

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC CASE NO. 259 OF 2016

JANET KAUNDA MAKAU
PLAINTIFF

VERSUS

SULTAN CHAI NGAO **1ST**
DEFENDANT

ADAM NGAO **2ND**
DEFENDANT

MTEKE NGAO **3RD**
DEFENDANT

MUSEMBI NGAO **4TH**
DEFENDANT

KAPOLI NGAO **5TH**
DEFENDANT

AND

MWANASITI MOHAMED ALI **1ST INTERESTED**
PARTY

REGISTRAR OF TITLES, KILIFI **2ND INTERESTED**
PARTY

JUDGMENT

1. The Plaintiffs instituted this suit on 17th September 2012 by way of a
Plaint dated 14th September 2012 in Mombasa HCCC 197 of 2012, which
was later transferred to this Court in 2016. The Plaintiff sought the
following reliefs: -

- a) **That a permanent injunction be issued against the Defendants by themselves, their servants and or agents and otherwise howsoever restraining them from entering, transferring, evicting and interfering with the Plaintiff's possession of the suit premise herein or carrying out all and any construction on ALL THAT parcel of land known as L.R Number 29077 situate at South East of Mariakani in Kilifi District;**
- b) **That this honourable court be pleased to issue a permanent injunction restraining the defendants by themselves, servants or agents or any person claiming through or under**

- them or otherwise howsoever from remaining on or continuing in occupation and/or interfering with the plaintiff's activities and/or dealings on ALL THAT parcel of land known as L.R Number 29077 situate at South East of Mariakani in Kilifi District;**
- c) That this honourable court be pleased to issue a mandatory injunction compelling the Defendants to demolish structures build by the defendants herein on to all that parcel of land situate at and known as L.R Number 29077 situate at South East of Mariakani in Kilifi District;**
 - d) That this honourable court be pleased to declare that the suit property rightfully and legally vests in the Plaintiffs as an administrator of the estate of the aforesaid deceased PETER VICTOR MAKAU whose name appears on the title deed as the rightful owner for their own benefit and for the benefit of the heirs of the estate of the said deceased;**
 - e) Costs incidental to this suit;**
 - f) Any other further relief the court deems fit.**

2. The Plaintiff's case was that at all material times, her late husband, Peter Victor Makau, was the rightful owner of Land Reference No. 29077 (hereinafter also referred to as "*the suit property*" or "*the suit land*"), having inherited it from his late parents. She stated that she had lived on the suit property with the deceased since their marriage in **1967**, and that the deceased's two brothers and their families also resided thereon. The Plaintiff further averred that as at the time of her husband's death in **2007**, the title to the suit property had not yet been processed. However, as the lawful surviving spouse, she obtained letters of administration in respect of his estate and was subsequently issued with a title in her own name. The Plaintiff averred that sometime in June **2010**, the Defendants unlawfully entered the suit property and demanded that she and her

family vacate. The Defendants thereafter erected a fence and put up structures on the property, thereby denying the Plaintiff and her family access to their home.

3. The **1st Interested Party** initially filed an Amended Complaint dated **28th September 2022** in **ELC Case No. 21 of 2017**, which was subsequently consolidated with the present suit on **21st February 2023**. The **1st Interested Party** averred that she purchased the suit property for value without notice through a sale agreement dated **12th August 2012** from the Plaintiff herein; that sometime in October 2016 when she was ready to develop the suit property, the Defendants denied her access as they had put up a perimeter wall, a **40** feet container and car-wash drums therein. She filed a complaint at Mariakani Police Station -OB 28/10/16 but the Defendants have since denied liability. In that case, she sought judgment against the Defendants. Her prayers were framed as follows:

- 1) A declaration that the Plaintiff is the lawful registered owner of Plot No. L.R 29077 (CR 57437);**
- 2) A permanent order of injunction restraining the Defendants by themselves, servants and or agents or however from denying the Plaintiff access in her land parcel herein known as L.R No. MN/I/29077- Mariakani (CR 57437);**
- 3) A mandatory order of injunction compelling the defendants by themselves, their servants and or agents or howsoever to immediately demolish/bring down the illegal perimeter wall container and car wash drums put up by themselves around the Plaintiff's property herein known as L.R No. MN/I/29077- Mariakani (CR 57437);**
- 4) Costs of and incidental to this suit;**
- 5) Any other relief as this honourable court may deem fit and just in the circumstances to grant.**

