



**Maneno & 3 others v Ibrahim & 3 others (Environment and Land Case
30 of 2016) [2025] KEELC 18436 (KLR) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 18436 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 30 OF 2016
FM NJOROGE, J
DECEMBER 18, 2025**

BETWEEN

**SALIM MWAROPHA MANENO 1ST PLAINTIFF
CHIYONZO NDEGE BAKARI 2ND PLAINTIFF
DANIEL LWAMBI TSOLACHIRO 3RD PLAINTIFF
SAUMU ABDALLA 4TH PLAINTIFF**

AND

**IDDI IBRAHIM 1ST DEFENDANT
YUSUF NEVI 2ND DEFENDANT
TUDOR LOGISTICS LTD 3RD DEFENDANT
LAND REGISTRAR COAST REGISTRY 4TH DEFENDANT**

JUDGMENT

1. The plaintiffs brought this suit vide a plaint dated 19th February 2016. Their claim is that the 1st and 2nd defendants lodged Mombasa Civil Application Number 328 Of 2010 OS (hereinafter also referred to as “the Mombasa case”) on their behalf in the year 2010. That case was in respect of title LR number 3590 and LR Number 3591 (subdivision number 885/VI/MN and subdivision number 288V/MN Mazeras respectively). Judgment was entered in favour of the 1st and 2nd defendants in that case. However, the 1st and 2nd defendants are now disposing of the suit land to the detriment of the plaintiffs and have caused the land to be subdivided into a number of portions which they have offered for sale to third parties including the 3rd defendant. The 4th defendant is said to have already obtained a title to a portion of the land using a decree, but which decree the plaintiffs challenge as fake.



2. The plaintiffs aver that the issuance of title deeds to the 1st and 2nd defendants was fraudulent and that the 3rd defendant has not obtained valid title to the portion purportedly transferred to it.
3. The plaintiffs have set out the particulars of fraud against the 1st and 2nd defendants and also on the part of the 4th defendant in their plaint.
4. The plaintiffs aver inter alia, that their rights under Article 40 *the Constitution* are being violated.
5. The plaintiffs seek the following orders against the defendants:
 - a. a declaration that the plaintiffs and other members of Mabirikani Village Land Committee are the lawful owners of LR number 3590 and LR number 3591 (subdivision number 885/VI/MN and Subdivision Number 288V/MN Mazeras respectively.);
 - b. An order that the 1st 2nd and 3rd defendants do deliver up to the plaintiffs and or the 4th defendant titles to the said parcels and to the subsequent subdivisions for cancellation and that the 4th defendant to cancel the same;
 - c. An order of permanent injunction restraining the 1st 2nd and 3rd defendants either by themselves or through their agents or servant from selling charging subdividing taking possession or otherwise dealing in any manner with the suit lands;
 - d. A declaration that the defendants' actions violated and breached the plaintiff's rights as provided for under the Article 40 or *the Constitution* of Kenya;
 - e. Costs and interest at court rates.

1st 2nd And 3rd Defendants' Preliminary Objection

6. The 1st 2nd and 3rd defendants filed a preliminary objection dated 13th September 2016 stating as follows:
 - a. That the court lacks jurisdiction to hear and determine the suit as it would be acting as an appellate court on a judgment and decree in HCC 328 of 2010 OS Iddi Ibrahim and another suing on behalf of all the 127 members of the Mabirikani Village Land Committee versus Ainsley Leveratt Dopwell and municipal council of Mombasa which is a decision of a court of concurrent jurisdiction;
 - b. The suit is res judicata HCCC 328 Of 2010 Mombasa;
 - c. The suit is bad in law as it seeks to appeal and review a judgment entered in HCCC 328 of 2010 – OS;
 - d. That the suit is an abuse of the court process as it offends various provisions of the law;
 - e. That the suit is bad in law a city fails to meet the requirements of Representative suit.
7. The 1st, 2nd and 3rd defendants prayed that the suit be dismissed with costs on the above grounds.

1st 2nd And 3rd Defendants Statement Of Defense Dated 10/2/2017.

