



**Matata & 37 others v Mkomaa & 4 others (Environment and Land Case E005 of 2025)
[2025] KEELC 18447 (KLR) (Environment and Land) (16 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18447 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE E005 OF 2025
EK WABWOTO, J
DECEMBER 16, 2025**

BETWEEN

KIZARO ALI MATATA & 37 OTHERS PLAINTIFF

AND

JOHN KOMU MKOMAA 1ST DEFENDANT

DOMINIC KIOKO MAKAU 2ND DEFENDANT

**TAVETA LAND ADJUDICATION AND SETTLEMENT OFFICER 3RD
DEFENDANT**

DISTRICT LAND REGISTRAR, TAITA TAVETA 4TH DEFENDANT

HON ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit vide a Plaint dated 17th February 2025 seeking for the following reliefs:
 - i. A declaration that the demarcation, allocation and issuance of the title of the suit property to the 1st and 2nd Defendants is illegal, null and void.
 - ii. A declaration that the suit property belongs to the Plaintiffs and/or any of their family members.
 - iii. An order directing the 3rd and 4th Defendants re-survey and each portion of the land to the Plaintiffs as indicated in the cathedral map.



- iv. An injunction restraining 1st and 2nd Defendants, their agents, assignees or however from interfering with the peaceful use and possession by the Plaintiffs all that property Kimala/Mata, Ngaa, Nguru, Kitivo, Ngwakwale.
 - v. Damages
 - vi. Costs and incidentals of this suit.
2. The suit was contested by the Defendants and thus necessitating the matter to proceed for trial.

The Plaintiffs case

3. It was the Plaintiffs case that they are primarily farmers at all that property Kimala/Mata, Nguru, Ngaa, Kitivo, Ngwa-Kwale trust land referred to as the suit property and have been in occupation of the suit property since 1980s.
4. It was averred that despite being the lawful owners of the suit property which they reclaimed by draining the flooded parts of Mata Village near Lake Jipe and putting it into use, they were shocked to learn that the 1st and 2nd Defendants had secretly registered themselves as owners. it was also averred that the procedure for demarcating and issuing of the title deeds to the 1st and 2nd Defendants was done secretly and in violation of *the Constitution* of Kenya and the rules of natural justice.
5. It was also the Plaintiffs case that the 1st and 2nd Defendants owned a share of the property but they secretly went and registered a size which is way beyond their share and as a result of the said illegal action by the Defendants, the 1st and 2nd Defendants have been demanding the Plaintiffs to vacate the suit property. The particulars of the said illegality were pleaded at paragraph 11 of the plaint.
6. During trial, two witnesses testified on behalf of the Plaintiffs. Kizaro Ali Matata testified as PW1 while Joseph Jimmy Ibrahim testified as PW2.
7. Kizaro Ali Matata, PW1 adopted his witness statement and bundle of documents dated 17th January 2025 in his evidence in chief.
8. It was his testimony that he is the owner of Plot No. 6036 even though he does not have title to the same. The title is in the name of John Komu Mkomaa and he seeks to have a title to the same.
9. Upon cross-examination by the 1st Defendant he stated that he is entitled to have the title of Plot 6036. There were committee sittings before he bought the land. The case concerns the entire area. He is also not sure whether the other Plaintiffs have title to the land. He has a letter confirming that he bought the land though the same is not before court. His name appears though J. Mtoto who was the previous owner. Plot 6036 does not appear on the land's record. He has no letter from the Lands Registrar confirming the same.
10. On further cross-examination he stated that the 1st Defendant property is 601 and it borders 6036.
11. On cross-examination by the 1st and 2nd Defendants, he stated that the land is at Mata Ward. The Plaintiffs are based in Mata, Nguru, Kitivo and Ngaa. He also stated that the then District Commissioner came to the ground when parties had agreed to the case. Sometimes in 1994 every person was getting 2 acres though the process had commenced in 1992.
12. Upon further cross-examination, he stated that he has sued the 2nd Defendant because "outsiders" have been given titles.



