful witness and I need say no more. The documents obtained from the County Government in 2021/2022 cannot change the position as they were made at the prompting of the Plaintiff who had a desire to get the Defendant out of the suit plot acting in collusion with his brother, Daniel Muia, whose relationship with the Defendant had soured.

56. On the evidence, I am persuaded that the Defendant and her **“estranged husband”** bought the plot from the Plaintiff and that they jointly constructed the house on the plot and moved therein and lived therein as **“husband and wife”** until their relationship became sour and they separated. It is my determination that the Defendant was never a tenant of the Plaintiff in the premises. The Plaintiff never demonstrated he was at any time paid any rent either by Daniel Muia or the Defendant. The demand letters issued by the Plaintiff to the Defendant were in my view intended to anchor these proceedings as the Plaintiff was aware the Defendant was not a tenant in the premises.

57. In the premises the Plaintiff has failed to prove his case against the Defendant on a balance of probabilities. On the other hand, the Defendant has proved on a balance of probabilities that she and Daniel Muia, during the pendency of their relationship jointly purchased the suit plot and constructed a residential house thereon. The Defendant as per the evidence which was corroborated by

her witnesses and equally admitted by Daniel Muia was running a business at the Public Works canteen and therefore had a source of income to contribute towards the purchase and construction of the house on the plot. I accordingly find and hold that the Defendant has proved her Counterclaim on a balance of probabilities and I enter Judgment in her favour and make the following consequential orders:-

**1. The Plaintiff's suit is hereby dismissed.**

**2. A declaration be and is hereby issued that the property described variously as TRCG/232 Madogo and TRCG/MDG/R/124 is jointly owned by Daniel Muia and the Defendant, Grace Karambu;**

**3. The Plaintiff by way of a permanent injunction is restrained either by himself, agents and/or servants from in any manner interfering with the Defendants quiet possession of the suit property.**

**4. The Defendant is awarded the costs of the suit and the Counter claim.**

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY  
AT KERUGOYA THIS 12<sup>TH</sup> DAY OF NOVEMBER 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

ORIGINAL