8. In this pleading, the defendants aver that judgment in Mombasa 328 of 2010 was delivered in their favour. The aver that this court cannot review the decree in Mombasa OS HCCC 328 of 2010, or even find it as fake or fraudulent. The defendants admit that they subdivided the suit lands and state that some of the plaintiffs are beneficiaries of that subdivision, but deny allegations that they disposed of the suit properties and further aver that all the beneficiaries have been given their portions and that



any such beneficiary is entitled to dispose of his share without interference by them. They deny fraud. They maintain that any transfers carried out in respect of the subdivisions were valid. The aver that the plaintiffs have no locus standi. They deny that there is any basis established for cancellation of a decree of a court of equal jurisdiction, or even of the title deeds. The issuance of a title deed to the 1st and 2nd defendants was valid. They stated that titles were obtained on behalf of the beneficiaries of the Mabirikani Village Land Committee. That there is no forged Court decree issued and that the judgment in Mombasa HCCC number 328 of 2010 -OS was followed and complied with by the 4th defendant; that all beneficiaries or members of the community have been allocated or given their respective parcels of land and that due process of the law was followed in this regard. The defendants reiterated all the limbs of their preliminary objection set out herein above in their defence and prayed that the suit herein be dismissed with costs.

Evidence of the Plaintiffs

9. PW1, Kenga Dickson, testified on 26th October 2022 and adopted his written witness statement dated 4th March 2022 and produced some documents as P. Exh 1 to P. Exh 21. His evidence is that the defendants are his neighbors. The 1st and 2nd different were committee officials during the time the community wanted to acquire the suit property. PW1 testified that he appears in the list of community members as member number 48. That Yusuf Nevi, the 2nd defendant, was the chairman of the committee while PW1 was its secretary. The community filed a case in Mombasa in which they were successful. There were two decrees issued in respect of the same parcel of land in that case. According to him the judgment in that case was that the defendants were to hold the land on behalf of all the plaintiffs. However, the 1st and 2nd defendant manufactured a decree which they used to acquire the entire suit property which is approximately 152 acres in their names; that the titles were issued in the names of the defendants contrary to the judgment. The defendants conducted subdivision and invited members of the public to buy the subdivisions. They sold portions to third parties and thus created disputes between the buyers and the people who were originally on the land. The suit land is the only home the community members know. He denied that there was any facilitation agreement between the community and Muhammad Shariff and Muhammad Hassan. A new chairman was elected in 2016. The plaintiff's lawyer did not know who ordered for the survey. PW1 prayed to the court for the titles issued as well as the subdivisions to be nullified.
10. PW2 Daniel Lwambi testified orally on the same date as PW1 and adopted his witness statement dated 19th February 2016 as his evidence-in-chief. His evidence is that he lives in Mazeras, at Mabirikani within Kilifi county. The 1st and 2nd defendant were his neighbors. The 2nd defendant was chairman of Mabirikani Village Land Committee whose task was to secure the members' rights to own the suit lands which are situate along the Nairobi Mombasa highway. The lands were later subdivided into 17 plots and registered in favor of the 1st and 2nd defendants who had been acting on behalf of about 127 villagers in the adverse possession case, that is Mombasa HCCC Number 328 Of 2010 whose judgment was entered in favour of the plaintiffs on 8th February 2013. Trouble, according to PW2, began in 2013 when the 1st and 2nd defendants caused to issue a decree that was fake providing that the suit lands, measuring an aggregate of about 152 acres, be registered in their individual names. The 1st and 2nd defendants then began sourcing for buyers and began disposing of portions of the suit property in total breach of the trust bestowed to them by the community, thus leading to a multiplicity of land disputes between the community members and purchasers with the titles. The 1st and 2nd defendants then engaged financiers/sponsors and or facilitators who started making demands for an equivalent of half of the suit property, that is 76 acres. The financiers also claimed 10 acres of prime land next to the Mombasa Nairobi highway amongst other demands. The sponsors were sought by the 1st and 2nd defendants without the involvement of the community. According to PW 2 the registration of the 1st



and 2nd defendants as proprietors having been affected illegally, all subsequent sales and transfers of suit parcels carved out of the suit lands are illegal and the resultant titles should be canceled.

