

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC NO 230 of 2018

SHABANI ATHUMANI MAITHA & ALEX FURAHA CHARO

(SUING FOR AND ON BEHALF OF THE WAMWANYUNDO CLAN)

PLAINTIFFS

VERSUS

KARSAN RAMJI & SONS LIMITED & 6 OTHERS

DEFENDANTS

JUDGMENT

THE CLAIM

1. In the amended plaint dated 31st of January 2019 the plaintiffs seek the following orders:

- a. A Declaration that the adjudication process which took place in Kawala "A" section adjudicating the suit property as if it is situated at Kawala "A" is null and void;
- b. An order directing the Chairman of National Land Commission and all other government departments mentioned hereinabove more particularly the Chief Land Registrar to cancel the title deed which was illegally issued to Ms Karsan Ramji and Sons Limited the 1st defendant here in above *in toto* contravention of the Adjudication Act as no adjudication ever took place to warrant the issuance of the title deed;
- c. An order directing the Director of Adjudication to nullify the adjudication process adjudicating the suit property as if it was situated in Kawala "A" and order a fresh adjudication process in Jimba Kaliangombe adjudication section where the suit property is a situated and thereafter the issuance of a new title deed in the name of the plaintiff;
- d. An order directing the Director of Adjudication to issue a fresh notice and appoint fresh members of the land committee to assist and sit at Jimba Kaliangombe adjudication section for the purpose of adjudicating the plaintiff's land and inviting the plaintiffs to participate in the process as per the requirements of the law
- e. An order directing the Chief Land Registrar and the National Land Commission to restore the parcel of land illegally registered as

Kawala "A"/Kadzodzo/399 as no adjudication process ever took place in Jimba/Kaliangombe where the suit property is situated.

- f. A perpetual injunction restraining the selling, trespassing, transferring, charging, pledging, leasing, or in any manner whatsoever disposing of or agreeing to dispose of any interest in the parcel of land illegally registered as Kawala "A" Kadzonzo/ 399 in the name of the 1st defendant;
 - g. An order of rectification to cancel all entries relating to the illegal registration of the aforesaid parcel of land into the name of the 1st defendant;
 - h. All such further inquiries, directions and relief as shall be just in the opinion of the court;
 - i. Both general and special damages;
 - j. *Mesne profits* for loss of use of the land;
 - k. Cost and incidentals to this suit.
2. The 1st defendant, a limited liability company, is the current registered owner of the suit land. The rest of the defendants are government offices and departments who, except the seventh defendant, are specifically involved in the land sector matters in Kenya. The 7th defendant is the government legal representative.
3. In their amended plaint the plaintiffs claim that at all material times they have been the beneficial owners of Kilifi/Kawala "A"/Kadzonzo 399 situated in Jimba Kaliangombe Adjudication Section. Jimba Kaliangombe was declared an adjudication section. During the adjudication process, the suit land was discovered to have been adjudicated under Kawala "A" adjudication section. However, the land adjudication committee that purportedly adjudicated the suit land denied having adjudicated that land as part of located in the Kawala "A" section. The plaintiffs were shocked to learn that a title deed had already been issued in respect of that land to the 1st defendant under the series of titles issued to land owners in

Kawala “A” adjudication section despite the fact that, according to the plaintiff, the suit land was located in Jimba Kaliangombe section. The plaintiffs aver that they were not involved in the adjudication of the land during the adjudication process in Kawala “A” section. It is there for claimed at the 1st defendant clandestinely, fraudulently and illegally caused the suit property to be adjudicated under the Kawala “A” and adjudication section and proceeded to obtain a title deed for it before the adjudication.

4. The particulars of fraud have been set out as follows in the amended plaint:

- a. Fraudulently and illegally adjudicating the suit property as if it is situated in Kawala “A”;
- b. Facilitating the issues of a title deed over the suit property knowing very well that the adjudication process of Jimba Kaliangombe where the suit property is situated had not taken place;
- c. Colluding with the 1st defendant to illegally take the suit property and processing a title deed without following the due process;
- d. Proceeding to illegally erect a fence around the suit property and squirting on the suit property.

5. The plaintiffs avers that they have demanded that the defendant does vacate the suit land but the defendant has failed to do so hence the suit.

RESPONSES

6. The 1st defendant filed a written statement of defence on 28th May 2019. The 2nd 3rd 5th 6th and 7th defendants file their statement of defence on 5th July 2019. The plaintiff filed a reply to the 1st defendant statement of defence on 29th July 2019

1st Defendant’s Defence

7. The defence of the 1st defendant is as follows: that it was registered as proprietor of the suit land after adjudication was conducted in respect of the area after it was declared an adjudication section in August 2007. According to the 1st defendant the suit land is situated in the Kawala “A” adjudication section. The 1st defendant has a first registration in respect of the suit property which was during surveyed as per survey map sheets number 148 and 50. The plaintiffs in the current suit took their complaint to the National Land Commission regarding the legality of the 1st defendant’s proprietorship of the suit land, when the National Land Commission conducted comprehensive investigations into their complaints and during the process the plaintiffs were fully represented, and documentary evidence was submitted to the **NLC** to support/oppose the claim after which submissions were tendered by all the parties; consequently, the National Land Commission confirmed and appealed the 1st defendant’s title over the suit property. According to the 1st defendant, it acquired the said property for quarrying purposes from Mavji Govind and company limited who was the previous owner. Mavji Govind and Company limited had initially purchased the property from the plaintiffs through three written sale agreements dated 14th December 1982 executed by Joseph Karisa Thoya second September 1983 executed also by Karisa and 27th April 2002 executed by Samson Nyundo and Karisa Thoya. Conclusion of the National Land Commission was that the 1st defendant had lawfully acquired the pursuit property from the previous

owners who had also legally purchased the suit property from the original owners and paid necessary consideration. The plaintiffs' interest in the suit property therefore ceased to exist upon the sale of the sole properties to Mavji Govind and company limited who passed good title to the 1st defendant. It is stated that adjudication of the suit property was lawfully done by a competent officer and further no objections were raised at the time of adjudication and that adjudication was upheld by the National Land Commission after its investigations. Fraud is denied.