13. On further cross-examination by the Counsel for the 3rd, 4th and 5th Defendants he stated that the entire area was swampy and the entire area had to be drained for the land to be habitable and that was sometimes in the 1980s. He also stated that everyone who was in the area was given land since it was still under adjudication.
14. He further stated that the then District Officer gave an order that the area be drained and everyone had to leave. Despite that everyone knew of his place.
15. He also stated on further cross-examination that the problem started when they came back to the land and found that people had acquired title to the land. The 1st and 2nd Defendants are the one who took over their land and he does not know how they acquired them. He also stated that none of the Plaintiffs had sold the land to the 1st and 2nd Defendants. He also stated that the correct list is the one appearing at the 1st Defendant's bundle which shows the portion for each person alongside their numbers.
16. In re-examination, he stated that the 1st and 2nd Defendants took over the portion of their land. He also stated that he had expected the title deed to be issued.
17. Joseph Jimmy Ibrahim PW2 adopted and relied on his witness statement in his evidence in chief. It was his testimony that he stays in Mata. They drained the land and cleared the swamp and continued staying there until 2010. His property number is 6015 and the same appears in the list. He equally stated that he hoped to get title to the land but never got the same.
18. He also stated that there was some dispute which led to the District Officer visiting the area and he gave the order for the draining exercise to be undertaken and everyone had to leave the area and later came back in 2021. According to him the 1st and 2nd Defendants also left the land in 2010 and later when they came back in 2021 they found that the 1st and 2nd Defendants were claiming ownership of the land and they had acquired the same illegally since no one knows how they got it.
19. When cross-examined by the 1st Defendant, he stated that the County Government does not own any land in the area as shown in Sheet 23 which was produced in evidence.
20. When cross-examined by the 2nd Defendant, he stated that he was born in 1974 and he knows the 2nd Defendant. He also stated that the 1st and 2nd Defendants had members of their family on the land. He could not remember if the 2nd Defendant was a secretary to the group.
21. On further cross-examination, he also stated that his mother's plot did not have a title. The land was ancestral land.
22. Upon cross-examination by Counsel for the 3rd to 5th Defendants, he stated that when they came back to the land in 2021, they found the 1st and 2nd Defendants had taken over their land. There is a problem in Ngaa and Kitivo. He seeks to have the 1st and 2nd Defendants title cancelled.
23. When re-examined, he stated that everyone was entitled to at least 2 acres.

The case of the 1st Defendant

24. The 1st Defendants filed a Statement of Defence dated 5th May 2025. It was his case that he is a member of Mukumu Group which stated their activities of reclaiming land back in the year 1980 whereby the names of the members of reclaiming land was endorsed by the then Assistant Chief Kimala/Mata Sublocation.
25. It was averred that, he went through the process of reclaiming the land and all the parcels were registered and titles issued with him being registered as the owner of Taita Taveta/Kimala Mata/5068.



26. It was stated that his land was registered without deceit and following the proper procedure.
27. It was further averred that the 1st Plaintiff Kizaro Ali Matata is a non member and just trying to incite others.
28. During trial, he testified as the sole witness for the 1st Defendant. He adopted and relied on his witness statement dated 5th May 2025. It was his testimony that the Mkomaa family came to Ngaa area in 1978 after being permitted to go there by the Government. At that time there was nobody in the area.
29. He also stated that the people of lower Mata complained when they came to the land and they had a session with the sub chief to explain the reasons why. He also stated that they used to farm on the land. The other groups came around 1988. His property was number 5068 which was later subdivided.
30. When cross-examined by the 1st Defendant, he stated that the land is not in Ngaa area. The people listed by the Plaintiffs have their land and title deeds and he does not why they have sued him.
31. On further cross-examination he reiterated that there was no fault in acquiring the title. The suit is malicious. His title deed should not be cancelled. No complaints were raised earlier.
32. Upon cross-examination by Counsel for the 3rd to 5th Defendants, he stated that he started farming on the land in 1978 and the Plaintiffs were not farming there. He also stated that the Plaintiffs were not in the land in 2019. He never left the land and he never stopped farming. His title was issued in 2017.
33. On cross-examination by Counsel for the Plaintiffs, he stated that not every person was given a title deed. He was the one who called the Surveyor to the land. The Plaintiffs have no right to the land. His names appear on the list. Survey was done before titles were issued.

