



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. E085 OF 2021

KADZO NYALE WANJE

IDD HUSSEIN CHARO (*suing as the legal representatives
and/or administrators of the estate of* **KILIFI NDENGE**

CHANZERA *alias* **KILIFI NDENGE**
(DECEASED).....**PLAINTIFFS**

VERSUS

MARY NYAVULA KOMORO.....**1st**

DEFENDANT

THE DISTRICT LAND REGISTRAR,

KILIFI.....**2nd**

DEFENDANT

JUDGMENT

1. The plaintiffs herein are joint administrators of the estate of Kilifi Ndenge Chanzera, also known as Kilifi Ndenge

[deceased], who was the initial registered owner of the parcel of land identified as title number Kilifi/Vipingo/190

2. By a letter of offer dated August 8, 1978, Kilifi Ndenge Chanzera, also referred to as Kilifi Ndenge [the deceased], was granted the parcel of land located at Vipingo Settlement Scheme number 453.
3. The deceased passed away on August 28, 1994 [refer to the death certificate dated September 16, 2019].
4. It is noted that the deceased was officially registered as the rightful owner of the land in question on August 29, 2006, through posthumous registration. Refer to the letter dated August 12, 2021, from the Chief Land Registration Officer of Kilifi County and the Green Card related to the said parcel of land. Additionally, a certified true copy of the title deed dated August 29, 2006, was produced as the plaintiffs' exhibit number 25.
5. That, through an undated and unregistered instrument of transfer, the aforementioned parcel of land was transferred and registered under the name of the 1st defendant on November 4, 2020. The said transfer was presented as plaintiffs' Exhibit Number 23.

6. By the year 2020, it is alleged that the deceased transferred the suit parcel of land to the 1st defendant, despite having been deceased for 26 years at that time. The court must scrutinize the timing of this transfer to determine its authenticity and legality, considering the deceased's date of death on August 28, 1994.

7. It is within this context that the plaintiffs filed a plaint on October 25, 2021, and, on October 26, 2021, requested a judgment jointly and severally against the defendants for:

a) A declaration that the transfer of the parcel of land known as title number Kilifi/Vipingo/190 to the 1st defendant was fraudulent and constitutes interference with the estate of the deceased by the 1st and 2nd Defendant.

b) Revocation of the title deed for all of the parcel of land known as Kilifi/Vipingo/190, which was registered in favor of the 1st defendant, allegedly on November 4, 2008.

c) An order requiring the 2nd defendant to correct the register for all that parcel of land known as title number Kilifi/Vipingo/190 and register it in the names of the plaintiffs or Kilifi Ndenge Chanzera, alias Kilifi Ndenge, the deceased herein.

d) An order directing the 1st defendant and/or her authorized agents and/or assigns to hand over vacant possession of the parcel of land known as title number Kilifi/Vipingo/190 to the plaintiffs, failing which they shall be evicted from the property at the 1st defendant's expense.

e) An order of permanent injunction be issued restraining the 1st defendant, either by herself or through her authorized agents and assigns, from selling, alienating, charging, or dealing with all that parcel of land known as title number Kilifi/Vipingo/190 in any manner whatsoever.

f) Costs of the suit and interest at court rates.

g) Any other relief that the honorable court considers appropriate to grant.

8. In support of the aforementioned suit, the 1st defendant submitted a statement of defense dated February 1, 2022, on February 21, 2022. In this statement, the 1st defendant generally denied the claims and stated that she purchased the parcel of land in question from the deceased in 1979.

9. Regarding the 2nd defendant, the Honorable Attorney General submitted a statement of defense dated

November 16, 2021, on November 17, 2021. Like the 1st defendant, the 2nd defendant denied the claim generally.

The Plaintiff's case

10. To support their case, the 1st and 2nd plaintiffs testified as PW1 and PW2 respectively.

11. During her court testimony, the 1st plaintiff, Kadzo Nyale Wanje [PW1], formally adopted her witness statement dated October 25, 2021, and filed on October 26, 2021, as her main testimony. PW1 also submitted the documents listed in the plaintiffs' list of documents dated October 25, 2021, and filed on October 26, 2021, which were admitted as plaintiffs' exhibits numbered 1 to 16. Additionally, those listed in the Supplementary list of documents dated November 8, 2022, and filed on November 9, 2022, were admitted as plaintiffs' exhibits numbered 17 to 25.