Defence evidence

11. DW1, Iddi Ibrahim, the 1st defendant, testified on 20th March 2025 on his own behalf and on behalf of the 2nd defendant, with his authority. He adopted his witness statement dated 12th July 2018 as his evidence-in-chief in this case produced documents in the list dated 28th February 2018 as D. Exh. 1 to 14. He averred that the defendants got the suit land by way of adverse position in case Number 328 Of 2010 at Mombasa. He admitted that he and the 2nd defendant were representing other named persons in that case in which the Land Registrar was ordered to issue titles. Titles were issued and the land subdivided and everyone got their own parcel and there was no complaint to the court that passed the decree. The 1st plaintiff and the 2nd plaintiff have also taken their share; that the judgment of the court and the decree have not been set aside to date; that the various beneficiaries of those portions had right to deal with their portions as they wished after the subdivision; that there was no fraud committed by himself or by the 2nd defendant or any breach of statutory duty and no such complaint has been raised in Mombasa HCCC 328 of 2010; that the transactions in respect of the subdivisions have been explained in the documents filed in this case and that they were valid legal and lawful; that the plaintiffs lack locus standi to file and prosecute this suit since this court has no jurisdiction to cancel and decree of a court of equal jurisdiction; that there was no appeal or review of the judgment in Mombasa HCCC 328 of 2010; that no violations of the plaintiffs' Constitutional rights were committed by the defendants.
12. Upon cross-examination by Mr Nyange for the plaintiffs, he stated that he and the 2nd defendant sued on behalf of the plaintiffs and the decision of the court was at the land be registered in the names of the 1st and 2nd defendant on behalf of the 127 members. He admitted that though there is no order in the judgment stating that the land be registered in his name or in the 2nd defendant's name, the decree at page 125 of the defendants' bundle stated at the land be registered in the names of the 1st and 2nd defendants. He admitted that the registration of the subdivisions in the 1st and 2nd defendants name was done to enable them hold them on behalf of the other persons who are members of the community. He admitted that the decree in the plaintiff's bundle differs from the decree in the defendants' bundle; that subdivision was conducted in the year 2013 and the titles were stored at Mr Tindi's office. Mr Tindi was their advocate. Members would go there seeking to have their titles transferred to them. He admitted at Sharif Yusuf Somabwana and Asman Abdullahi Athman Abdullah named at page 20 and 21 of the defendants' bundle were not among the 127 members of the community. Neither was Ahmed Saleh Hassan mentioned at page 22 in the bundle. Ahmed Asman Ahmed mentioned at page 25 of the defendant's bundle was also not in the list.
13. He admitted that though Athman Mambo who was selling land to Muhammad Abdallah at page 72 of the bundle, did not have any title in Athman's name for plot number 2636 which he was purporting to sell. DW1 could not remember the number of plots that he had transferred.
14. Upon re-examination by Mr Omwenga he stated that the titles are not with him but that they have been given to the owners of the lands. He stated that no one has complained of any two different decrees issued in the Mombasa case. He admitted that some of the plots were transferred to people who had stood in for the group in terms of expenses incurred when following up on the land and its subdivision. He asserted that the 1st and 2nd plaintiffs have withdrawn from the case, and they have not stated which plot they were entitled to, or claimed that it was not transferred to them.



15. DW2, Muhammad Saleh Hassan, director of Tudor Logistics Limited testified on the same day as DW1 and adopted his witness statement dated 12th July 2019. He stated that the 3rd defendant acquired its parcel, CR Number 59603 (Subdivision number 2625 Section V/MN) from one Matano Jira Morris; that he visited the suit land on the ground and established that Morris was the owner and that there was no illegality in the acquisition of the land by the 3rd defendant. He stated that the land was acquired for value without notice and no cause of action has been disclosed against the 3rd defendant by the plaintiffs. He adopted the evidence of the 1st defendant.
16. Upon cross-examination by Mr Nyange for the plaintiffs, he stated that a search was conducted on the suit land which led to its acquisition; that it was found that the land was registered in the names of the 1st and 2nd defendants; that the transfer was executed by the 1st and 2nd defendants while Morris give his consent; that the title which Morris had bore the names of the 1st and 2nd defendants. DW2 does not have evidence that consideration was paid for the transfer; the Agreement at page 9 of the defendants' bundle stated no consideration at all.
17. Under the examination by Mr Omwenga DW2 stated that a board resolution was file on 15th July 2019.

