



**Kombe v Ombajo & 2 others (Environment and Land Case E040 of 2024)
[2025] KEELC 18519 (KLR) (10 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E040 OF 2024
EK MAKORI, J
DECEMBER 10, 2025**

BETWEEN

BENSON SHUHULI KOMBE PLAINTIFF

AND

BROLIA MBUKA OMBAJO 1ST DEFENDANT

KOMBE YERI YAA 2ND DEFENDANT

DISTRICT LAND REGISTRAR 3RD DEFENDANT

JUDGMENT

1. The plaintiff filed this suit by a plaint dated May 15, 2024, seeking, among other remedies, orders for a permanent injunction to prevent the defendants from interfering with the suit property, a declaration of ownership, and cancellation of titles allegedly obtained through fraud.
2. The defendants entered their appearance and filed their respective defenses dated May 30, 2024, and July 24, 2024, denying the allegations in the statements.
3. The matter proceeded to a formal hearing. The plaintiff testified as PW1. The plaintiff claims that his late grandfather's land, originally known as Majaoni Block 5A/183 and later subdivided into parcels known initially as 297, was fraudulently sold and transferred to the 1st defendant through collusion with the 2nd defendant. It is alleged that the 3rd defendant plans to conduct a boundary rectification on the disputed land at the request of the 1st and 2nd defendants and without the plaintiff's consent.
4. The 1st defendant testified that he bought land from the plaintiff's grandfather in 1992. He has a sales agreement and all transfer documents, including the title. The sale and transfer were not fraudulent.
5. He also stated that he won a tribunal case and was granted ownership of the land in question. The primary concern now is the boundary.



6. DW2 said he was not aware of why he was sued, but admitted he witnessed the sale agreement between the grandfather of the plaintiff and the 1st defendant.
7. The 3rd defendant did not adduce evidence.
8. At the close of both the plaintiff's and the defendants' cases, I directed that the parties file written submissions. I acknowledge receipt of submissions from the learned counsel for the plaintiff, Mr. Nyamwange; learned counsel for the 1st defendant, Mr. Chebukaka; and learned counsel for the 3rd defendant, Mr. Munga, with appreciation, as they went a long way to assist the court in resolving the issues raised in this matter.
9. Based on the evidence, materials, and submissions presented, the issues I frame for the court's determination are whether the plaintiff has proved the allegations of fraud claimed against the defendants regarding the suit property, whether the transfer and registration of the suit property were lawful and proper, and whether the plaintiff is entitled to the reliefs sought from the defendants. Costs.
10. Mr. Nyamwanga, in his submissions on behalf of the plaintiffs, argues and exposes flaws in the sale agreement that took place in 1992. He also questions the Land Control Board form, the subsequent transfer, and the proceedings before the Bahari Land Disputes Tribunal, concluding that the documentation suggests there was fraud.
11. Mr. Chebukaka, on behalf of the 1st defendant, asserts that his client produced the sale agreement and documents leading to the transfer of the land to his name; fraud has not been proven.
12. Learned state counsel Mr. Munga for the 3rd Defendant agrees with Mr. Chebukaka that the plaintiff has not pleaded or demonstrated that the 3rd Defendant participated in the alleged fraudulent sale, transfer, or subdivision of the land. The 3rd defendant's position is that any involvement in the matter has been in fulfillment of statutory duties under Sections 18 and 19 of the *Land Registration Act*, which require the Land Registrar to determine and establish boundaries.
13. Significantly, in this matter, the plaintiff has raised the issue of fraud in the transactions that led to the transfer of the suit property to the 1st defendant. The defendants correctly argue that the burden of proving the alleged fraud rests solely on the plaintiff. In cases where fraud is alleged, it is not enough to infer fraud from the facts alone. The party claiming fraud must explicitly plead and support the alleged fraud in accordance with the required standards.
14. In *Ahmed Mohammed Noor v Abdi Aziz Osman* [2019] eKLR, the court held that:

“There is no doubt that fraud is a serious accusation. It must be pleaded and proved. Bullen, Leake & Jacobs on Pleadings 13th Edition provides as follows: -Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged. The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that fraud was the cause of the loss complained of.

It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and distinctly proved. ‘General allegations, however strong, may be by words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice’.”



15. Regarding the standard of proof, judicial authorities have determined that the evidentiary burden for claims based on fraud is more rigorous than that for ordinary civil disputes. Refer to the court's decision in the case of *Kinyanjui Kamau v George Kamau* [2015] eKLR, where it was stated that:

“It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* [2008]1KLR (G&F) 742 wherein the court stated that: -

“...We start by saying that it was the Respondent who was alleging that the will was a forgery, and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely, proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.”