2nd 3rd 5th And 7th Defendants' Statement of Defence.

8. The defendants denied the plaintiffs' claim and stated that the subject property was adjudicated in the section known as Kawala "A" Kadzonzo Madzimhani and not Jimba Kaliangombe. They state that the suit land was allocated through an adjudication process in strict compliance with the provisions of the Land Adjudication Act and that those who were allocated the land were ordinary residents on the land who had complied with the terms of allocation. They deny that the title number Kilifi Kawala "A" 399 exists or that it forms part of Jimba Kaliangombe section as alleged.
9. The plaintiffs reply to the 1st defendant's statement of defence reiterated the contents of the plaint and joined issues with the 1st defendant on its written statement of defence. They added that the suit property is situated

in Jimba Kaliangombe and not Kilifi Kawala “A”. The denied the allegations in the defence and put the plaintiff to strict proof thereof.

EVIDENCE

10. **PW1, Victoria Mishi Maraga**, testified on 29th September 2022 and adopted her witness statement filed in court on 20th December 2018 as her evidence -in-chief in this case. She stays in Rabai sub-county. She stated that she and unnamed others got information that there would be adjudication of Jimba Kaliangombe in 2011. She produced 9 documents. She was the Deputy Chairman of the committee. However, she did the work of the chairman since the chairman was ailing. She was fully involved in the entire adjudication process in the jimba kariangombe adjudications section. He denied that the Wamwanyundo clan land or Joseph Thoya Baya’s land was adjudicated under Kawala “A” section because it was outside that section. He maintained at the land was in Jimba Kaliangombe. The committee's work was to identify the beneficiaries of the parcels of land. According to her the suit land is located in Jimba Kaliangombe. Are committee did not adjudicate the land because they were told that the land had already been adjudicated and they were titled deeds issued. When cross-examined by Mr Kithome for the defendant he did not know who did the adjudication.
11. Upon cross-examination by Mr Munga, she could not remember when the Jimba Kaliangombe adjudication took place. However, she could recall that when they went to the second section of the Jimba Kaliangombe

section the plaintiffs filed their complaints to their adjudication, but the case could not be heard since the requisite 14 days had lapsed.

12. **PW2, Douglas Mazunga Wale** testified on the same day as **PW1** and adopted his witness statement filed in court on 20th December 2018. He was a committee member in the Kawala “A” Adjudication Section in 2007. He denied that any Wamwanyundo clan land or Joseph Thoya Baya’s land was adjudicated under Kawala “A” section because it was outside that section. He maintained that the land was in Jimba Kaliangombe and thus was outside the Kawala “A” committee's mandate.
13. On cross-examination by Mr Kithome he stated that Kawala “A” and Jimba Kaliangombe are adjacent to one another.
14. When cross-examined by Mr Munga, he stated that he was the chairman of the Kawala “A” adjudication section that there is a boundary between Kawala “A” and Jimba Kaliangombe and that Kawala “A” section does not have a plot number 399.
15. **PW3, Alex Furaha Chalo** testified on 26th September 2024 and adopted his witness statement dated 31st January 2019 as his evidence-in-chief. He is one of the plaintiffs. His evidence is that while demarcation was being done for the suit land, a man of Asian extraction appeared with a title deed and the demarcation ceased. The title deed was bearing the name of the “Kawala “A” Kadzonzo” section. According to PW3, the land is in Jimba Kaliangombe section. The plaintiffs sought the services of Surveyor Mwanyungu who concluded that the land was in Jimba

Kaliangombe. They therefore approached this court for relief. The Asian fenced the land. PW3 was not aware of any agreement such as that the Asian claimed to have made with the Wamwanyundo clan. He stated that if there was no adjudication that was conducted then the title held by the Asian is illegal. PW3 stated that officers responsible for adjudication over Kawala "A" and Jimba Kaliangombe denied ever having adjudicated the land. He stated that the plaintiffs have not received any report from the National Land Commission.

16. Upon cross-examination by Mr Ngaira, PW3 stated that he was born in **1974**, and he was **37** when these things were discovered. He admitted that in his written statement he had not stated that an Asian came with a title or that the matriarch fainted when that Asian appeared. He did not recall what date it was when the title was produced. He insisted that the committee and the land officers were present at the time; Ms. Victoria Mishi Maraga the chairlady of the committee was present. The committee members originated from the locality. He cannot remember how many members comprised that committee. He admitted that Sarah Karisa Baya is his mother and was the family matriarch; that she is also called "*Sarah Joseph Thoya*;" that he denies that she is also known as "*Kamazina*"; that Joseph Karisa Thoya is his father and Sarah was his wife; that Joseph Karisa Thoya is now deceased; that his co-plaintiff, Shaban Thoya Maitha is also called Shaban Athumani Maitha; that Shaban is his uncle. He stated that he does not know who Juma Abitoya Baya is. (the present suit

had been commenced in the name of Juma Abitoya Thoya.) He does not know why Juma's name was removed from this suit and his name and that of Shaban substituted therefor. He denied that his mother Sarah Joseph Thoya went to report the matter to the National Land Commission. He dismissed the conclusion of the **NLC** in **1DExh 2** (its Report) as untrue because in his opinion the land is within Jimba Kaliangombe.

17. He has never seen **PExh2** in his life. He is not aware that Kawala "A" was still under adjudication process as at the year **2007**. He knew Douglas Mazungu, who was the chairman of Kawala "A" adjudication committee. Douglas was not a member of the Wamwanyundo clan. He did not know who the rest of the person's listed in **PExh3** were. He admitted that **P.Exh 4** dated 30th June 2011 speaks of Jimba Kaliangombe. He has no evidence to show that Kawala "A" was being adjudicated in **2011**. He admitted that he comes from Kawala sub location in Kaloleni Division, Kilifi District; that his identity card contains the right information that he comes from Kawala. He has no evidence of collusion between the defendants. He has not conducted as search on the title. He believes that the land does not have a title. The plaintiffs did not concern themselves with doing a search in respect of the land title held and shown by the Asian because they believed the land is in Jimba Kaliangombe. He is familiar with the Kokotoni area of Kaloleni. He is aware that the 1st defendant operates a ballast business alongside other business enterprises there. He has never heard of Mavji Govind and Company

Limited. He is not aware that Joseph Thoya, his father had sold land to Mavji. His clan had more than **100** members. He acted on behalf of that Clan. However, the authority to act is signed by **39** people only who are only some of the clan members. He stated that his mother is not from the Wamwanyundo clan. Baya Nyundo who had been appointed as an Assistant Chief but who is now deceased was not a member of the Wamwanyundo clan. The **39** members who gave him permission to sue on their behalf had not attended Court. He could not ask 1st defendant why it was on the suit land when his father was alive and he could not also ask his father the same question. Title issued in the name of the 1st defendant, labelling the land as being in Kawala "A", was discovered after his father's death. He denied exploiting the Constitution to bring a historical injustice claim.