Plaintiffs' Submissions

18. The plaintiff's counsel submitted that the sole issue for determination was whether the final prayers sought should issue. He stated that a challenge to this court's jurisdiction as mounted by the defendants ought to fail for the reason that it is not only belated but also that it is unsound. He pointed out that though the defendants filed their notice of Preliminary Objection on 20th February 2018 they did not prosecute the objection and that preliminary objection was dismissed by Justice Olola. He stated that an objection on jurisdiction ought to have been raised at the earliest opportunity; that it is now being raised after parties have been heard and that even if the court were to consider the arguments raised on jurisdiction the same ought to fail for the reasons that res judicata is not applicable in the case for the reason that, according to counsel, the cause of action in Mombasa HCC 328 of 2010 was adverse possession, whereas the cause of action in the present case is fraud and corrupt dealings; the cause of action is therefore not the same in both causes. Besides the parties are not the same in both cases. Counsel argued that it is not true that the court is being asked to sit as an appellate Court, to or to review the findings of the court in respect of Mombasa HCCC 328 of 2010 OS, and that the final prayers sought in both suits are distinct. Consequently, he avers, this court has jurisdiction to entertain the present suit.
19. On the issue of locus, it was argued the defendants had stated that the plaintiffs have failed to give evidence of the suit property they claim to own or have an interest in. The plaintiff's counsel avers that the 1st and 2nd defendants, together with other persons not members of the community caused numerous subdivisions making it impossible for the plaintiffs to specifically identify the suit property that they are entitled to after subdivision; that in any event, their ownership, interest and locus arises from their claim of adverse possession that was granted in Mombasa HCCCC 328 of 2010 OS. Besides, it is pointed out that The plaintiffs' witness Kenga Dickson, appears in the list of beneficiaries at number 48 and 88 while the 4th plaintiff appears in the documents file by the defendants alongside one Mariam Said and others. Therefore, according to counsel, the question of locus has been answered.
20. Counsel referred to Section 24(a) and Section 25 of the *Land Registration Act* regarding the rights of a proprietor of land and stated that the titles in the names of the defendants were acquired illegally, unprocedurally or through a corrupt scheme and that the title by the 1st and 3rd defendants and the subsequent subdivisions and transfers all arise from that corrupt scheme. He referred to *Munyu Maina Versus Hiram Gathiha Maina CA Number 239 Of 2009* and *Alice Chemutaito Versus Nickson*



Kipkurui Korir and Two Others 2015 eKLR for the proposition that the law allows an aggrieved party to challenge a title deed or lease. The defendants bungled the process of land acquisition by forging a decree that allowed the entire suit land to be registered in their names knowing very well that they have never owned nor were they entitled to ownership of the entire suit land. He stated that the plaintiffs have even demonstrated how the suit land came to be registered illegally in the 1st and 2nd defendants' names and that the subdivisions were caused solely for purposes of profiting at the expense of the parties in Mombasa HCCC 328 of 2010 OS who are currently in occupation.