4. The Defendants, in their Further Amended Statement of Defence and Counterclaim dated **4th July 2017**, denied the allegations set out in the Plaintiff and the 1st Interested Party's counterclaim. They contended that the suit property, **Land Reference No. 29077**, is the same as **Plot No. 1815 Kadzozo/Madzimbani** Adjudication Section, which is registered in the name of the Plaintiff. They further averred that the said parcel was unlawfully excised from **Plot No. 1012 Kadzozo/Madzimbani Adjudication Section**, which is registered in the name of their late father, Abdallah Chai Ngao. They added that the two plots do not exist on the ground as the land was first adjudicated on 26th February 2008 vide **PID Map No. 44** and was therefore not free for setting apart.
5. The Defendants further averred that the Plaintiff, in collusion with the 1st and 2nd Interested Parties, fraudulently caused the suit property to be set aside during the adjudication process and subsequently procured its transfer to the 1st Interested Party, notwithstanding the pendency of the present suit. The Defendants contended that the Plaintiff's and 1st Interested party's actions have caused them loss and damage and that any right the 1st Interested Party has is against the Plaintiff.
6. In their counterclaim, the Defendants sought the following reliefs:
 - a) **A permanent injunction restraining the Defendants and the Interested Parties from transferring, selling, alienating, subdividing and/or dealing in any manner in the suit property known as Plot No. 1012 Kadzozo/Madzimbani Adjudication Section;**
 - b) **Revocation and or nullification of the title deed, setting apart, subdivision and/or all the entries reflecting on all that**

property referred to as LR No. 29077 Title Number CR 5737 and Plot No. 1815 Kadzonzo/Madzimbani Adjudication Section issued to the Plaintiff and 1st Interested Party Defendants;

c) A declaration that the Defendants are the rightful and legal owners of the suit property known as Plot No. 1012 Kadzonzo/Madzimbani Adjudication including the illegal subdivisions known as L.R No. 29077 Title Number CR 57437 and Plot No. 1815 Kadzonzo/Madzimbani Adjudication Section;

d) Costs of the suit.

7. Notably, the Defendants also filed a defence to the 1st Interested Party's Amended Plaint. It is dated 2nd December 2022. They largely reiterated the contents of their first response and averred that the 1st Interested Party is not an innocent purchaser for value as the sale and transfer in her favour was tainted with fraud and concealment of facts. They urged the court to dismiss the Amended Plaint with costs; the 1st Interested Party's title be revoked and the 2nd Interested Party be directed to issue title on the original land known as **Kadzonzo/Madzimbani/ Adjudication Section 1012.**

8. The 2nd Interested Party filed a **defence to the Defendants' counterclaim** dated **6th September 2017**, wherein it averred that the parcel 1012/Kadzonzo/Madzimbani has never been transferred since it was still subject to an appeal to the minister. It denied any liability alleged in the third-party notice.

9. On her part, the Plaintiff filed a response to the Defendants' counterclaim dated **23rd October 2017**. She averred that the adjudication officer

removed Plot No. 1815 from the adjudication process and that the same is not synonymous with the suit property. She denied the allegation that the suit property was excised from Plot No. 1012 and averred that the suit property exists on ground as per the surveyor's map which is among her documents. She denied any allegations of fraud and asserted that she lawfully acquired the suit property. She urged for a dismissal of the counterclaim.

EVIDENCE

10. **Mwanasiti Mohamed Ali**, the 1st Interested Party, who was the Plaintiff in **ELC Case No. 21 of 2017**, testified as **PW1**. She adopted her witness statements dated **3rd February 2017** and **19th February 2021** as part of her evidence-in-chief. She produced documents in the list of documents dated 3rd February 2017 and 19th February 2021 as P. Exh 1-5. She testified that her husband paid Kshs. 16,000,000 for the suit property which was registered in her name; that at the time of purchase, it was vacant. On cross-examination, she told the court that the Plaintiff did not inform her of this suit and she was not aware of any *caveat* against the suit property.

11. The 1st Interested party's husband, **Ahmed Abdulwahid Abdulrahman**, testified as **PW2**. He equally adopted his witness statement dated 19th February 2021. He testified that he paid **Kshs. 16, 407, 401** for the suit property and a transfer was legally effected in May 2013 in favour of the 1st Interested Party. He told the court on cross-

examination, that his lawyers undertook due diligence and found the title to be clean with no *caveat* and that he did not know the Plaintiff before then. Like PW1, the witness stated that the Plaintiff did not inform him of a court case touching on the suit property.