18. Upon cross-examination by Mr Munga, he maintained that the clan lives in Jimba Kaliangombe in Rabai while Kawala "A" is in Mariakani, and that the suit land has not been demarcated. He reiterated that Jimba Kaliangombe was declared an adjudication Section in August 2011 while he was on the land together with other members of his Clan. They intended to get a title in the name of one person representing all the others. As a clan, they sought a private surveyor. They never filed any appeal during adjudication process for the Kawala "A" section. He does not know whether Jimba Kaliangombe has a plot numbered 399. He admitted that Jimba Kaliangombe borders Kawala "A".

19. Upon re-examination by Mr Gakuo, he stated that he received his ID card at Mariakani and that he never misled the ID card officials. He insisted that the plot is physically located in Jimba.
20. **PW4, Shaban Athumani Maitha** testified on the same day as PW3 and adopted his witness statement dated 31st of January 2019. His evidence is that in June 2011 the government advertised the Jimba Kaliangombe adjudication section and in August 2011 a committee was formed. When adjudication officers came to the suit land the lady who owned the land produced an ID card to facilitate adjudication but someone else came and produced a title to the land. He saw that title. It was for Kawala "A" Kadzonzo while the suit land is in Jimba Kaliangombe. At that juncture the officers stopped the adjudication process. **PW4** belongs to the Wamwanyundo clan which had given him authority to act for them in this action. He denied that the clan ever took any complaint to the National Land Commission. He labeled the title held by the 1st defendant as fraudulent. He denied at the land had been adjudicated. He had no knowledge of sale of the land to Mavji Govind and Company by Joseph Karisa Thoya. The clan hired a surveyor who confirmed that the land is in Jimba Kaliangombe in Rabai.
21. Upon cross-examination by Mr Ngaira, PW4 admitted that he is a leader at a local mosque and is sworn to speak the truth in this case; that Joseph Karisa Baya is his elder brother, now deceased. PW4 denied having any other names. He knows PW3 as his brother's son. He explained that

Sarah Thoya's widow is not a member of the clan because she had simply been married into the clan. He stated that Johnstone Thoya is Joseph Thoya's son. One of his other nephews is also called Joseph Thoya. He is not aware of any person called "*kamazina*". That "*kamazina*" is a name given to someone "*without a name*". He has never heard of Sarah being referred to as "*kamazina*". He maintained that the suit land is at Jimba Kaliangombe and it is unadjudicated. He does not know its acreage but it is his opinion that it is more than **36** acres, contrary to what his statement said at **paragraph 2**.

22. **PW4** stated that Juma Abitoya Baya, was his elder brother who was leading the case earlier but who died in **2019** and so, PW4 took over in his place after being authorized by the family. He stated that it had been reported to court at Juma had died. He was present at the meeting that authorized him to take over the matter. He was not sure how many members the clan had as at the time he was testifying. He admitted that Johnstone Thoya never signed the authority, explaining that clan members are scattered all over. He denied that Joseph Thoya's children failed to sign the authority because they knew of the transaction between their father and the 1st defendant's predecessor in title. He saw the ballast business being operated on the land long ago and the area where it is located is called "*Kokotoni*" due to the nature of that business. In **1982** he was in **Form 2**. He used to rejoice when he had explosives roar in the quarry long ago. There were still elders who knew what must have been

happening even at that time. PW4 was not familiar with **P. Exh 2** or that Kawala "A" was adjudicated in 2007. Also when shown the notice dated 30th June 2011 in respect of Jimba Kaliangombe he was not familiar with it and he insisted that he is not aware that Jimba Kaliangombe has been adjudicated. When shown **2DExh 2** in the Attorney General's list of documents, he still maintained that Jimba Kaliangombe has not been adjudicated. He admitted that as at the time of his testimony, the clan was not living on that land. He stated that the clan was not involved in adjudication of Kawala "A"; he also does not know what happened in respect of the land in the year 2007. He confirmed that the 1st defendant has fenced off the suit land. He maintained that Jimba Kaliangombe and Kawala "A" are two different areas. The land the 1st defendant fenced is in Jimba and not in Kawala "A" hence the suit. He denied knowledge of the case before the National Land Commission regarding the suit land.

23. Upon cross-examination by Mr Munga, he stated that he does not know if other areas of Jimba Kaliangombe have been adjudicated, but he was sure that the clan land has not been adjudicated; that at time the land adjudication officers came, the wall fence around the land had not yet been built. He does not know who *Wellington Ndune Malanga* is.

24. Upon re-examination by Mr Gakuo, he stated, without giving dates, that they had been living on the land. He maintained that Juma Abitoya Thoya had initially brought the suit on behalf of the clan.