1st To 3rd Defendants' Submissions

21. Counsel for the 1st to 3rd defendants submitted that an analysis of the entire matter shows that the plaintiffs are complaining about issues relating to the decree issued in Mombasa HCC 328 of 2010 OS; that the plaintiffs never applied for review of the said decree. They did not also appeal against it; that consequently any complaint in respect of the said decree in this matter is a nullity and does not have any legal basis at all; that the 1st and 2nd plaintiffs filed a consent with the 1st to 3rd defendants to withdraw their case on 17th November 2022; that the 3rd and 4th plaintiffs have not specified what plot or subdivisions they were entitled to and which they did not get, hence their allegations are unfounded.
22. Citing Nairobi Civil Miscellaneous Application Number E404 of 2020 Thomas Occur and Another Versus Lucy Mwikali Kitonyo and Nairobi Civil Appeal Number 36 Of 2012 Joseph Ndirangu Waweru T/A Moorland Mercantile Company Hillworks Furniture Limited and City Council of Nairobi, counsel submitted that this court does not have jurisdiction to issue orders for cancellation or nullification of the said transfers since the plaintiffs did not apply to the trial court for the said orders; that case emphasizes that as per Section 34(1) of the *Civil Procedure Act*, the questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit.
23. Counsel submitted that the plaintiffs have failed to show that they are members of the alleged Mibirikani Village hence they have not demonstrated and or shown any prima facie case with any chances of success; that they have failed to demonstrate that they have any known legal interest in the mentioned parcels of land, hence the prayer for alleged violation of their rights to property cannot issue. They cited the case of Mombasa Civil Appeal E092 of 2021 Chai Lwambi Mwalambe Suing as The Legal Representative of the Estate of Lwambi Mwalambe Beponda and District Land Registrar & 4 Others for that proposition. He added that they have failed prove that they shall suffer irreparable loss that cannot be compensated by way of damages and thus do not deserve an injunction as prayed. Also the balance of probability tilts against the plaintiffs. Counsel stated that as the decree has not been reviewed, set aside or appealed, this matter would be best dealt with in that previous suit. He cited the case of Joseph Martin Nyangau and Ndatani Enterprises Limited and Two Others Machakos ELC Number 51 Of 2019 in support of that proposition. He further relied on *Accredo AG and Three Others and Stefano Lucelli and Another -Malindi Civil Appeal Number 43 Of 2018* for the proposition that the plaintiffs are estopped from raising issues which they ought to have raised in the earlier suit Mombasa HCCC No. 328 of 2010 OS, and this court should thus down its tools.

Analysis And Determination

24. The only issues arising in the present suit are as follows:
 - a. Whether this court has jurisdiction to determine the present suit;



- b. Whether the plaintiffs have proved fraud on the part of the 1st and 2nd defendants in their dealings with the suit land;
- c. Whether the 4th defendant is guilty of fraud and breach of statutory duty;
- d. What orders should issue.

Whether this court has jurisdiction to determine the present suit;

25. Whilst the plaintiff assert that their cause of action lies in fraud and breach of statutory duty, the main defence of the 1st 2nd and 3rd defendants is that the present dispute arises from the implementation of a decree issued in Mombasa HCCC OS 328 of 2020 and that according to Section 34 of the [Civil Procedure Act](#) the same ought to be ventilated in that court. Section 34 provides as follows:

“ 34. Questions to be determined by court executing decree

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
- (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
- (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation. — For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.”

26. This court notes that the present matter is not a dispute between a decree holder and a judgment creditor but a struggle amongst the decree holders, where some are alleging fraud and breach of trust in the manner in which the others who were bestowed with leadership responsibilities are dealing with the fruits of their judgment. It also includes a claim against the Land Registrar for alleged breach of statutory duty. There are clearly solid causes of action independent from the cause of action in the former suit which are outlined in the plaint herein and which require to be dealt with by way of calling of evidence from the parties.

27. The dispute before this court in this suit is not a matter of mere enforcement of decree. A dispute relating to fraud and breach of statutory duty in connection with the sharing out of land obtained through a court decree can not be heard and determined in a dispute for enforcement. To buttress this point one only needs to, examine the wording of Section 34 as follows:

- “(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”



