

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**  
**ELC CASE NO. E002 OF 2023**

PHILICHON SIMIYU NATEMBEYA (as legal representatives of the  
estate of PETER NATEMBEYA

WENANI-----PLAINTIFF/APPLICANT

EDWRD WALIMBWA (as legal representatives of the estate of  
JAVAN

WALIULAWENANI-----PLAINTIFF/APPLICANT

VERSUS

CONSTANT MARUTI WENANI -----1<sup>ST</sup>  
DEFENDANT/RESPONDENT

MOSES MIRUNI WENANI-----2<sup>ND</sup>  
DEFENDANT/RESPONDENT

BRIAN MASIKA WENANI----- 3<sup>RD</sup>  
DEFENDANT/RESPONDENT

EDWIN WALIULA WENANI-----4<sup>TH</sup>  
DEFENDANT/RESPONDENT

KIKAI COOPERATIVE SOCIERTY LIMITE-5<sup>TH</sup>  
DEFENDANT/RESPONDENT

**JUDGMENT**

**a) INTRODUCTION AND PLEADINGS**

**1.** By a plaint dated 01/03/2023, the Plaintiffs seeks Judgment against the defendants jointly and severally for *inter alia*; cancellation of the name of Job Wekesa as the registered owner of Land Parcel No. Malakasi North/Central Namwela/1301 and 1303 and for the same to revert to Land Parcel No. Malakasi North/Central Namwela/134 for succession processes, cancellation of Kikai Cooperative Society Limited, the 5<sup>th</sup> Defendant as the registered owner of Land Parcel No. Malakasi North/Central Namwela/1302 and 429 and for the same to revert

to the original Land Parcel No. Malakasi North/Central Namwela/134, cancellation of the names of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants as the registered owner of Land Parcel No. Malakasi North/Central Namwela/428 and for the same to revert to the original Land Parcel No. Malakasi North/Central Namwela/134 and a permanent injunction against the 5<sup>th</sup> Defendant and an order for eviction from Land Parcel No. Malakasi North/Central Namwela/1302 and 429.

**2.** It was their case that Land Parcel No. Malakasi North/Central Namwela/1300, 1301, 1302 and 1303 are sub divisions of Land Parcel No. Malakasi North/Central Namwela/134 which initially belonged to their grandfather Wilson Wenani who died in 1993 and who was survived by Javan Waliula Wenani, Peter Natembeya and Job Wekesa Wenani. That the 1<sup>st</sup> Defendant who is a legal representative of the estate of Job Wekesa is the registered owner of Land Parcel No. Malakasi North/Central Namwela/1301 & 1303, the 2<sup>nd</sup> and 4<sup>th</sup> Defendants are the registered owners of Land Parcel No. Malakasi North/Central Namwela/1428 while the 5<sup>th</sup> Defendant is the registered owner of Land Parcel No. Malakasi North/Central Namwela/1302 and 1429.

**3.** It was averred that in 2013, the said Job Wekesa-Deceased the 1<sup>st</sup> to 4<sup>th</sup> Defendants' father fraudulently transferred Land Parcel No. Malakasi North/Central Namwela/134 to himself without conducting succession proceedings. He set out particulars of fraud against the said Job Wekesa and the 1<sup>st</sup> to 4<sup>th</sup>

Defendants. It was averred that in 2015 when Job Wekesa died, Land Parcel No. Malakasi North/Central Namwela/134 again without succession was sub-divided into Land Parcels No. Malakasi North/Central Namwela/1300-1303 and the aforementioned registrations done.

**4.** The Defendants filed defence to the plaintiffs' claim dated 05/10/2024 wherein they denied the claim and averred that their actions were not fraudulent but meant to enforce their proprietary rights under the law.

**Evidence by parties.**

**5.** When the suit came up for directions, the parties agreed to proceed by way of viva voce evidence.

**6. PW1 Philichon Simiyu Natembeya** adopted his witness statement dated 01/03/2023 as his evidence-in-chief and produced into evidence 22 items contained in his list of documents dated 01/03/2025 as P-Exhibit 1 to 22. In cross-examination, he testified that the suit land was ancestral land and he was therefore a beneficiary. He confirmed that Job Wekesa was issued with a title deed on 04/04/2013 and that his beneficiaries did obtain letters of administration. It was his evidence that he has not sued the administrators of the estate of the said Job Wekesa.

**7. DW1** Constant Maruti Wenani adopted his witness statement dated 02/12/2024 as his testimony-in-chief and produced in evidence documentary contained in his list of documents of an even date as D-Exhibit 1-11. He testified that once his father Job Wekesa died, they filed succession proceedings. That the Land Parcel No. Malakasi North/Central Namwela/134 was initially registered in the name of Wilson Wekesa who was his grandfather and died in 1992 and later transferred to Job Wenani in 2013. He testified that he was not certain that succession proceedings were done in relation to the estate of his grandfather. He stated that they filed a case before Sirisia Law Courts seeking to stop his uncle from invading their land. It was argued that land parcel no. 1302 was not part of the estate of Job Wekesa as it belonged to Peter Wenani.