12. **Sultan Chai Ngao, DW1**, adopted his witness statements dated 30th October 2012 and 16th May 2016 as part of his evidence-in-chief. He also produced as D.Exh 1-12, documents in the list of documents dated 30th October 2012; D.Exh 13 and 14 in the list of documents dated 9th April 2018; D.Exh 15 in the list dated 18th July 2018; DExh 16 in the list dated 3rd October 2018; DEXH 17-24 in the list dated 15th November 2019; and D.Exh 24-32 documents in the list dated 3rd February 2019.

13. DW1 testified that the Plaintiff had sued the Defendants over the suit property in **Mariakani Land Case No. 101 of 2010**, a case which was dismissed. He narrated that the adjudication was done in **2008** and the Plaintiff was given Plot No. 1815 being **3** acres of their land, Plot No. 1012. He stated that as a result, he filed an objection before the Adjudication Committee which held that the plot 1815 revert back to Plot 1012; that the Plaintiff was given **60** days to appeal that decision but failed to do so, instead, she used the County Council to apply for setting apart and eventually procured a title at the Mombasa registry in her name. The witness added that Plot No. 1012 was never featured in the Gazette Notice no. 3812 of 9th May 2008, but it was the same one claimed by the Plaintiff.

14. He further testified that the Defendants have always resided on the suit property and it was not true that when the 1st Interested party purchased it, it was vacant. He added that the injunction placed on the suit property was issued on 16th April 2013 and it prohibited sale and transfer of the same.
15. On cross-examination, the witness confirmed that he did not have a surveyor's report to show that the suit property was the same as Plot No. 1012. The witness was shown **page 6** of the Plaintiff's further list of documents dated 23rd October 2017. He confirmed that the same states plot 1012 and the suit property herein were in different locations.
16. **DW2, Stephen Charo**, the retired area chief, testified that as early as 1980 when he became the chief, there was a boundary dispute between Chai Ngao, Mzee Juma Dzombo and Kitsao Masha. The dispute was adjudicated by a panel of **6** elders appointed by the then D.O. The panel's award was then taken to court vide **Case No. 13 Of 1985**. The land in dispute was said to be situated South of Mariakani. He also confirmed that adjudication on the area began in 2007 and ended in 2012.
17. On cross-examination, the witness testified that he was elected chairman of the adjudication committee but was never involved in any case over the suit property. He was not aware whether Plot 1012 got a title or whether the dispute went up to appeal to the Minister.
18. The 2nd Interested Party called **Mr. Sego Manyorkiny**, a Mombasa based Land Registrar, who testified that the suit property was issued with

a new grant to Victor Makau, for a term of 99 years from 1st September 2011. The grant was registered on 28th August 2012 and issued CR No. 57457. The head lessor is County Council of Mariakani and the approximate area 1. 328 HA. A transfer to the administrator was registered on 31st May 2013 and on the same date, a deed of assent was registered to Janet Makau, Mary, James, Joseph, Isabela, Daniel, Kamene and Eva. On the same date, a transfer to Mwanasiti Mohamed Ali was registered.

19. Upon cross-examination, the Registrar stated that there was an application for registration of a *caveat* dated 2nd October 2012, but the same was never registered. He added that the title to the suit property was prepared by the then Commissioner for Lands and forwarded to the registry for registration.

SUBMISSIONS

Plaintiff's Submissions

20. The Plaintiff challenged the Defendants' *locus standi*, noting that the 1st Defendant had not obtained Letters of Administration for his late father's estate, and relied on **Fredrick Wachira Ndegwa v. Richard Wanjiku Ndanhern & Another (1997) eKLR**, which held that an administrator cannot bring an action before taking letters of administration. She contended that the Defendants had produced no

evidence establishing legal interest in Plot No. 29077 and that their counterclaim alleging fraud and collusion was baseless.

21. The Plaintiff cited statutory provisions, including **Sections 24-26** of the Land Registration Act and **Section 107** of the Evidence Act, emphasizing that registration conferred indefeasible ownership unless procured through fraud or illegality. She relied on *Kuria Greens Ltd v. Registrar of Titles & Another*, Nairobi Petition No. 107 of 2010, and *Alice Chemutai Too v. Nickson Kipkurui Korir & 2 Others* (2015) eKLR, which affirmed that a certificate of title constitutes *prima facie* evidence of ownership, subject only to fraud or illegal acquisition.