The 2nd Defendant's case

34. The 2nd Defendant filed a Statement of Defence dated 5th May 2025. It was averred that he is the Secretary of Kitivo Group which started activities of reclaiming the land way back in the year 1981 whereby the names of the members who were reclaiming the land was endorsed by the then Assistant Chief Kimala/Mata Sublocation.
35. It was averred that he engaged the Ministry of Lands to come and register the land according to the names of the members who participated in the land reclamation on which they did and parcels of land were registered.
36. It was further averred that after registration, they were later issued with title deeds and there was no objection to the process. He was issued with title number Taita Taveta/Kimala Mata/4087 measuring approximately 5.14Ha. Due process was followed and the 1st Plaintiff is not a member.
37. During trial, he testified as DW2. He relied and adopted his witness statement dated 5th May 2025 in his evidence in chief. It was his testimony that they started draining the swamp in 1981 until 1993 when the land was fully dried up.
38. It was also his testimony that the land was redistributed in 1983 and everyone got his share of the land depending on the amount of the work done. Survey was done and title deeds issued.
39. He further stated that in 2022 a meeting was held by the then Deputy Commissioner and they were informed that nobody should interfere with any other person's land. The Plaintiffs did not have land in the area.



40. Upon cross-examination by the 1st Defendant, he stated that he knows the 1st Defendant but not his family history. He cannot say much on the role of the County Government on the land. The title deeds were issued to where the persons were staying.
41. When cross-examined by Counsel for the 3rd to 5th Defendants he stated that he came to the area in 1981 and drained the swamp and got the land. He also stated that he got the land in 1988 and titles came later. He got his title in 2016.
42. On further cross-examination, he stated that there were some complaints in 1993 and there was a letter dated 6th August 1993 demonstrating the same and another letter dated 31st October 2022. He also stated that the Plaintiffs do not have land in Kitivo and that he had not left the land in 2010.
43. When cross-examined by Counsel for the Plaintiffs, he stated that his land is on Sheet No. 25 and 26 and it is 500 metres from Ngaa.
44. When asked whether he had produced Sheet No. 25 and 26 in evidence he stated that none had been produced in court. He also stated that there were no issues when getting the land. There was an agreement on how the land was being allocated.

Plaintiffs submissions

45. The Plaintiffs filed written submissions dated 17th September 2025. Counsel submitted on the following issues:-
 - i. Whether the Plaintiffs are beneficiaries and/or legal owners of the suit property.
 - ii. Whether the 1st and 2nd Defendants acquired a good title to the suit property.
 - iii. Whether the Plaintiffs are entitled to the reliefs sought in the plaint dated 17th February 2025.
46. It was submitted that all members including the Plaintiffs and the 1st and 2nd Defendants took part in draining the water and would later become beneficiaries of the suit property and they subdivided the land and shared among themselves and their families. The said position was confirmed by the list provided by the 1st Defendant which showed the list of those persons who took part in draining water and therefore the Plaintiffs had legitimate expectation that from the plot numbers they would be issued with titles as beneficiaries and/or legal owners. It was also submitted that the local government surveyed the land and commenced the process of allocation.
47. On whether the 1st and 2nd Defendants acquired a good title to the suit property it was submitted that upon cross-examination of the 1st and 2nd Defendants on how they obtained the said certificates of titles, they failed to explain how they obtained their titles.
48. It was also submitted that it was confirmed during trial that the workers on the suit property were to receive 2 acres of land but the 1st and Defendants had received more than 2 acres and they had failed to explain the same.
49. Replying on the case of Njoroge =Versus= Karuku (Civil Appeal E069 of 2022) (2021) KECA 533 (KLR) (24 May 2024) and Lelei =Versus= Melly & 3 Others (Civil Suit 67 of 2016) (2022) KEELC 3253 (KLR) (8 June 2022) (Judgment), it was submitted that it is not enough for a party to dangle a certificate of title and invite the court to accept it if the instrument is challenged.
50. On whether the Plaintiffs are entitled to the reliefs sought, it was submitted that the Plaintiffs have established they are beneficiaries of the suit property, the 1st and 2nd Defendants in collusion with