28. The use of the words “and relating to the execution, discharge or satisfaction of the decree” is important. Execution of a decree is usually not effected between the winning parties in a suit, but by the successful parties against the unsuccessful parties, the decree holder against the judgment debtor. The commencement of that subsection with the words “relating to execution” is indicative that all the rest of the provisions in Section 34(1) are targeted at resolution of issues arising between the opposing parties in the suit and not issues between the co-holders of the decree. It is only logical to interpret the clause in that manner because there were no orders made by the court antagonizing the successful parties amongst themselves. Another indicator of the intention of the legislature is that the words relating to execution are closely followed by the words “discharge or satisfaction of the decree”. A decree can only be discharged in favour of a judgment debtor as only he would be a beneficiary. It can not be discharged as against a co-decree holder as he is already among the successful parties. Lastly, the words “satisfaction of the decree” are used in the same clause. Satisfaction of a decree is usually by a judgment debtor and not a decree holder. The court is only supposed to ensure that the decree it has issued has been satisfied by the judgment creditor. In brief the terms used in Section 34 - execution, discharge, satisfaction, - once construed ejusdem generis leave no doubt that the section is not targeted at co-holders of a decree who did not have a dispute with each other. However, if there was a decree passed between one plaintiff and another plaintiff, which was not the case in the Mombasa case, Section 34(1) may be applicable but only between those affected by the decree as decree holder and judgment creditor. Those against whom no decree was not passed would not be affected by Section 34(1).
29. In view of the foregoing discourse on the law in Section 34(1) of the *Civil Procedure Act*, this court finds no fault on the part of the plaintiffs herein in the commencement of a fresh suit against their co plaintiffs in the Mombasa case. Consequently, I find that the present suit is properly before this court for determination and this court is possessed of jurisdiction to hear and determine it.

Whether The Plaintiffs Have Proved Fraud On the Part Of The 1st And 2nd Defendants In Their Dealings With The Suit Land;

30. There is no doubt that 127 persons were involved in the Mombasa Case Number 328 Of 2010 OS (hereinafter also referred to as “the Mombasa case”) as applicants. It is not controverted that the 1st and 2nd defendants in this case prosecuted that case on behalf of all the members of the group that was claiming the land. They have indeed expressly admitted that fact during cross-examination in the present case. In the judgment in the Mombasa case the court stated as follows:

“Their claim to the suit land by way of adverse possession has been proved satisfactorily. I therefore do hereby issue a declaration in terms of prayer 1 of this originating summons and I find that the applicants are entitled therefore to be registered as proprietors to the suit land. I make no order on costs.”

31. According to the judgment in Mombasa HCCC OS 328 of 2010 which set it out verbatim at the onset, prayer 1 of the originating summons dated 16th August 2010 and filed in court on 14th September 2010 read as follows:

“Whether the applicants be declared to have become entitled by virtue of adverse possession of 40 years of ALL THAT PIECE OF LAND containing an area of 152 acres and 34 acres respectively or thereabout registered under the Registration Of Titles Act Chapter 21 Laws of Kenya in the name of Ainsley Leveratt Dopwell and comprised in Title L.R. 3591 at Mazeras Mombasa District.”



32. That was the prayer that the court granted on 8th February 2013. The decree that issued on 15th February 2013 not only contained the terms in prayer number 1 as granted, but went ahead and included another paragraph as follows:

“The Land Registrar Mombasa land office do register the Title LR3590 & 3591 Subdivision Number 885 Section VI MAINLAND NORTH and Subdivision Number 288 Section V MAINLAND NORTH at MAZERAS Mombasa District forthwith and issues certificates of titles in the names of IDDI IBRAHIM AND YUSUF NEVI.”

33. It is clear that this second paragraph of the decree omits to state that Iddi Ibrahim and Yusuf Nevi would hold the land titles on behalf of or in trust for all the 127 applicants in the Mombasa case. The decree varies a great deal from what was expressed by the court in its judgment dated 8th February 2013. A wholistic reading of the judgment conveys the meaning that the suit land was to be registered in the name of all the 127 applicants. Of course in due time each would receive their separate portion. It was evident from page 3 of the judgment that the applicants in the Mombasa case claimed to have been born on the suit land, and that they had all constructed family homes on the suit land, and that the remains of their kin have been buried there. The list of 127 occupants of the village as well as copies of the identity cards of each applicant were produced in evidence by PW1 who is the 2nd defendant in this case, and who was the chairman of the Mabirikani Village Land Committee. The 1st defendant in this case was the Deputy Chairman of the same committee. The 3rd plaintiff testified in the Mombasa case as an occupant of land within the village and one of the beneficiaries of the expected judgment and decree.