22. She further detailed that the suit property had been validly set apart under section 13 of the Trust Land Act (Cap 288), culminating in a Gazette Notice (9th May 2008), a Letter of Allotment (26th September 2011), and a grant issued in the name of her late husband (12th August 2012). The subsequent registration in her name and that of other beneficiaries was confirmed by the Registrar, who testified that no caution or encumbrance had been registered to impede the transfer. The Plaintiff prayed that the Court enter judgment in her favour, dismissing the Defendants' counterclaim as lacking merit and award costs.

Defendants' Submissions

23. The Defendants submitted that the dispute concerned LR No. MN/1/29077, which corresponded to Plot No. 1815 Kadzonzo/Madzimbani, which had been deleted from the adjudication register and reverted to

Plot No. 1012 Kadzonzo/Madzimbani. They contended that the Plaintiff had initially filed **Mariakani P.M.C.C No. 101 of 2010** over the same land, which was struck out for lack of capacity. The Plaintiff later obtained Letters of Administration and filed the present suit, claiming ownership over the same property, which was synonymous with **LR No. MN/1/29077**.

24. The Defendants argued that their land had been adjudicated in 2007–2008, and the Plaintiff’s Plot No. 1815 was irregularly set apart in 2010 from their Plot No. 1012. Upon objection by the 1st Defendant, the adjudication committee deleted Plot No. 1815 and reverted it to Plot No. 1012. They submitted that the setting apart was invalid, as it fell within an adjudicated section and the Plaintiff’s deceased husband could not have been allocated the land posthumously. No appeal was filed under **Section 29** of the Land Adjudication Act, Cap. 284, rendering the Plaintiff’s claim procedurally barred.

25. The Defendants argued that the Plaintiff’s sale of the land to the 1st Interested Party was unlawful, that the Interested Party could not claim to be an innocent purchaser without notice, and that due diligence was not exercised. They noted discrepancies in gazetted descriptions, location, and area, and highlighted that the Plaintiff never resided on the property.

26. The Defendants relied on: Gorane Amarnath v. Patrick Kazungu & Others, Mombasa Court of Appeal No. E033 of 2021, on limits of court intervention in adjudication; Tobias Achola Osindi & 13 Others v. Cyprian

Otieno Ogalo & 6 Others [2013] eKLR, confirming courts may supervise but not usurp adjudication powers; Torino Enterprises Ltd v. Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79, on *bona fide* purchaser awareness; Flemish Investments Ltd v. Town Council of Mariakani, CA No. 30 of 2015, on due diligence in property purchase; and Kenya Post Office Savings Bank Staff Retirement Benefit Scheme v. Attorney General & 7 Others [2025] KECA 438, applying the *nemo dat quod non habet* rule. The Defendants prayed for dismissal of the Plaintiff's suit with costs and for the Counterclaim to be granted.

1st Interest Party's Submissions

27. The 1st Interested Party, also Plaintiff in ELC Case No. 21 of 2017, filed written submissions in support of her claim against the Defendants. She relied on the Land Registrar's confirmation of her lawful ownership, a Surveyor's report, and oral and documentary evidence as establishing lawful purchase from the Plaintiff and proper registration as an innocent purchaser for value without notice.

28. She submitted that the Defendants failed to substantiate their allegations of fraud or forgery, and that the Plaintiff's, 1st and 2nd Interested Parties' claims were properly proven. She urged the Court to grant all her prayers, including costs, and dismiss the Defendants' counterclaim.

29. The 1st Interested Party cited several authorities to support her claim - Macharia v Gitau & another (Land Case 231 of 2017 & Environment &

Land Case 221 of 2017 (Consolidated)) [2022] KEELC 3787 (KLR); Church Commissioners of Kenya v Mumba & another (Environment & Land Case E009 of 2023) [2025] KEELC 247 (KLR); and Ngarama v Kinyanjui & another (Environment & Land Case 215 of 2015) [2022] KEELC 3067 (KLR).