officers from the 3rd to 5th Defendants proceeded to procure certificates of titles before the Plaintiffs would procure them and as such they are entitled to the reliefs sought with costs of the suit.

The 1st Defendant's submissions

51. The 1st Defendant filed written submissions dated 13th October 2025. It was submitted that the Plaintiffs claim and interest to the property is unknown since there is no such property by the name Kimala, Ngaa, Nguru, Kitivo and Nguwa Kwale.
52. It was also submitted that the 1st Defendant does not hold title of the entire area but has only title for himself and members of Mkomaa family being about 10 acres.
53. It was further submitted that the Plaintiffs had failed to prove that they were each allocated 2 acres of land during trial. PW1 did not produce any evidence confirming that he bought the land and further that the Plaintiffs had not adduced any evidence confirming any ownership to the parcel.
54. It was also submitted that it is not possible to ascertain which part of the land is being claimed by the Plaintiffs. The 1st and 2nd Defendants acquired their properties lawfully and no evidence of any illegalities had been demonstrated by the Plaintiffs.
55. The court was urged to dismiss the Plaintiffs suit with costs to the 1st Defendant and reliance was placed to the cases of James Muniu Mucheru =Versus= National Bank of Kenya Ltd (2019) eKLR and Anne Wambui Ndiritu =Versus= Joseph Kiprono Ropkoi & Another 2001 EA 334.

The 2nd Defendant's submissions

56. The 2nd Defendant equally filed written submissions dated 13th October 2025. His submissions was focussed on the following issues:-
 - i. Whether the Plaintiffs are the legal owners of the suit properties.
 - ii. Whether the 2nd Defendant acquired the title over land parcel No. TAITA TAVETA/KIMALA MATA/4087 illegally.
 - iii. Whether the registration of the 2nd Defendants as the owner of Land Parcel No. TAITA TAVETA/KIMALA MATA/4087 should be cancelled.
 - iv. Costs
57. It was argued that it was not clear on what property was being claimed by the Plaintiffs. PW1 did not produce any evidence confirming that he was entitled to Plot No. 6036 by virtue of purchase. PW2 did not produce any evidence that he had acquired any interest in the suit property when he came back in the year 2021 since the 1st and 2nd Defendants had already acquired title deeds in the year 2016.
58. It was also submitted that it was undisputed that the distribution of the land amongst the Defendants and other members that had participated in draining the flooded area happened in the year 1983. It was also undisputed that the Defendants land was surveyed upon the request by the members vide the letter dated 9th April 1993.
59. The 2nd Defendant also wondered why the Plaintiffs had an issue only with the titles issued to the 1st and 2nd Defendants in the area.
60. It was further submitted that the Plaintiffs had failed to prove any illegality on the 2nd Defendant acquisition of the title to the suit parcel and thus his title ought not to be cancelled. Reliance was placed



on the case of *Munyu Maina =Versus= Hiram Gathiha Maina* (2013) eKLR and the provisions of Section 24, 25 and 26 of the *Land Registration Act*, 2012.

61. The court was urged to dismiss the suit with costs.

The 3rd to 5th Defendants submissions

62. The 3rd to 5th Defendants never filed any written submissions despite being granted an opportunity to do so.

Analysis and Determination

63. Having considered the pleadings, evidence tendered and written submissions filed, the issues that arise for determination are as follows:

- i. Whether the Plaintiffs are the legitimate proprietors of the suit properties.
- ii. Whether the 1st Defendant acquired good title to the parcel of land Taita Taveta/Kimala Mata/5068.
- iii. Whether the 2nd Defendant acquired good title to the parcel known as Taita Taveta/Kimala Mata/4087.
- iv. Whether the Plaintiffs are entitled to the reliefs sought.