34. No evidence was presented to this Court by the 1st and 2nd defendants to demonstrate that they ever applied for the review of the judgment so that the decree may indicate that the land was to be registered in their own names, or to include an extra parcel which the court did not give them in the judgment. Also, no evidence was presented by the 1st and 2nd defendants to demonstrate that they were authorized by their co-applicants in the Mombasa case to hire facilitators or sponsors for any subdivision of the land or for any other task connected with implementation of the decree.

35. Ordinary claimants for title by way of adverse possession are entitled to the extent of land which they have occupied and utilized contrary to the rights of the registered title holder and no more. Even without first having the 1st and 2nd defendant registered as owners of the entire portions concerned, it should not have been difficult to establish by way of a comprehensive survey how much land each of the 127 applicants named in Mombasa HCCC OS 328 of 2010 were entitled to under the judgment of the court. No such survey was undertaken the consequence was that the 1st and 2nd defendants dealt with the suit land as they deemed fit, hence the complaints by the plaintiffs herein.

36. Surprisingly from the letter dated 30th August 27 written by Martin Tindi Advocates to Edward Kiguru Land Surveys of Mombasa, it is evident that only 16 rather than 127 plots emanated from a subdivision of LR 3591. Despite inquiry by advocate Tindi, no information was forthcoming as to who conducted the survey that led to the 16 subplots, and Kiguru the Surveyor who further subdivided those 16 subplots denied having ever conducted the original subdivision of LR Number 3591 that gave birth to them.

37. Besides, there is one very glaring discrepancy between the judgment and the decree regarding the parcels of land that was declared to have vested in the applicants under the doctrine of adverse possession. The court in its judgment gave the applicants Plot Number 3591 at Mazeras Mombasa District. Instead of confining themselves to this plot, the 1st and 2nd defendants somehow procured a decree that contained an additional parcel of land baptized Title Number LR 3590. Nowhere in the body of the judgment



dated 8th February 2013 in Mombasa HCCC OS 328 of 2010 was LR 3590 mentioned by the court. It does not take rocket science to establish that the inclusion of LR 3590 in the decree was undertaken in order to give the impression that it had been awarded to the applicants by the court. This was clearly fraudulent. Since the decree was procured in their favour and the two parcels were both registered in the names of the 1st and the 2nd defendants it is clear that they alone must have been the beneficiaries of such fraud and I therefore hold them liable for it.

38. Lastly, the 1st and 2nd defendants did not demonstrate the criteria by which they subdivided the land. They did not bring before this court clear records to show that the same was equitably subdivided and distributed to the appropriate beneficiaries who had claimed under the OS. They did not show how they dealt with the parcel of land that was fraudulently included in the decree.
39. I have observed that numerous photographs of permanent and semi-permanent developments were exhibited at the beginning of this suit and that confirms to this court that many of the applicants were settled on the land. This court gets the impression that the two applicants were not interested in any manner in claiming the land on behalf of their co-plaintiffs despite using their names in the suit. It would appear that their co-applicants happened to be mere incidental donkeys to be used to convey to the court that a large number of people were involved so that it may issue the orders it did in the judgment, only for them to start dishing out the suit land to whomever they wished. From my reading of the present proceedings and the evidence of the two defendants themselves, it would appear to this court that the two defendants were in cahoots with other persons not named in the suit to carry out their nefarious plans. However, despite the intention of the two defendants, and unfortunately for them, the decree granted their co-plaintiffs rights which can not be taken away by anyone at will.
40. Upon being cross-examined by Mr Nyange, DW1 disclosed that some of the persons to whom land was transferred were not parties to the adverse possession suit.
41. Surprisingly in his written statement DW1 still adopted his witness statement filed on 15th July 2019. That statement appears to contradict the judgment of the court by stating that in Mombasa HCCC OS 328 of 2010, the applicants applied for title by way of adverse possession for two land parcels, including LR 3590 which was not the case.
42. What DW1 seems to be rejoicing over in this matter as his defence is that the decree extracted from Mombasa has never been set aside nor appealed by any person, which issue this court has dealt with and put to rest as the first issue for determination in this very judgment. The finding of this court above has been that this is not merely a dispute about the implementation of the decree between a decree holder and judgment creditor. It is a case which, according to the plaint, is rooted in the cause of action in fraud and misrepresentation.
43. From the foregoing this court has found that this case is replete with evidence to support the finding that there was indeed such fraud and misrepresentation. This court thus finds that the registration of LR 3590 and 3591 in the names of the 1st and 2nd defendants and the subsequent subdivision thereof and disposal without any transparency and accountability to the plaintiffs in this case was fraudulent.
 - c. Whether the 4th defendant is guilty of fraud and breach of statutory duty;
44. No evidence was led against the 4th defendant by the plaintiffs to attempt to establish fraud or breach of statutory duty against him. From the record it is clear that the plaintiff's ammunition were purely directed at the 1st 2nd and 3rd defendant; that the court has found the 1st and 2nd defendants culpable for fraud does not automatically drag in the 4th respondent into liability. Documents registered in government offices were submitted by the 1st and 2nd defendants and their advisors. Fraud has to be