2nd Interested Party's Submissions

30. The 2nd Interested Party submitted that the Defendants' allegations of fraud and illegality in relation to the suit Land were unsubstantiated. He contended that mere assertions of fraud were insufficient and must be particularized and strictly proven, citing *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR, *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* [2016] eKLR, *Neepu Auto Spares Ltd v Narendra Chaganlal Solanki & 3 Others* [2014], and *RG Patel v Lalji Makanji* [1957] EA 314. They emphasized that as per Section 109 of the Evidence Act, Cap 80, the burden of proof on allegations of fraud rests on the party asserting it.
31. Regarding claims of illegality, the 2nd Interested Party submitted that public officials are presumed to act lawfully ("*Omnia Praesumuntur rite et solemnite esse acta*"), citing the presumption of regularity in *Teresia Kamene King'oo v Harun Edward Mwangi* [2019] eKLR. He stated that the alleged restriction on the suit land was never registered under **Section 76(2A)** of the Land Registration Act, 2012, and therefore had no legal

effect. Further, the Kilifi Land Registry had no jurisdiction over land registered in Mombasa, where the Suit Property was located, and the 2nd Interested Party had no involvement in any transfer or alleged irregularity.

32. The 2nd Interested Party asserted that for reliefs to lie against the 2nd Interested Party, the Defendants needed to demonstrate a legal duty, breach, and resultant harm. They noted that no nexus existed between the 2nd Interested Party's actions and the Defendants' claims, and that the Defendants' case was an abuse of process. Consequently, they urged that all claims against the 2nd Interested Party be dismissed with costs.

ANALYSIS AND DETERMINATION

33. The principal issues arising for determination in the present case are as follows:

- i. Whether L.R. No. 29077 is the same property as Plot No. 1012 / Plot No. 1815 Kadzonzo/Madzimbani as alleged by the Defendants;**
- ii. Whether the Defendants have established the alleged fraud, collusion and illegality;**
- iii. Whether the Plaintiff, Janet Makau lawfully acquired the suit property;**
- iv. Whether the 1st Interested Party purchased the suit property as a *bona fide* purchaser for value without notice;**
- v. The appropriate remedies to be granted.**

34. The Defendants alleged that the land described as **Kadzonzo/Madzimbani/1815** is identical to **L.R. No. 29077**, the subject of the present suit. They contended that this land was irregularly

set apart, with a title subsequently issued in favor of the Plaintiff and later transferred to the 1st Interested Party. The Defendants further asserted that the suit property was in fact excised from their own land, specifically **Plot No. 1012**. In essence, the Defendants' position is that the Plaintiff and the 1st Interested Party hold a title over land that rightfully forms part of the Defendants' land, and that the allocation of **L.R. No. 29077** was tainted by irregularities and procedural improprieties. The Defendants further alleged that following an objection filed by the 1st Defendant, Plot No. 1815 was deleted from the adjudication record and reverted back to Plot No. 1012.

35. The Plaintiff, supported by the 1st and 2nd Interested Parties, denied this, contending that L.R. No. 29077 was validly set apart, gazetted, and subsequently registered in her late husband's name, and is distinct from Plot No. 1012.

36. The evidence on record reveals that the adjudication of the Kadzonzo/Madzimbani area took place between 2007 and 2008, with Plot No. 1815 initially being allocated to the Plaintiff's late husband. The Defendants, particularly Sultan Chai Ngao (DW1), claim that upon their objection, the adjudication committee deleted Plot No. 1815 from the register and reverted it to the larger Plot No. 1012, contending that any subsequent setting apart and registration of the land in the Plaintiff's name was irregular. DW1 conceded on cross-examination that he did not have a surveyor's report or other evidence to establish that L.R. No.

29077 physically coincides with Plot No. 1012. He however asserted that the Plaintiff had initially admitted in the former suit filed in Mariakani as Civil Suit No. 101 of 2010, that Plot No. 1815 was situated on Plot No. 1012.

37. It is not in dispute that the adjudication records show a decision recommending that Plot No. 1815 revert to Plot No. 1012 following an objection lodged by the 1st Defendant. However, that finding does not, by itself, resolve the legal question of ownership of L.R No. 29077. There was no evidence that the adjudication register was formally amended and authenticated to reflect that outcome. More importantly, the Defendants produced no survey evidence, deed plans, mutation forms, or authenticated adjudication maps demonstrating that Plot 1815 and L.R. No. 29077 are the same land geographically. When confronted with the Plaintiff's Surveyor's map, the 1st Defendant admitted that the map depicted Plot 1012 and the suit property as two distinct parcels in separate locations. That admission is fatal to the claim that the parcels are one and the same.