25. **PW5 Bartholomew Mwanyungu**, a surveyor testified on 15th May 2025 and produced his report dated 11th November 2022 as his evidence in this case. His evidence is that though in the title the suit land is said to be located in the Kawala “A” section in its title, it falls within the Jimba section. In his experience a company cannot be adjudicated trust land.
26. Upon cross-examination by Mr Ngaira, he admitted that his report does not indicate when he was instructed by his principals. It was Shaban Athman and Furaha and their lawyer who determined the terms of reference for the task that he was given; he was to map the position of plot number 399 in relation to the declared boundaries of the Kawala “A” and Jimba Kaliangombe a sections. He was aware that the plot was part of a section that had been adjudicated. He relied on the two adjudication notices dated 12th July 2007 and 30th June 2011 and a copy of the title to plot Number 399, and a topographical map sheet showing the physical features in the area. According to him the language in the notice dated 30th June 2011 clearly showed that Kawala “A” had been adjudicated. He did not refer to the Adjudication register for Kawala “A” Kadzonzo during his exercise. According to him the adjudication register contains the names and the areas concerned but does not contain the adjudication map. He did not attach the Registry Index Map to his report though he had obtained it from Mombasa regional survey office. He did not confirm how the 1st Edition looked like. He knew however that an RIM is a registration instrument for titles though it does not contain survey plans

or survey records but only very active positions of parcels of land. It is retained by the Director of Surveys and only altered pursuant to mutations. He stated that the Land Registrar can also alter boundaries. PW5 had prepared a map which he attached to his report, but which only reflected the boundaries as held by the Director of Surveys without altering them. **PW5** never forwarded his map to the Director of Surveys for authentication.

27. Upon re-examination by Mr Gakuo he stated that there was no need for authentication of the map at **page 6** of his report and maintained that the suit land is clearly in Jimba Kaliangombe section. He stated that the two notices of adjudication helped him only in identifying the boundary but he was not concerned with issues relating to adjudication of the land.

28. The plaintiffs' case was then marked as closed.

29. **DW1 Muhammad Abdalla Swazuri** testified on 26th September 2024. His evidence is that the National Land Commission heard a dispute between the claimants herein and after hearing all parties at sessions held in Mombasa, Nairobi and Kilifi, it made a report dated 22nd February 2016. The report is addressed to Karsan Ramji, Sarah and Victoria. **DW1** is the one who signed the report and he produced as **1DExh2**. The finding of the Commission after its exertions was that the land belongs to the 1st defendant herein.

30. **DW2 Dhanji Varsani**, a director of the 1st defendant resident at Nairobi authorized by the 1st defendant to represent it in this matter testified on

12th February 2025 and adopted his witness statement related that in the April 2022 as his evidence-in-chief. He also produced **2DExh 1-6**. According to him operations on the suit land are for making ballast. The land was acquired in **1982**. It was sold by Joseph Karisa Thoya to Mavji Govind & Co Ltd as per 2D. Exh 3 and 4. In the year **2004** the 1st defendant bought out Mavji Govind & Co Ltd including the two properties vide an agreement dated 29th September 2004 (which is **DExh5**). Mavji Govind had been operating ballast business in the area and wanted to sell. So they asked the 1st defendant if they were interested and the 1st defendant brought out the shares in Mavji Govind. From **2004** to date, the 1st defendant has been in possession of the land and have always crushed ballast thereon. In **2007**, adjudication officers came and showed him the boundaries on request and told them to await title to the land. The 1st defendant took the adjudication officers around the property and the property was surveyed as per **Defence Exhibit 6**. Title then issued in the 1st defendant's name.

31. In **2013**, the 1st defendant's officers appeared before the National Land Commission and presented those sale agreements after the Thoya family claimed the land. Samson Thoya, Victoria Mishi Maraga and Sarah Thoya are the ones who claimed so. Yeee. Victoria belonged to a committee for another adjudication section and not Kawala "A". The verdict of the Commission and which was not challenged, was that the land belonged to the 1st defendant.

32. **DW1** denied fraud. He indicated the suit land has been fenced as per the title deed and survey boundaries and none of the plaintiff's members are within the suit premises.
33. Upon cross-examination by Mr Munga, he stated that there being no objection raised during adjudication, title was issued to the 1st defendant.
34. Upon re-examination by Mr Gakuo, he maintained that he does not agree with the surveyor's report produced by Mr. Mwanyungu. He admitted that neither the complaint nor the proceedings before the NLC had been filed in the present case. He maintained that at the time the land was bought, it was unadjudicated Trust Land. He admitted that no Land Control Board consent was acquired. The land was later adjudicated to a company. He had no board resolution giving the Karsan Ramji & sons' directors authority to acquire the Mavji Govind property, nor a resolution by Mavji Govind to sell to Karsan. He did not have a transfer of shares between the two companies with him at the time of giving his testimony. However, he emphasized that all assets of Mavji Govind were included in the transfer executed between the two companies. He agreed that the agreement between the two companies was also not before Court. He maintained that after the Kenyan shillings **6,000,000/-** deposit was tendered, the balance of the purchase price was paid.
35. Under re-examination by Mr. Ngaira, he stated that during the adjudication exercise the local community was present, but the Thoya family was not present and there was no complaint from the family who

had moved away a long time before the adjudication. He also stated that as at **1982** the Land Control Board consent was not needed; that in any event no Land Control Board consent was required at the adjudication.

36. At the end of DW1's testimony the 1st defendant case was marked as closed.

37. **DW3, John Wachira Karanja**, Land Adjudication Officer, Kilifi, testified on 12th June 2025 and produced **2** exhibits. His evidence is that there is no adjudication section known by the name "*Kawala Kadzonzo Madzimbani*"; that there is only *Kawala, Kawala "A", Kadzonzo Mazimbani* and *Jimba Kaliangombe* adjudication sections. According to his records, the suit property is within Kawala "A" adjudication section and the owner is the 1st defendant.

38. During adjudication of Kawala "A", the suit parcel was not allocated to any clan or any person representing any clan and no objection was ever lodged by the plaintiffs.

39. Upon cross-examination by Mr Ngaira he denied fraud on the part of his office. He gave a description of the adjudication process under the Land Adjudication Act and stated that the process was properly followed with respect to the suit land. He stated that Jimba Kaliangombe section has not been published for registration. He stated that upon promulgation of the notice a committee was formed for Kawala "A". The committee was to assist in the adjudication process. It was to adjudicate only the issues that touch on customary claims and safeguard the persons who do not

comprehend the process, and it was supposed to bring to the officer any interest that has not been claimed. It never brought to the attention of the officer any claim by the Wamwanyundo clan, and there is no such claim in the land adjudication office records. There was an adjudication officer who was then in charge. An adjudication register was then prepared. The register comprises of the adjudication record and a map that particular area which are published. Publication entails the adjudication officer holding a *baraza* and communicating to all the persons of that adjudication section and also information that the adjudication record and a map are ready for inspection; that the adjudication officer then gives **60** days for anyone to apply for corrections before the same is published. The register of the Kawala "A" section was published on 19th March 2008 and there were no objections affecting the suit plot herein. Where there is no objection the register is forwarded by the Land Adjudication Officer to the Director of Settlement for him to forward it to the Chief Land Registrar for processing of a title deed. In the present case, he said, the title should have been processed in the name of the 1st defendant, and if it was done, then it was correctly done.