specifically proved by way of evidence against each person and since I find no evidence against him, the case against him must fail.

45. The 3rd defendant is a beneficiary of land that was obtained by means of fraud. due diligence would have informed it that the parcel no LR 3590 was given to the plaintiffs in the Mombasa case and that the decree that was used to register the same in the names of the 1st and 2nd defendant was forged.
46. Consequently, I find that the plaintiffs have established their claim on a balance of probabilities as against the 1st, 2nd and 3rd defendants and I hereby enter judgment in the plaintiffs' favour against the 1st, 2nd and 3rd defendants and I issue the following final orders against them jointly and severally:
 - a. A declaration is hereby issued declaring that the applicants named in Mombasa HCCC OS 328 of 2010 are the lawful owners of LR number 3591 pursuant to the judgment issued in that case;
 - b. A declaration is hereby issued declaring that the issuance of title to LR number 3591 and LR 3590 in the names of the 1st and 2nd defendants without any indication that they were to hold it on behalf of their co-plaintiffs in Mombasa HCCC OS 328 of 2010 was illegal and fraudulent;
 - c. A declaration is hereby issued declaring that the inclusion of LR 3590 in the decree in Mombasa HCCC OS 328 of 2010 and the issuance of title to LR number 3590 in the names of the 1st and 2nd defendants was fraudulent;
 - d. A declaration is hereby issued declaring that the subdivision of title to LR number 3591 and LR 3590 and issuance of subtitles resultant therefrom in the names of the 1st and 2nd defendants was illegal and fraudulent;
 - e. An order is hereby issued compelling the 1st, 2nd and 3rd defendants to deliver up to the 4th defendant the mother titles issued to them over LR number 3591 and LR 3590 and titles issued in their names in respect of the subsequent subdivisions of the said parcels for cancellation and that the 4th defendant shall cancel the same;
 - f. An order of permanent injunction restraining the 1st, 2nd and 3rd defendants either by themselves or through their agents or servant from selling, charging, subdividing, taking possession or otherwise dealing in any manner with the suit lands;
 - g. An order is hereby issued to the effect that any execution of decree in Mombasa HCCC OS 328 of 2010 shall be confined strictly to the plot number 3591 which was the subject matter of Mombasa HCCC OS 328 of 2010 and LR No 3590 shall be excluded;
 - h. An order is issued hereby directing the Deputy Registrar Mombasa ELC court to issue a decree that conforms to the judgment in Mombasa HCCC OS 328 of 2010 by excluding LR 3590;
 - i. The Director, Criminal Investigations Directorate shall launch investigations as to who applied for and obtained the decree stating that the suit land shall be registered in the names of the 1st and 2nd defendants herein and how, and who included plot LR number 3590 in that decree and establish if any offence has been committed with a view to preferring charges against the culprits;
 - j. A declaration is hereby issued declaring that the defendants' actions violated and breached the plaintiff's rights as provided for under the Article 40 or *the Constitution* of Kenya;
 - k. The 1st, 2nd and 3rd defendants shall bear the costs of this suit.



DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 18TH DAY OF DECEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