12. On his part, the 2nd plaintiff, Idd Hussein Charo [Pw2], adopted his witness statement dated October 25, 2021, and filed on October 26, 2021, as his direct testimony.

13. PW2 also identified the documents produced by PW1 as plaintiffs' exhibits numbers 1 to 25 and relied on them in support of the current suit.

14. The plaintiffs also called Mohamed Billow, the Land Registrar, Kilifi, to testify as PW3

15. In his testimony, PW3 identified several issues with the process that led to the transfer of the title deed for the disputed land parcel and confirmed that the transfer document from the deceased to the 1st defendant was undated, unregistered, and unsigned by the transferor [see plaintiffs' exhibit number 23]. The discharge of charge from the Settlement Fund Trustees is also unregistered [see plaintiffs' exhibit number 20]. It is impossible that the deceased could have transferred the land parcel to the plaintiff since he was deceased when the transfer was made and registered. For the transfer of the land parcel to the 1st defendant to occur, succession proceedings for the deceased's estate must have been initiated and completed. He had not seen a certificate of Grant of Letters of Administration from the court for the estate of the deceased in the parcel's file at the land registry.

16. In light of this, PW3 finished his main testimony by stating that the title deed of the land in dispute, held by

the 1st defendant, is fraudulent because it did not result from a legitimate transfer and is therefore null and void.

- 17.** PW3 then recommended that the 1st defendant's title to the suit parcel of land be declared invalid, cancelled, and/or revoked.

The 1st Defendant's case

- 18.** In defense of the suit, the 1st defendant testified as DW1. Her testimony, in summary, is that there was a sale of the property in question, Plot 190 Vipingo Settlement, currently known as Kilifi/Vipingo/190, whereby the deceased sold the property to her with the family's knowledge. She developed the property and has resided in and benefited from it for over twenty years. Although an equitable interest was transferred upon the successful sale, an irregularity occurred during the transfer process. The plaintiff's claim is based on these irregularities, aiming to deprive her, a *bona fide* purchaser, of her legally vested property rights.

The 2nd Defendant's case

- 19.** On November 2, 2023, the 2nd defendant's counsel closed the 2nd defendant's case without calling any witnesses.

20. I acknowledge receipt of submissions from learned counsel for the plaintiff, Mr. Lewa, and learned counsel for the 1st defendant, Ms. Amina, with much appreciation, as they went a long way in resolving the issues raised in this matter.

21. Based on the submissions and materials presented to me, the issues I identify for the court's decision are whether the plaintiffs have proven their case against the defendants and are therefore entitled to the reliefs requested in the plaintiffs' plaint dated October 25, 2021. Who is responsible for the costs of the suit?

Whether the plaintiffs have proved their case against the Defendants and are therefore entitled to the reliefs sought in the Plaint dated October 25, 2021.

22. Mr. Lewa asserts that the plaintiffs have substantiated their claim with the evidence on record.

23. In paragraph 13 of the plaint dated October 25, 2021, and filed on October 26, 2021, the plaintiffs alleged that the suit parcel of land was transferred to the 1st defendant not only fraudulently but also that the 1st defendant's title to the land resulted from interfering with

the estate of the deceased. Mr. Lewa submits that the plaintiffs have proved the particulars of fraud and intermeddling against both the 1st and 2nd defendants.

24. The transfer of the suit parcel of land to the 1st defendant, which was caused by fraud by the defendants and interference with the estate of the deceased, was indeed confirmed by both PW3 and DW1 when they testified.

25. Ms. Amina claims that a valid sale of the suit property was completed, in which the deceased transferred possession to the 1st defendant. The court should review this matter from a contractual standpoint, focusing on the three core elements: offer, acceptance, and consideration.