40. DW3 stated that if any objection is raised, the case is heard and determined and any aggrieved party files an appeal within **60** days. If there is no appeal filed, the records are forwarded to the Registrar for registration.

41. He stated that there was no appeal in respect of plot number 399. The boundaries set by an adjudication officer cannot be varied by a surveyor unilaterally but only with the involvement of the Land Adjudication Officer. DW3 has not seen any communication on the suit land from Surveyor Mwanyungu in his office.
42. Under cross-examination by Mr Gakuo, DW3 stated that he has been an adjudication officer for more than **15** years; that adjudication is commenced by the officer so appointed communicating to the Director of Adjudication that he intends to declare a section, and then he goes to the ground gets a description of the area, and, in a *baraza* he meets the locals and gets the name for the area and a committee is elected and appointed. From among the committee there is a chairman elected by the committee members. The committee members are representative of their people on the ground and they guide the demarcation officer in demarcation and in hearing cases and making determinations. They assist the demarcation officer by pointing out cases of land where the owners are not present. Though committee members' evidence is useful to court, the committee members are only part of the adjudication team. DW3 maintained that if the plaintiff discovered that what was adjudicated was in another section, there was an opportunity to lodge the objection required.
43. In his opinion, the plaintiffs ought to have known that the suit property has had been demarcated as the process is a very publicized one. The

adjudication register is prepared after the adjudication process is completed. Demarcation is basically identifying the plots on the ground and fixing the boundaries and is usually within their adjudication process. During demarcation, where he needs guidance, the demarcation officer is guided by the committee members. The committee members come from within the locality. During the adjudication process concerns of the owners can be raised.

44. Upon re-examination by Mr Munga, he stated that any issue arising during the process can be forwarded to the adjudication officer who is part of the committee as well as custodian of the records. After the registration the National Government surveyor becomes the custodian of the maps.
45. At the close of the evidence of DW3, the case of the 2nd to 6th defendants was also marked as closed.

SUBMISSIONS

46. The plaintiff filed submissions dated 7/7/25. The 1st defendant filed submissions dated 18/8/2025 while the 2nd, 3rd, 5th 6th and 7th defendants filed submissions dated 18/9/2025. The 4th defendant never called any evidence and also did not file any submissions.

Plaintiffs' Submissions

47. Counsel for the plaintiffs submitted that the 1st defendant clandestinely fraudulently caused the suit property to be adjudicated under the Kawala

“A” adjudication process and proceeded to obtain title thereto; that the evidence of B.C. Mwanyungu, a surveyor, corroborates the plaintiff’s evidence and that on the converse the 1st defendant never produced any survey report contradicting Mr Mwanyungu’s findings. In particular, it was urged that the 1st defendant never produced a survey report that demonstrated that the suit land lies in Kawala “A” adjudication section; that the 3rd defendant’s evidence corroborated the plaintiff’s evidence to the extent that Jimba Kaliangombe is yet to be fully adjudicated and that titles are yet to be issued. (the plaintiff’s claim has been that the suit land is located in Jimba Kaliangombe.) Relying on **Dina Management Limited v County Government of Mombasa & 5 others petition 8 of 2021** and **Solomon Meme Muthamia v Ntaari Kabutura & Land Adjudication Officer Meru 2001 eKLR**, the plaintiff’s counsel urged that the plaintiff had proved fraud against the defendants jointly and severally. Citing **Elijah Ole Nanteya V Kipainot Sayagie & District Land Registrar 2022 eKLR** it was urged that failure to conduct the adjudication process properly as required by Cap 284 resulted in a flawed first registration in favour of the 1st defendant and that the defendants are not protected under the principle of first registration.

1st Defendant’s Submissions

48. Counsel for the 1st defendant submitted that the suit was not properly before the court as a representative suit for failure to comply with mandatory provisions of the law in Order 1 Rule 8 (b) and Order 1 Rule 13

CPR. He also urged that the plaintiff's evidence was not reliable and pointed to several instances where the witnesses contradicted themselves or uttered what were allegedly untruths. He urged the court to find that fraud had not been proved to the required standard and that the 1st defendant had acquired the suit land legally.

2nd ,3rd , 5th ,6th And 7th Defendants' Submissions

49. The 2nd ,3rd , 5th ,6th and 7th defendants' counsel, citing **Amarnath V Kazungu & 2 Others- Civil Appeal No E033 Of 2021 [2023] KECA 1280 KLR**, submitted that the process of adjudication was done in accordance with the law. Relying on **Section 107** of the Evidence Act and **Kingara & Another V Njonge & Another Civil Appeal No 77 Of 2019 CA** and **Independent Electoral Boundaries Commission & Another V Stephen Mutinda Mule & 3 Others 2014 eKLR** counsel urged that parties are bound by their pleadings, that no fraud had been proved and that the suit ought to be dismissed.

ANALYSIS AND DETERMINATION

50. The gist of the present suit is that the plaintiffs claim that their land was wrongfully adjudicated and titled in the 1st defendant's name by the 2nd - 7th respondents and in the wrong adjudication section and without their knowledge or involvement, hence their plea that the adjudication and the title be cancelled or declared null and void, the land be adjudicated afresh and they be issued with title in their name.