16. From the record, the transaction between the late David Karisa Yaa Yeri and the 1st defendant was carried out in full compliance with the applicable statutes. The evidence presented before this Court shows that in 1992, the deceased, as the registered owner of Majaoni Block 5A/183, entered into a valid sale agreement with the 1st defendant for approximately six acres. This agreement formed the basis of the transaction and was followed correctly by the necessary statutory steps for transferring agricultural land.
17. In accordance with Section 6(1) of the *Land Control Act*, the parties obtained the necessary consent from the Bahari Land Control Board. It is well-established law that no transaction involving agricultural land can be valid without such consent, and the fact that consent was granted demonstrates that the transaction met the legal requirements. The transfer documents were then properly executed and, along with the consent and supporting documents, submitted to the Land Registrar for registration.
18. Upon presentation, the Land Registrar, acting under the *Land Registration Act*, examined the documents to ensure they complied with the law. Satisfied that all requirements had been met, the Registrar registered the transfer in favor of the 1st defendant and issued him a valid title deed. This title, under Section 26 of the *Land Registration Act*, is prima facie evidence of ownership, and the law protects it unless it is proven to have been obtained by fraud, misrepresentation, illegality, or procedural irregularity. The Court of Appeal in *Joseph Arap Ng'ok v Moiwo Ole Keiwua & 4 others* [1997] eKLR emphasized:
- “the provisions of section 23(1) that the title of a registered proprietor cannot be defeated except in accordance with the provisions of the law.”
19. Based on the foregoing, it is evident that the procedure used to effect the transfer was legal, appropriate, and aligned with the statutory framework. The plaintiff has not provided any credible evidence to dispute the process or to demonstrate that the 1st, 2nd, or 3rd defendants, the Land Registrar, exceeded their authority, violated procedures, or acted in bad faith. Instead, the evidence indicates that compliance was maintained throughout the transaction.
20. The concerns raised regarding the documents prepared in 1992 are unfounded. Their preparation methods and format cannot be questioned after 32 years! The statute of limitations prevents such challenges.



21. In *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal reiterated that:
- “once a title is challenged, it is for the holder to demonstrate the root of that title.”
22. The 1st defendant has fulfilled their obligations by submitting the sale agreement, the Land Control Board consent, and properly executed transfer documents, which led to registration. The plaintiff has not challenged this evidence with any conflicting material, except to question the manner in which the documents were prepared.
23. It follows, therefore, that the title held by the 1st defendant is indefeasible, having been lawfully acquired through a process sanctioned by the Land Control Board and duly registered by the Land Registrar. In the absence of any proof of illegality or procedural impropriety, this Court finds the allegations leveled against the defendants unsubstantiated and lacking in merit.
24. Consequently, the plaintiff has failed to meet the evidentiary burden required by law. The reliefs sought are based on the claim that the transfer of Majaoni Block 5A/296 and 297 was unlawful and should therefore be void. However, as shown by the evidence presented, the transfer of the properties was made under a valid sale agreement, with the necessary Land Control Board approval obtained, the parcels properly subdivided, and the transfers correctly registered by the Land Registrar.
25. The Court has already been informed that no illegal act occurred during the registration process, and that the 1st defendant holds an indefeasible title protected under Section 26 of the *Land Registration Act* and Article 40 of *the Constitution*. Without any evidence of fraud, illegality, or procedural irregularity, the plaintiff’s requests for cancellation and reversion are denied.
26. Additionally, the plaintiff’s case largely relies on the claim that the late David Karisa Yaa Yeri was mentally unfit when signing the sale agreement. However, no credible or substantial medical evidence has been presented to prove any insanity or mental incapacity at that moment. The law presumes all adults are of sound mind unless clear and convincing evidence demonstrates otherwise.
27. This was the holding in the case of *Grace Wanjiru Munyinyi & Another v Gedion Waweru Githunguri, 5 others*, 2011 KECA 42 (KLR), where the court stated:
- “The starting point is the presumption that must always exist, until it is proved otherwise, that every person is of sound mind. It is a logical presumption otherwise no one would be held responsible for their actions.”
28. In *Muiyuro & 2 others v Muthathai & 4 others (Environment and Land Appeal E009 of 2023)* [2024] KEELC 4469 (KLR) (8 May 2024) (Judgment), the court held that:
- “In this case, the appellants merely accused the 1st respondent of lacking the mental capacity to transfer his land to the respondents. They did not produce any evidence to support that allegation. The requirement is that mental incapacity must be proved and that can only be done with evidence and not mere statements as is the case herein.”
29. As submitted by Mr. Munga, who cited the above two authorities with which I agree, the presumption of soundness of the deceased must therefore stand. Additionally, the plaintiff has provided no evidence of mental incapacity. It is also important to note that the deceased’s actions after signing the agreement conflict with the claim of insanity. There is no evidence that he ever attempted to rescind the agreement, nor that his family took steps during his lifetime to challenge the transaction on grounds of incapacity. Silence and acceptance for decades following the transfer further weaken the plaintiff’s recent effort to



contest the transaction. Equity favors the vigilant, not those who neglect their rights. The plaintiff's claim, filed years after the deceased's death, cannot now cancel a transaction lawfully completed while he was alive.

30. Within the premises, the plaintiff has failed to prove their entitlement to the declaratory, injunctive, or cancellation orders requested in the complaint. Granting such relief would violate the laws governing land transactions and unfairly infringe the 1st defendant's constitutional right to property under Article 40 of *the Constitution*. This Court, following the principles and judicial precedents set forth earlier, concludes that the plaintiff has not provided a sufficient basis for their claim. Therefore, the suit is dismissed, with costs awarded to the defendants.

DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN MALINDI ON DECEMBER 10, 2025.

E. K. MAKORI

JUDGE.

In the presence of:

Mr. Nyaega for the Plaintiff

Ms. Lutta for the 3rd Defendant

Happy: Court Assistant

In the absence of:

Mr. Chebukaka for the 1st Defendant