Issue No. (i) Whether the Plaintiffs are the legitimate proprietors of the suit parcel

64. It is apparent from the respective parties cases that the dispute herein involves competing claims of ownership of the suit parcels. Both the Plaintiffs and the 1st and 2nd Defendants are obligated to prove their respective claims. This requirement is anchored on the fundamental principle of law and that he who alleges must prove.

65. This legal maxim is enshrined in Section 107(1) and (2) of the *Evidence Act*, which provides as follows:

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

66. The majority decision of the Supreme Court in *Presidential Election Petition No. 1 of 2017 - Raila Amolo Odinga & Another vs IEBC & 2 Others* (2017) eKLR had the following to say on the evidential burden of proof:

“Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and “remains constant through a trial with the plaintiff, however, “depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.”

67. When a title is challenged the owner of the same has an obligation to prove the root of its acquisition.

68. It is not automatic that simply accepting titles as conclusive, incontestable and indefeasible or the concomitant argument that in the face of two or more competing titles, the first in time automatically



prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder. That much is now the law pronounced in a lengthening line of authorities such as *Munyu Maina vs Hiram Gathiha Maina (Supra) And Funzi Development Ltd & Others vs Country Council Of Kwale* [2014] eKLR, and by the Supreme Court in its authoritative and all-binding decision of *Dina Management Limited vs County Government of Mombasa & 5 Others* [2023] eKLR.

69. This approach was well appreciated in the case of *Hubert L. Martin & 2 Others vs Margaret J. Kamar & 5 Others* [2016] eKLR. Equally in the case of *Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others v The City Council of Nairobi & another*, the court stated as follows:

“We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.

70. This investigation must start at the root of the title and follow all processes and procedures that brought forth the interests of each party to the land. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property.

The Court of Appeal in the case of *Jacob Wekesa Bokoko Balongo vs. Kincho Olokio Adeya & another* [2020] eKLR held as follows on the importance of deciphering the historical acquisition of title:

“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of *Fahiye & 2 others – v- Omar & 4 others* [201] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In *Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (05))*, it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of *Champaklal Ramji Shah & 3 Anors –v- AG & Anor*, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”

71. The apex court also shed light on the relevance of a historical background analysis insofar as acquisition of title is concerned restating that the ownership of land whose title was not acquired regularly is not



protected under Article 40 of *the Constitution* on the protection of right to property. It held as follows in *Dina Management Limited vs. County Government of Mombasa & 5 others* (supra):

“Where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. It was the instrument that was in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

72. Section 26 of the *Land Registration Act*, Act No. 3 of 2012, provides that a title which was acquired by way of fraud or misrepresentation, where a person is proved to be a party can be attacked. So too a title which was acquired illegally, procedurally or through a corrupt scheme. The said Section is drawn as follows:

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

73. Being guided by the above, the court then has to consider the evidence adduced during trial. It was the Plaintiffs case and submissions before this court that they had legitimate expectation of getting the land and titles but they were surprised when the 1st and 2nd Defendants had gotten the same through a process which was termed irregular and not proper.

74. The 1st Plaintiff who testified as PW1 in his testimony stated that his plot is No. 6036 which he does not have title to the same and that he came to the said land when it was swampy and together with other members they drained the swamp.

75. From his cross-examination he stated that he owned the said land through Jakan Mtoto and that the name of Jakan Mtoto appears on the list.

76. PW2 on the other hand maintained that her mother used to stay in the land and that he also participated in draining the swamp and just like other members he was entitled to a portion of the land



and also a title deed of the same. He equally accused the 1st and 2nd Defendants of illegally obtaining title deeds of the property.