51. It is worth noting that the plaintiffs are an entire clan of many people, possibly more than **100** going by the evidence that was adduced from their witnesses. There is no doubt that the suit land is land that was capable of adjudication under the Land Adjudication Act Cap 384. The following facts have been established by the evidence of the parties in this case:

- a. Adjudication of the Kawala “A” section took place in 2007 while adjudication of the Jimba Kaliangombe section began in 2011;**
- b. Both Kawala “A” and Jimba Kaliangombe are adjacent to one another and two different committees were instrumental in the adjudications;**
- c. Both adjudications were publicized through the Kenya Gazette;**
- d. There was no objection raised in the adjudication for the Kawala “A” section regarding the suit land;**
- e. The suit land has been in use by the 1st defendant and its predecessor in possession Mavji Govind Ltd since the 1980s;**
- f. The land is fenced all round by the 1st defendant and none of the plaintiffs are in occupation thereof.**

52. I have considered the pleadings and evidence as well as the filed submissions. The issues that arise for determination are as follows:

- a. Whether adjudication of the suit land was conducted according to law;**
- b. Whether the plaintiff has proved fraud as against the defendants to the required standard and to warrant cancellation of the suit title;**
- c. Who ought to pay the costs of the suit?**

Whether adjudication of the suit land was conducted according to law;

53. DW3 described the ideal process of adjudication under Cap 284. He stated that that adjudication is commenced by the officer so appointed

communicating to the Director of Adjudication that he intends to declare a section and then he goes to the ground gets a description of the area and, in a public *baraza*, he meets the locals and gets the name for the area and a committee is elected and appointed. A chairman is elected by the committee members from their midst. The committee members chosen are representative of their people on the ground, and they guide the demarcation officer in demarcation and in hearing cases and making determinations. They assist the demarcation officer by pointing out cases of land where the owners are not present. The committee was to assist in the adjudication process. It is meant to adjudicate only the issues that touch on customary claims and safeguard the persons who do not comprehend the process, and it is supposed to bring to the officer any interest that has not been claimed. The land is then demarcated and an adjudication register is prepared. The register comprises of the adjudication record and a map of that particular area which are published. Publication entails the adjudication officer holding a *baraza* and communicating to all the persons of that adjudication section the information that the adjudication record and a map are ready for inspection, and the adjudication officer gives **60** days for anyone to apply for corrections before the same is published. Where there is no objection, the register is forwarded by the Land Adjudication Officer to the Director of Settlement for him to forward it to the Chief Land Registrar for processing of a title deed.

54. DW3 began by stating categorically that there is no section known by the description given in the plaint, "*Kawala "A" Kadzonzo Madzimbani.*" It may be that this was a mere typographical error on the plaintiffs' part since the notice of establishment of an adjudication section under which the suit land is claimed to have been adjudicated, dated 10/8/2007, refers to that section as "*Kawala "A" Adjudication section*".

55. As to whether the suit land was adjudicated under that section (Kawala "A" Adjudication section), DW3's evidence is in the positive. He stated that the suit land is in the Kawala "A" section and according to records the same was adjudicated to the 1st defendant and not to any clan or any other person; that just like in any other adjudication section a committee was formed for Kawala "A". That committee is supposed to deal with customary law claims over the land under adjudication. The committee never brought any communication to the adjudication officer of any claim by the plaintiff clan. There is no such communication by the committee in DW3's office records. An adjudication register was prepared in respect of the suit land. the adjudication register was published on **19/3/2008** and there were no objections relating to the suit land. As there were no objections the adjudication officer forwarded the register to the Director of Settlement for onward transmission to the Chief Land Registrar for purposes of processing a title deed. He stated that in the circumstances, the correct registration is that in the name of the 1st defendant. DW3 stated that if any objection is lodged it is heard and determined and if any

party is aggrieved by the decision of the committee, he must appeal within **60** days from the date of the decision. However, there was neither objection nor appeal lodged in respect of the suit land.

56. The 1st defendant's evidence corroborates DW3's evidence. DW2 stated that the suit land was acquired in the 1980s from Joseph Karisa Thoya by Mavji Govind & Co Ltd vide three agreements executed by either Joseph Karisa Thoya or members of his family; Mavji Govind & Co carried on the business of ballast on it until its business and assets were bought out by the 1st defendant in 2004. Evidence was given that as at the time of adjudication, it was the 1st defendant who was in possession, carrying on the work of crushing ballast. In the year 2007 an adjudication officer visited the suit land and he was shown the boundaries of the suit land at his request. The land was surveyed and a map made and a title deed was subsequently issued in 2008 for the suit land which was christened Kawala "A"/Kadzozzo/399. That is the impugned title in these proceedings.

57. DW1's evidence also corroborated the evidence of both DW2 and DW3. He stated that while he was chairman of the National land Commission, a dispute regarding the suit land came to his office. The complainants were members of the plaintiff clan. The respondent in that dispute was the 1st respondent herein. The report of that dispute recommended that the 1st respondent is the proper owner of the suit land and that report was signed by DW1. DW1 stated that all the requisite documents including

the transfers to Karsan Ramji were produced in evidence before his Commission during the hearing of the dispute. I have perused that report dated 22/2/2016. It reads in part that:

“The Commission received a complaints (sic) through personal representations and memoranda from the (sic) Mrs Sarah Joseph Thoya and her family, who identify themselves as members of the Wanyundo (sic) clan regarding the legality of the proprietorship of the above parcel of land.”

58. Though the plaintiffs feigned lack of knowledge of the proceedings before the Commission, this court finds it improbable that DW1 was lying when he stated that the dispute was brought to the Commission, or that the Commission’s report is fictitious. It is declared in the report that the hearings regarding the suit land were held on various dates at Kenya School of Government, Mombasa and Kilifi, during which all the interested parties were represented by advocates and the claimants represented themselves.

59. The report goes on to describe how the 1st defendant eventually purchased a house in Changamwe for Joseph Karisa Thoya in compensation which house was sold by Joseph’s family after he died. It also emerged that Joseph was not the only person who had sold land to the 1st respondent in the area, and it is likely, in the observations of this court, that the suit land is an amalgamation of many plots sold to the 1st defendant. The Commission made a finding the 1st respondent owns the land and no evidence had been adduced before it to show that there was any unlawful acquisition thereof by the 1st respondent.