38. The Court must emphasize that the setting apart process under the former Trust Land Act (Cap 288) is distinct and autonomous from the adjudication process. A parcel that has been successfully set apart and gazetted under **Section 13** of the Act passes through a constitutional, statutory, and procedural chain involving a resolution of the County Council, gazettelement, survey and allotment, issuance of a Letter of

Allotment, and finally, registration of title. In this case, the Plaintiff produced Gazette Notice No. 3812 of 9th May 2008, a Letter of Allotment dated 26th September 2011, and a Grant registered as CR 57457 on 28th August 2012. These documents, supported by the Registrar's testimony, have not been displaced by contrary documentary evidence. The Defendants' allegation that the setting apart was fraudulent was not substantiated thus they failed to prove that L.R. No. 29077 was unlawfully created.

39. Fraud is a serious allegation, one that must not only be pleaded with particularity but proved to a standard higher than a balance of probabilities, though not beyond reasonable doubt. This principle was firmly laid down in **Mutsonga -v- Nyati [1984] K.L.R. 425** as follows:

“Allegations of fraud must be strictly proved and although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, a high degree of probability is required, which is something more than a mere balance of probabilities, and it is a question for the trial judge to answer.”

40. Similarly, in **Koinange & 13 Others -v- Koinange [1986] KLR 23**, the Court of Appeal also stated: -

“The party alleging fraud had the burden of proving it and they had to discharge that burden. Allegations of fraud must be strictly proved.”

41. The Defendants pleaded fraud as collusion between Plaintiff and 2nd Interested Party; illegal set apart during adjudication; and transfer during pendency of suit, yet no evidence was tendered to prove the alleged

irregularity in setting apart, or that the 1st Interested Party was aware of the suit during the purchase. How then could the defendants establish their claim of fraud? In my view, the Defendants' claims rise no higher than mere suspicions.

42. The Plaintiff demonstrated that she lawfully acquired the suit property, as the administrator of her late husband's estate. The Land Registrar indeed established that a new grant was issued to Victor Makau, for a term of 99 years from 1st September 2011. The grant was registered on 28th August 2012 and issued CR No. 57457. A transfer to the administrator was registered on 31st May 2013 and on the same date, a deed of assent was registered to Janet Makau, Mary, James, Joseph, Isabela, Daniel, Kamene and Eva.

43. The 9th Edition of the Black's Law dictionary defines a *bona fide* purchaser as "a person who buys property for value, in good faith, and without notice of any other person's claim or any defect in the seller's title."

44. In the renowned case of **Katende -v- Haridar & Company Ltd (2008) 2 E A 173** the Court of Appeal in Uganda stated what amounts to a *bona fide* purchaser for value without notice. The Court held as follows: -

"For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, (he) must prove that:

a. he holds a certificate of title;

b. he purchased the property in good faith;

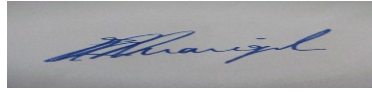
- c. he had no knowledge of the fraud;**
- d. he purchased for valuable consideration;**
- e. the vendors had apparent valid title;**
- f. he purchased without notice of any fraud;**
- g. he was not party to any fraud.”**

45. I have keenly perused the evidence on record, it is clear that the 1st Interested Party meets the above threshold. PW2 testified regarding due diligence conducted including a search, which revealed no *caveat* or caution. The Land Registrar confirmed that although an attempt was made to lodge a *caveat*, it was never registered.

46. Accordingly, this Court makes the following final orders:

- a) The Plaintiff’s suit succeeds;**
- b) A permanent injunction is hereby issued restraining the Defendants, their servants, agents, or persons claiming under them from entering, occupying, transferring, evicting, or otherwise interfering with the Plaintiff’s and/or the 1st Interested Party’s possession and use of L.R. No. 29077;**
- c) A declaration is hereby issued that the suit property L.R. No. 29077 (CR 57457) lawfully vests in the Plaintiff and her successors, and the current registered proprietor, Mwanasiti Mohamed Ali, is recognized as a *bona fide* purchaser for value without notice;**
- d) The Defendants shall vacate and remove all unlawful structures on the suit land within 60 days, failing which eviction may be undertaken in accordance with the law;**
- e) The Defendants’ counterclaim is dismissed in its entirety;**
- f) The costs of the suit and counterclaim shall be borne by the Defendants in the main suit.**

Dated, signed and delivered at Malindi on this 17th day of December, 2025.

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

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