26. She suggests that it is widely recognized that a contract can be either written or oral. The defendant, in her statement, which was adopted as her testimony, stated that the deceased approached her and made an offer to sell the property in the 1970s. This is the first element of a legally binding contract: the offer. The defendant accepted this offer by agreeing to purchase the property from the deceased, supported by a consideration of KShs. 25,000/-.

27. She argues that these are three key elements of a contract that have been fulfilled. The defendant submitted several documents; notably, defense exhibits 1, 2, 3, and 4 — specifically, the letter of consent to transfer dated June 25, 1985, a letter to the Takaungu area chief acknowledging receipt of full consideration and discharging his claim on the suit property, thereby transferring ownership to the 1st defendant, the surrender letter of the property from the deceased to the 1st defendant, and the acknowledgment of full payment.

28. Through these documents, Ms. Amina contends that the defendant has convincingly demonstrated the existence of a valid and binding contractual agreement between the deceased and the 1st defendant. Once the existence of a legally binding contract is established, the next question for this court is whether ownership was transferred to the buyer, thereby removing the property from the deceased's estate.

29. She argues that the doctrine of equitable conversion is relevant here: once the purchase agreement is signed and full payment is made, equitable ownership is transferred to the buyer. As soon as the full consideration is paid and

possession is taken, the purchaser ceases to be merely a licensee and gains equitable title. In this case, after paying the full purchase price, the defendant took possession of the property in the 1980s and began developing it, having obtained equitable title.

30. I agree with Mr. Lewa that the way the 1st defendant obtained the title seems unusual. The title was not acquired during the deceased's life but after his death, despite claims of sale and possession. The transfer document that resulted in the registration of the suit parcel in her name shows that Kalama Kai Kalama, who was not the registered owner, supposedly transferred the parcel to the 1st defendant [see plaintiffs' exhibits 22 and 23].

31. It was also observed that Kalama Kai Kalama was the worker of the 1st defendant when the transfer took place. In addition, Kalama Kai Kalama was not the administrator of the deceased's estate at that time. The transfer document from the deceased to the 1st defendant is neither dated nor signed by the transferor. It is not signed by the land registry nor stamped, and therefore, it was not registered. Although the land was registered in the

deceased's name and a title deed was issued, the title was never transferred to his heirs. The 1st defendant did not produce the actual sale agreement, as she claimed she had no agreement proving she bought the land from the deceased in 1979, as stated in her pleadings.

32. The unusual way of obtaining this title is also confirmed by Mr. Mohamed Billow, the Land Registrar of Kilifi, who testified as PW3 and stated as follows:

“...I have documents in respect to title number Kilifi/Vipingo/190 (certified)

I also have a transfer from Kilifi Ndenge to Mary Nyavula Komoro. It is undated, unregistered, and not signed by the parties. Kilifi Ndenge has not signed the document, in discharge of the charge. I can see the discharge of the charge from the Settlement Trustee Fund. It is unregistered. Kilifi Ndenge, who is said to have been the transferor, died on 28/8/1994. I can see this is his death certificate. It is not possible that he could have transferred. Succession was necessary for any form of transfer to have taken place.

That I have not seen a certificate of confirmation from the court.....”.

33. On her part, the 1st defendant stated as follows during cross-examination:

“I can see document number 6. I can see a copy of Kalama's ID. According to the transfer, Kalama is the seller. That said, Kalama was never the registered owner of the disputed land. That Kalama was my worker then.

That he was not the administrator of the estate of Kilifi Ndenge.

Exhibit number 23, item 7, on the supplementary documents: I can see the transfer, but the transfer date is not indicated.

The transfer does not appear to be signed, as I can see. The transfer lacks the Land Registrar's signature. It has no stamp nor the name of the Land Registrar...”

34. In conclusion, although the 1st defendant occupied the suit property for a prolonged period, evidence from PW3 supports the testimonies of PW1 and PW2. These witnesses state in their testimony that the transfer of the suit land to the 1st defendant was not only carried out through fraudulent means but also involved interference with the estate of the deceased. This conduct violates

Section 45 of the Law of Succession Act, Cap 160 of Kenya's Laws.