60. It is the denial by the plaintiff's witnesses of the Commission proceedings that worked to cast much doubt as to the veracity of the rest of their evidence. Whether or not the plaintiffs were in occupation of the suit land (and the evidence points in the negative) given the publicity accorded to the adjudication exercise, it was highly improbable that the plaintiffs never knew that the suit land was adjudicated beginning the year **2007**. African village settings bear stark contrast to the individualistic western settings where residents may not know what is happening next door; rather in the African setting, there is communal living where majority of resident's commune on a day to day basis to exchange ideas or news or just to commune for communion's sake. In the **1980s** it was even less likely than it is today that a village *baraza* could be held by a land adjudication officer, a respected government officer, either for the launch of the adjudication exercise or for the preparation to publish the completed adjudication register, and the villagers would not know.

61. In the present case, the improbability of that kind of lack of awareness increases when one considers that what was at stake then was, according to the plaintiffs, ancestral land. The rhetorical question arises: if the land is not so extensive (about 30 acres in the plaintiff's opinion) and the plaintiffs were not found thereon by the land adjudication officer or the demarcation officer, where were they living then? Events affecting ancestral land could not in the 1980s have passed right under the noses of the plaintiffs without their knowledge.

62. The conclusion of this court is that as at the time of adjudication the plaintiffs were not in occupation of the suit land because it had been sold and possession had passed to the 1st defendant. The further conclusion of this court is that the plaintiffs never raised any objection to the adjudication of the suit land because they were not living on it by then, and it had not occurred to them to renege on the agreements that they had made with Mavji Govind & Co Ltd, the 1st defendant's predecessor on the suit land. When they finally found their minds, they decided to exploit the contiguity of Kawala "A" and Jimba Kaliangombe adjudication sections, which obviously shared a boundary, to claim that the suit land was wrongly adjudicated under the former adjudication section instead of the latter.
63. Perchance the plaintiff's claim were true that the land was wrongly adjudicated under Kawala "A", there is no reason given as to why, if they were in possession thereof, the Kawala "A" adjudication officers and demarcation officer never found them on the suit land, yet adjudication officers commence the process with whoever is in possession.
64. There is no evidence adduced by the plaintiffs that can effectively counter the evidence of DW3 to the effect that the land was adjudicated under Kawala "A". However, it is one thing for DW3 to state that the land was adjudicated under Kawala "A", but it is another thing altogether to establish that the land was *rightfully* within the boundaries of Kawala "A" and not Jimba Kaliangombe as alleged by the plaintiffs. The issue that

now arises is whether the adjudication under Kawala "A" ought to be nullified if the suit land is demonstrated to fall within the Jimba Kaliangombe Section.

65. It is a requirement in **Section 107** of the Evidence Act that he who alleges proves. It was the legal burden of the plaintiff to establish that the suit land fell within the Jimba Kaliangombe section. It will not be sufficient for the plaintiff's counsel to argue in submissions, as he did in this case, that the 1st defendant never produced a survey report that demonstrated that the suit land lies in Kawala "A" adjudication section. That is an unfair shifting of the burden of proof to the 1st defendant's shoulders.

66. Was it proved by the plaintiff that the land fell within the Jimba Kaliangombe section? The evidence of PW1 was as follows:

"We did not adjudicate the suit land as it had already been titled. We do not know who did the adjudication. I did not attend a case in respect of the suit land before the National Land Commission."

67. The evidence of DW1, deputy chair of the Jimba Kaliangombe section, was categorical that proceedings took place before the National Land Commission and that witnesses of the plaintiffs herein were present. A perusal of the Commission report shows that PW1 herein, Victoria Mishi Maraga, was one of the persons who appeared before the Commission in the dispute regarding the suit land. It is evident that she is not telling the truth to this court in denying having attended the NLC hearings. Her evidence that the suit land fell under Jimba Kaliangombe is thus of no value as she has lost her credibility as a witness.

68. The other evidence adduced as expert evidence is that of B.C. Mwanyungu, surveyor, t/a Pimatech Land Surveyors & Consultants. His report is dated 11/11/2022. His task as assigned by the plaintiffs was to establish the position of the suit land in relation to the declared boundaries of Kawala & Kaliangombe sections, and state in which section the land falls. His evidence is that the suit land lies in the Jimba Kaliangombe section. In his report he cites reliance on an unnamed committee member as having assisted in tracing the boundary between the two sections. He came up with the following interesting findings:

- a. **There is a quarry that is part of the subject parcel and is mentioned in the letters of declaration of boundaries to the sections;**
- b. **The boundaries of the adjudication sections agree in the declaration with the features that are shown on the topographical map sheet;**
- c. **It is evident that the parcels neighbouring Kawala "A" 399 and most land surrounding it belong to Kaliangombe adjudication section;**
- d. **The entire Map Sheet No 50 of Kawala "A" Kadzonzo adjudication section is physically in Jimba Kaliangombe adjudication section;**
- e. **Kawala "A" 399 was adjudicated and included into Kawala "A" adjudication section while it is physically in Kaliangombe adjudication section.**

69. I have perused the entire report and seen its conclusions. I have also looked at the maps attached thereto. One notable omission is the identification of the main landmarks identified in the notices of adjudication. For example, his map, in connection to the notice dated **12/7/2002**, lacks features like *"railway line"*, *"Old Chief's Office Mariakani"*, *"Kingangeni river"*, *"Kayafungo Location"*, *"Mwatsuma*

Bridge”, or “Kibao Kiche trading centre”, which would have established the points where the boundary was supposed to be located.

70. More crucially, his map, in connection to the notice of **30th June 2011**, lacks any identification or reference to the starting point (Meri Ramu), the railway, Dhanjal road, and Jimba River.etc. It was for the surveyor to use all expertise he had to make a map that was capable of proper interpretation on the basis of the landmarks that the boundary followed, without which the present report is unhelpful to all the parties and to this court.

71. Surveyor Mwanyungu stated in his report that he went to the site and conducted survey by use of GNSS equipment. His report is replete with references to use of technology during the exercise. If he was on the ground, there is no reason provided as to why most of the features mentioned in the adjudication proclamation notices were not included in his own map. This court’s reading of such a notice with reference to a properly populated map should not have presented any difficulty for this court in tracing the true boundaries of the two sections, Kawala “A” and Jimba Kaliangombe. It is very unfortunate the only map that could have assisted this court was his map, and it is bare of all vital the details mentioned herein above. It only incorporates numerous numbers of land parcels yet the adjudication notice does not refer to parcel numbers. His findings set out earlier herein above, including the conclusion that the

suit land is within Jimba Kaliangombe adjudication section are unsupported and thus unhelpful to this court.