**Submissions by parties.**

**8.** At the close of their respective cases, Parties agreed to file written submissions.

**9.** The Plaintiffs filed submissions dated 29/10/2025 wherein they submitted that they had proved their claim for fraud as pleaded against the Defendants to the required standard. It was further submitted that they obtained a grant of letters of administration ad litem and as such, had the locus standi to commence these proceedings against the Respondents in relation to the role they played in the subdivision of the various titles. It was further their argument that the titles held by the

Defendants were obtained illegally and cannot therefore stand and ought to be cancelled and revert back to the original title. Reliance was placed in the case of **Dina Management Limited vs County Government of Mombasa & 5 others, SC Petition No. 8 of 2021.**

**10.** The 1<sup>st</sup> to 4<sup>th</sup> Defendants filed submissions dated 04/11/2025 and submitted that the Plaintiffs herein ought to have obtained letters of administration to represent the estate of Wislon Wenani and since they did not, they lack locus standi to institute the current suit. It was further submitted that the issue herein being the acquisition of title to Land parcels NO. North Malakisi/Central Namwela/1301 and 1303 by the Defendants herein and the enjoyment of proprietary rights thereon, the issues are the same in Sirisia which is about the proprietary rights in the two parcels being North Malakisi/Central Namwela/1301 and 1303. It was equally their argument that the Plaintiffs were obligated to enjoin the estate of Job Wekesa to defend the fraud case leveled against him. They quoted the case of **Edward Mwangi Irungu v Chief Land Registrar, Nyeri Land Registrar, Richard Joseph Mathenge Gitonga & Attorney General [2018] KEELC 201 (KLR).** Lastly, it was submitted that the said Job Wekesa embarked on sub-dividing the land in issue immediately after his acquisition which took effect in the year 2016.\_

### **Analysis and determination.**

**11.** The chronology above constitutes a summary of the pleadings, the available evidence and Exhibits produced, the opposing written submissions and the cited authorities all of which I have carefully considered. I have also considered the relevant provisions of the law and before I proceed to render my determination, I will attempt to answer the following questions;

a) whether this suit is *sub judice*; and

b) whether the Defendants rightfully acquired the parcels they hold.

**12.** From the evidence on record, it is not in contention that suit land Parcel No. Malakasi North/Central Namwela/134 was initially registered in the name of one Wilson Wenani who was the grandfather to the parties herein. It is also not in contention that the said land was later registered in the name of Job Wekesa, the father of the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the year 2016 as shown in the various green cards produced by both parties and that the said land was sub-divided into four (4) parcels after the demise of the said Job Wekesa in February 2016. The four (4) resultant sub-divisions were L.R NO. MALAKISI NORTH/CENTRAL NAMWELA/1300, 1301, 1302 & 1303. That in the year 2019, Land Parcel No. NORTH MALAKISI/CENTRAL NAMWELA/1300 was further sub-divided into two (2) resultant parcels NO. NORTH MALAKISI/CENTRAL NAMWELA/1428 and 1429. That Land Parcel No. NORTH MALAKISI/CENTRAL NAMWELAM/1301 & 1303 were registered in the name of Job Wekesa, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are registered as owners of Land Parcel No. NORTH

MALAKISI/CENTRAL NAMWELA/1428 while the 5<sup>th</sup> Defendant was registered as owner of Land Parcel NO. NORTH MALAKISI/CENTRAL NAMWELA/1302 and 1429 respectively.

**13.** It has been argued that the Plaintiffs lack the locus standi to file this suit. However, I refer parties to the ruling of this court of 20/06/2024 on the said issue. It is further noted that the Defendants have indeed argued and attached proceedings and a ruling delivered by Hon. C.M. Wattimah on 15/12/2021 in Sirisia PMCC E009 of 2021 which touches on one of the parcels in questions being Land Parcel No. MALAKISI NORTH/CENTRAL NAMWELA/1300. Notably, and despite the passing of time, this court has not been informed of the progress and position in that case. However, this court takes note that the issue in dispute herein is the sub-division of Land Parcel No. MALAKISI NORTH/CENTRAL NAMWELA/134 which the Plaintiffs claim was fraudulent and the same is not restricted to Land Parcel No. MALAKISI NORTH/CENTRAL NAMWELA/1300 which is in issue in Sirisia PMCC.

**14.** The 1<sup>st</sup> to 4<sup>th</sup> Defendants equally argued that the issues in question herein, more so the alleged beneficial interest of Peter Natembeya Wenani was decided in HCCC No.39 OF 2002 between Job Wekesa Wenani vs. Peter Natembeya Wenani. Notably, the supporting document (D-Exhibit 10) does not indicate the court station the case was heard and decided and the same is neither dated nor signed. This court took the liberty of searching for the same in the court database but could not

trace the same. As such, this court cannot therefore rely on the said documents.