77. From his cross-examination, he conceded that his mother did not have title to the property, the mother died about 20 years ago and she did not participate in the draining of the swamp.
78. Beginning with the PW1's testimony and analysis of the evidence tendered, it is evident that it was not clear when he came to the land, he did not produce any documentary evidence showing the purchase of 2 acres on any property from Jakan Mtoto. Jakan Mtoto was equally not called to testify on his behalf.
79. In respect to the testimony given by PW2, it was evident that no evidence was tendered demonstrating how his mother was allocated any land. PW2 was equally unable to confirm which portion of the land belonged to him or the other Plaintiffs since the area was vast.
80. In the circumstances, it is the finding of this court that the Plaintiffs have been unable to prove their legitimate interest and or claim to the suit properties.

Issue No. (ii) Whether the 1st Defendant acquired good title to the parcel of land Taita Taveta/Kimala Mata/5068

81. Section 24 of the [Land Registration Act](#) 2012 begins with the provisions "subject to this Act" the registration of person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging to and appurtenant thereto. Section 24 of [Land Registration Act](#) 2012 has to be read together with section 25 and 26 of the [Land Registration Act](#) 2012. Section 26 of the Act empowers any person to challenge a certificate of title on grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
82. On the issue of absolute ownership, there are two opinions in respect of title obtained through fraud and misrepresentation and title obtained legally. Illegal registration of a person as a proprietor of land and certificate title issued illegally can be cancelled. Section 80 of the [Land Registration Act](#) 2012 empowers this court to rectify the register by cancelling registration due to fraud or mistake.
83. The 1st Defendant herein has equally an obligation to demonstrate how he acquired his title and the court must trace its root.
84. In the instance, the evidence tendered by the 1st Defendant was to the effect that they came to the property with the entire Mkomaa family in 1978. By that time the area was flooded and they formed groups to drain the water to enable them undertake farming. It was also his testimony that many groups were formed from Kimala/Mata Nguru, Ngaa, Kitivo and Ngwa-Kwale for the purposes of draining the land. They later succeeded to drain the water and they engaged land officers by a letter dated 9th April 1993 to demarcate the land according to each portion a person had drained. The demarcation and survey was undertaken and title deeds issued for each portion.
85. The 1st Defendant also produced in evidence the list of names of the group that were formed by the then Assistant Chief dated 15th August 1987 and a copy of title deed issued on 9th May 2016.
86. The testimony of PW1 and PW2 that was tendered on behalf of the Plaintiffs failed to demonstrate any illegality on how the 1st Defendant acquired title to their land.



(Issue No. (iii) Whether the registration of the 2nd Defendant as the owner of Taita Taveta/Kimala Mata/4087 should be cancelled

87. The Plaintiffs had also challenged the manner in which the 2nd Defendant acquired title to his land and they even sought for cancellation of the aid title.
88. In the instant case, the analysis of the evidence on record showed that the 2nd Defendant was registered as the owner of the land after an adjudication process, no objection was made in respect to the said process and no evidence of any illegality was furnished to this court and in the circumstances the court is unable to accede to the Plaintiff's plea in respect to the cancellation of the 2nd Defendant's title.

Issue No. (iv) Whether the Plaintiffs are entitled to the reliefs sought

89. The Plaintiffs sought for various reliefs as enumerated in their plaint and at the earlier part of this judgment.
90. The court has found that the Plaintiffs have not been able to demonstrate any legitimate interest to the suit parcels. The court has equally found that the Plaintiffs have failed to prove any illegality in respect to the properties and title obtained by the 1st and 2nd Defendants.
91. In a nutshell, the Plaintiffs have been unable to prove their case to the required standard and the court is unable to grant the reliefs sought.
92. In respect to costs, it is noteworthy that this court retains the discretionary rights on award of costs. Considering the circumstances relating to the suit herein, this court directs each party to bear own costs of the suit.

Conclusion

93. In conclusion, it is the finding of this court that the Plaintiffs suit has not been proved to the required standard and the same is dismissed with an order that each party to bear own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 16TH DAY OF DECEMBER 2025.

E. K. WABWOTO

JUDGE