72. The conclusion of the foregoing analysis is that the surveyor's report dated 11/11/2022 can not be relied on at all as the maps attached thereto, with reference to which it must be read, do not identify and incorporate major landmarks that the boundaries to the two sections Kawala "A" and Jimba Kaliangombe followed as per the two relevant adjudication notices. The plaintiffs' only other expert evidence having failed the test of credibility, it can not be said that the plaintiffs have established that the suit land fell under Jimba Kaliangombe Section at all. Their claim that the suit land was adjudicated as part of Kawala "A" while it was part of Jimba Kaliangombe has not been proved on a balance of probabilities.

73. The conclusion of this court on **issue no 1** herein above is therefore that the adjudication of the suit land was conducted according to the notice dated 12/7/2007 and within Kawala "A" adjudication section and therefore was according to law.

Whether the plaintiff has proved fraud as against the defendants to the required standard and to warrant cancellation of the suit title;

74. A title issued under the law is deemed as indefeasible subject to only some few factors. **Sections 25 and 26** of the **Land Registration Act** provide as follows:

“25. (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

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.”

75. In **Elijah Makeri Nyang’wara V Stephen Mungai Njuguna & another [2013] eKLR** it was held as follows: -

"Is the title impeachable by virtue of Section 26(1) (b)? First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means

that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”

76. The plaintiffs’ cause of action in the present suit lies in fraud. The law is that fraud must be specifically pleaded and proved. It is clear that that the evidence the plaintiff has adduced must go into proving the elements in **Section 26** of the Land Registration Act, - to wit, fraud or misrepresentation to which the 1st defendant is proved to be a party, illegality, unprocedural acquisition or corruption - if their claim is to be successful.

77. Regarding fraud, the court in **Kinyanjui Kamau -v- George Kamau [2015] eKLR** held as follows: -

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo -vs- Ndolo [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

78. In **R. G. Patel v. Lalji Makanji, (1957) EA 314**, the former Court of Appeal for Eastern Africa stated thus: -

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof

beyond reasonable doubt, something more than a mere balance of probabilities is required.”

79. Fraud was specifically pleaded by the plaintiffs. At this juncture, however, this court notes that the greater part of the plaintiff’s claim regarding fraud was pegged on the allegation that the suit land was adjudicated as part of Kawala “A” though it is within Jimba Kaliangombe, which issue this court deemed necessary to address as an independent issue hereinabove, and which claim the plaintiffs failed to prove. Besides that decided issue, there are other alleged particulars of fraud in the plaint and I will proceed to address the same and also state whether they have been proved. Proof is by way of evidence as seen herein above.

80. **Particular no (a)** of the particulars of fraud in **paragraph 17** of the plaint have therefore been dealt with under the first issue herein above. What were the other particulars of fraud in the plaint? They are as follows:

PARTICULARS OF FRAUD

- a.spent.
- b. **Facilitating the issuance of a Title Deed over the suit property knowing very well that the adjudication process of Jimba/Kaliang’ombe where the suit property is situated had not taken place;**
- c. **Colluding with the 1st Defendant to illegally take the suit property and processing a Title Deed without following the due process;**
- d. **Proceeding to illegally erect a fence around the suit property and squatting on the suit property.**

81. **Particular (b)** -facilitating the issuance of a Title Deed over the suit property knowing very well that the adjudication process of Jimba/Kaliang’ombe where the suit property is situated had not taken

place, must be a particular that is dependent on the plaintiffs' proof of the first particular of fraud (adjudication under Kawala "A").

82. It is correct that the title deed was issued over the suit property under Kawala "A" adjudication process, and there was no proof that the suit property was under the Jimba Kaliangombe section. Consequently, no malice aforethought can be attributed to the defendants. Thus, the section under which the suit land was adjudicated must be deemed the correct section, and this court has deemed it thus herein above. Consequently, the process under which it acquired its title must be deemed to be the correct and legal process and thus this particular of fraud lacks any force.

83. Under **particular (c)**, -colluding with the 1st Defendant to illegally take the suit property and processing a Title Deed without following the due process, this court has searched for any evidence of collusion between the 1st defendants and the rest of the defendants and has found none throughout the record of evidence of all the parties. However, the basis of this allegation should have been the proof that the land fell within the Jimba Kaliangombe section and since the plaintiff failed to prove that, the allegations of collusion can not stand.

84. Further to that, this court finds that there is satisfactory evidence from DW1, DW2 and DW3 to the effect that the land was properly adjudicated without any demur on the part of the plaintiffs and that the title deed was issued to the 1st defendants after all the processes under the Land

Adjudication Act Cap 284 were fully satisfied. Since there was no objection and there was no appeal to the Minister - the two hindrances that usually frustrate issuance of title to land in an adjudication section upon completion of the process - the register was forwarded to the Chief Land Registrar for issuance of title to the 1st defendant. It is therefore clear that the issuance of the 1st defendant with title over the suit land under the provisions of Cap 284 title can not be questioned.

85. The last allegation of fraud is **particular (d)** - proceeding to illegally erect a fence around the suit property and squatting on the suit property. However, having regard to the court's findings regarding the particulars of fraud **numbered (a)-(c)** herein above, this allegation does not evince any fraud at all because the land has been found to rightfully belong to the 1st defendant after a proper and valid adjudication process. the 1st defendant was therefore entitled to fence off his land for its purposes.

86. There is therefore no basis for this claim and it ought to be dismissed.

Who ought to pay the costs of the present suit?

87. The plaintiffs brought the present suit against the defendants and failed to prove their allegations against the defendants. Besides that, there were other proceedings before the National Land Commission that the plaintiffs would have wished that this court did not know about or address. The evidence of the defendants brought what happened in those proceedings to light - which was that the Commission pronounced itself

that according to evidence that had been tabled before it at the hearing of the dispute the suit land belonged to the 1st defendant. Costs must therefore follow the event. The plaintiffs must therefore bear the costs of the present suit.

CONCLUSION

88. The plaintiffs' suit is hereby dismissed with costs to the defendants.

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.**