**15.** In view of the foregoing, I find that the singular issue for determination in this case is whether the registration of Land Parcel No. MALAKISI NORTH/CENTRAL NAMWELA/134 in the name Job Wekesa and its subsequent sub-division and registration in the names of the Respondents was regular and procedural.

**16.** Section 24 of the Land Registration Act vests in a registered proprietor the absolute ownership of land together with all rights and privileges appurtenant thereto. Similarly, Section 25 protects the interests of a registered proprietor from being defeated except as provided for by law, while Section 26(1) accords the Certificate of Title prima facie evidence of proprietorship. However, subsection (1)(a) and (b) thereof make it clear that such title may be challenged on the grounds of fraud, misrepresentation, or where it has been acquired illegally, unprocedurally, or through a corrupt scheme.

**17.** However, the court in the case **Dina Management Limited v County Government of Mombasa & 5 Others; SC Petition No. 8 (E010) of 2021** stated as follows:

***“Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then***

***such a title cannot be held as indefeasible...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 right as not extending to any property that has been found to have been unlawfully acquired. Having found that the first 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.”***

**18.** The evidence from both sides shows that Land Parcel No. Malakasi North/Central Namwela/134 was initially registered on 26/08/1964 in the name of Wilson Wenani, whom all parties except the 5th Defendant acknowledge as their grandfather. His name was later amended to Wilson Wenani Walimbwa on 30/01/1984, and a title deed was subsequently issued on 01/02/1984. The land was later registered in the name of Job Wekesa on 04/04/2013. Although the green card does not indicate how this change was effected, the parties' evidence suggests that the transfer occurred after the death of Wilson Wenani Walimbwa. Notably, the record contains no proof that any succession proceedings were undertaken upon his death to lawfully devolve the property to Job Wekesa.

**19.** In light of these gaps, this court is unable to ascertain the legal basis upon which the property was transferred to Job Wekesa. The absence of any succession cause or documentary

proof of transmission raises serious questions regarding the propriety of the transfer. Given that land of a deceased person can only be lawfully dealt with in accordance with the law through a succession process, the unexplained change of ownership casts doubts on the validity of the subsequent registration and calls for closer scrutiny of the entries on the register.

**20.** Since the Plaintiffs pleaded fraud against the said Job Wekesa and the 1<sup>st</sup> to 4<sup>th</sup> Defendants. it is paramount to appreciate the meaning of fraud. Black's Law Dictionary, 11<sup>th</sup> Edition page 802 defines fraud in the following words: -

***“a).A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment. Fraud is usu. a tort, but in some cases (esp. when conduct is willful) it maybe a crime.)- Also termed intentional fraud...***

***b)A reckless misrepresentation made without justified belief in its truth to induce another to act.***

***c)A tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment. Additional elements in a claim of fraud may include reasonable reliance on the misrepresentation and damages resulting from this reliance.***

***d)Unconscionable dealing; esp., in contract law, the unfair use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."***

**21.** From the admission by the defendants in their oral evidence, no succession proceedings were carried out for the estate of Wilson Wenani Walibwa to transmit the land to Job Wekesa. Those admissions are indications that the subdivision and subsequent transfer of the suit lands were marred by unprocedural illegalities.

**22.** As a result, I agree with the words of Lord Denning in the case of **Benjamin Leonard Mcfloy - vs - United African Company Limited (UK)(1962) AC 152**, when he stated as follows;

***"If an act is void, then it is in law a nullity. It is not only bad ...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."***

Accordingly, the subdivision and subsequent transfers were irregular, unprocedural and therefore null and void.

**23.** It therefore follows that the registration of Land Parcel No. Malakasi North/Central Namwela/134 in the name of Job Wekesa and the subsequent sub-divisions and transfers to the Defendants were tainted with illegality and is, in law,

impeachable. In line with **Article 40(6) of the Constitution of Kenya 2010**, the right to property does not extend to property unlawfully acquired. Consequently, this Court finds that the impugned transfers, subdivisions and resultant registrations are liable to be cancelled which I hereby do and the register duly rectified to restore the property to its proper legal status.

**24.** The plaintiffs' claim as per the plaint is hereby allowed in its entirety with costs.

**25.** It is so ordered.

**DATED SIGNED** and **DELIVERED** at **BUNGOMA** this 04<sup>th</sup> day of December, 2025.

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**HON.E.C CHERONO**  
**ELC JUDGE**

In the presence of;

1. Mr. Barasa H/B for M/S Lunani for the plaintiff
2. Mr. Anwar for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.  
5<sup>th</sup> Defendant/Advocate-absent
3. Bett C/A.