35. Furthermore, the testimony of DW1, as outlined in paragraph 33 of this judgment above, serves as an admission that her title deed to the suit parcel of land was obtained fraudulently and through interference with the deceased's estate, as pleaded and conclusively proven by the plaintiffs.

36. I agree with the decision referenced to me by Mr. Lewa in **Helbling v Masha & another [2022] KEELC 13668 (KLR)**, where Olola J. expressed the following about a title arising from interference with a deceased person's estate.

***“While the Plaintiff asserts that the 2nd Defendant was the lawful administrator of the estate of the late Karisa Chogo Nzai when he sold the land to her, the said Letters of Administration issued to the 2nd Defendant were not produced before this Court. While holding that he was the administrator of the estate, the 2nd Defendant conceded during cross-examination herein that he had not been issued with any Letters of Administration as at the time he sold the 6 acres of land to the Plaintiff.*”**

As it were, Section 45 of the Law of Succession Act provides as follows:

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person,”

(2) Any person who contravenes the provisions of this Section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

Arising from the foregoing, it was apparent that the Plaintiff obtained the title she is seeking to enforce herein through a process that amounted to intermeddling and that was punishable in law. It follows, therefore, that the prayers sought by the Plaintiff herein cannot be granted, as to do so

would amount to this Court sanctioning a criminal process.”

37. Based on the above authority, which is persuasive to the court here, the 1st defendant’s title deed to the land in question, being the result of interference and a criminal process, should be revoked as requested by the plaintiffs in this case.

38. I also concur with the decision cited to me by Mr. Lewa in **McFoy v United Africa Co. Limited (1961) 3 ALL ER 1169**, concerning an act that is rendered void, as Lord Denning articulated as follows:

“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

39. In this case, the plaintiffs have demonstrated and proven that the process of transferring the title of the suit parcel of land from the deceased to the 1st defendant was

void *ab initio*. It follows that the 1st defendant's title to the suit parcel of land is a bad title and should therefore be nullified or revoked.

40. This, then, answers the prayers sought in the plaint, namely prayers a, b, and c: that the registration of the 1st defendant was invalid in law; that the registration be revoked; and that the name of the deceased Kilifi Ndenge Chanzera, also known as Kilifi Ndenge, be reverted. The land registrar is hereby ordered to make those changes.

41. The other requested orders, which are prayers d and e, include eviction and/or vacant possession and a permanent injunction. From what I understand and have on record, the 1st defendant has provided a detailed history showing how she bought this land from the deceased in the 1970s. She was granted possession and has been living on the property ever since. Therefore, she cannot be evicted, nor can injunctive orders be issued against her at this time.

42. While I concur with the submissions made by Ms. Amina, citing a series of precedents concerning constructive trust, including **Mathooko & 2 others (suing as the legal representatives of Joel**

Mathooko Nthenge) v Chege & 46 others [2023] KEELC 22111 (KLR), Peter Mbiri Michuki v Samuel Mugo Michuki [2014] eKLR, and Aliaza v Saul [2022] KECA (KLR), the 1st defendant erred by employing fraudulent means to register her interest in the suit property, as demonstrated above. She should have initiated legal proceedings against the deceased's estate to facilitate a lawful transfer of her purchaser's rights, or filed a formal suit asserting adverse possession if the estate refused to transfer and register her rights. She circumvented proper legal procedures, which will likely necessitate the filing of another suit to rectify the situation and have her claim adjudicated. I did not see any counterclaim asserting her rights as a purchaser now that the title has been ordered for nullification. A subsequent hearing would be appropriate.

43. As a result, the plaintiffs' claim partly succeeds, as detailed in paragraph 40 above, and partly fails, as explained in paragraph 41 above.

44. Considering the nature of the litigation, with plaintiffs having acquiesced on their rights to sue on time and the

1st defendant occupying the property for a long time,
each party will bear their own costs.

**Dated, signed, and delivered electronically in
Malindi on November 19, 2025.**

**E. K. MAKORI
JUDGE**

In the presence of:

Mr. Lewa for the Plaintiff

Ms. Amina for the 1st Defendant

Mr. Nyoike for the 2nd Defendants

Happy: Court Assistant