

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLC NO E061 OF 2025

NICHOLUS LEWA KALAMA & ANOTHER
PLAINTIFFS

VERSUS

THE ATTORNEY GENERAL AND & 7 OTHERS
DEFENDANTS

RULING

1. The 4th and 5th defendants Notice of Preliminary Objection dated 23rd September 2025 gives the following grounds for the striking out of the entire suit:

- a. **That the suit is filed contrary to the provisions of Section 30 of the Land Adjudication Act cap 284;**
- b. **The court has no jurisdiction to entertain a claim emanating from a concluded land adjudication exercise conducted in accordance with the law;**
- c. **That the plaintiffs have no *locus* or capacity to initiate suit on behalf of the deceased persons;**
- d. **That registration of the 4th and 5th defendant's title is a first registration that cannot be impeached or challenge by the plaintiffs or the court as sought.**

2. Submissions were filed by the parties for the disposal of the objection.

Defendants' Submissions

3. In submissions for the 4th and 5th defendant's counsel cited **Section 29** of the Land Adjudication Act as barring institution of any proceedings in matters emanating from Land Adjudication. He stated that the jurisdiction of the court is ousted by that section; that the present dispute was canvassed before their adjudication committee and a decision rendered on

2016 November 2010 and any aggrieved party was to appeal within 60 days; that the plaintiffs lodged their appeal which was dismissed upon hearing. He relies on the case of Joseph S. Tootio and 12 Others Versus District Land Adjudication Section and Settlement Officer Narok South And 24 Others 2021 eKLR.

4. Regarding whether the plaintiffs' suit is *res judicata*, it was submitted by counsel that the suit offends **Section 7** of the Civil Procedure Act in that the issues in regard to the land in dispute have been litigated and conclusively determined before the land adjudication committee which had jurisdiction over the matter; that an appeal had been launched against the decision of that committee which was dismissed. Counsel cited the case of Naitore M'iburi and Another Versus the Attorney General and 2 Others Sebastian Kaaria (Interested Party).
5. As to whether the plaintiffs have *locus standi*, counsel submitted that the late Nathaniel Kalama Rimba and the late Dzombo Mwatela Dzombo had no valid claim over the land in question and therefore the plaintiff's claim over the suit land on the basis of the estates of the deceased is misconceived and unsustainable in law; that the two deceased persons were mere squatters who had no right within Pingilikani area, having moved into Pingilikani from Kaloleni-Giriama yet the plaintiffs claim that the suit property is their former unsurveyed ancestral land which was later subjected to adjudication and registration under various parcel numbers. Counsel relied on the case of Mukangu Versus Mbui Civil Appeal

Number 2181 Of 2000 2004 2 eKLR 256 as well as Evanson Jidiraph Kamau and Another Versus the Attorney General Mombasa HC Miscellaneous Application Number 40 Of 2,000. Counsel also stated that the letters of administration held by the plaintiffs are defective in form and content and they do not confer upon the plaintiff the right to litigate on behalf of the estates of the deceased.

6. On Limitation, counsel submitted that the adjudication process having been concluded in 2010, the plaintiff had a period of 12 years within which they could have commenced proceedings to challenge the decision of the adjudication committee. The 12 years lapsed in 2022 and the plaintiffs had no right to commence the suit herein.
7. On the issue of first registration counsel submitted that the 4th and 5th defendants' titles as first registration titles cannot be impeached or challenged by the plaintiffs. Counsel relied on Section 28 of the Registered Lands Act and Section 26 of the Land Registration Act.

Plaintiffs' Submissions

8. Counsel for the plaintiffs submitted that the plaintiffs' case is seeking cancellation and rectification of titles of the properties on account of fraud; that titles were obtained in a process that was legally flawed and laden with fraud, resulting in a denial and suppression of the plaintiffs' property rights; that the plaintiffs have properly invoked the jurisdiction of the court and they are set to tender their evidence for assessment and determination at the full hearing. Counsel added that titles obtained

through land adjudication can still be cancelled by a court of law if obtained fraudulently; that Section 30 of the Land Adjudication Act does not oust to the court's jurisdiction; that in the present case, the process of adjudication is spent and titles have issued but that is not a bar to the challenge of the process as provided for by the Land Registration Act.

9. Counsel relied on **Section 26 (1) Section 79** and **80** of the Land Registration Act. and stated that only the court could sanction the revocation of title by allowing the Land Registrar to rectify the register, or by directing that any registration be cancelled or amended if it was obtained by fraud or mistake.
10. On limitation, it was stated that the suit titles giving rise to the cause of action were first issued in the year 2025; that on the plaintiff's capacities as administrators, the proper documentation has been provided. Counsel relied on the case of Swaleh and Another Versus Land Registrar Kwale & 2 Others ELC Appeal Number E003 of (2022) [2025] KEELC 4187 KLR.

ANALYSIS AND DETERMINATION.

11. The plaintiff's case has been brought by a way of plaint dated 9th June 2025 which seeks declarations that the deceased were *bona fide* proprietors of the previous ancestral land whose measurements are expressly stated, now surveyed and titled variously as numbers Kilifi/Pingilikani/151, 162, 274, 275, 547, and 573. The claim is premised on

fraud. The plaintiffs stated that adjudication occurred in the year **1995**, but titles issued in the year **2023** after a long wait and after the deceased had already passed on. That is when they land that the deceased had been left with only a small registered portion that at the edges of their property which had been illegally divided amongst the 4th , 5th. 6th , 7th and 8th defendants. Their claim is that the local liaison committee had in the year 1995 properly identified the suit property boundaries and the extent of the suit property but the actual titles released in the year 2023 after incessant demands and apparently deliberate delay at the Kilifi Land Registry did not reflect reality on the ground. When they followed up on the emergence of new owners, it was established that adjudication objection proceedings had been deliberately mixed up fraudulently undertaken in the names of deceased persons or non-owners or fictitious parties in respect of the several parcels of the suit property in order to give a sense of formality and apparent legality to the titles obtained by the 4th, 5th, 6th, 7th and 8th defendants; that in 2025, they were summoned to the Directorate Of Criminal Investigations where the officer in charge of the supposed to investigations demanded to see their titles and purported to supervise new subdivisions and erection of beacons on the suit property under the watch of armed police despite protestations by the plaintiffs.

12. I think in the circumstances disclosed herein above, this is not a suit that can be said to be contrary to the provisions of Sections 29 and 30 of

the Land Adjudication Act. The plaintiffs admit that adjudication was done, but you also aver that there was some kind of fraud that caused the greater portion of their land to be hived off and appropriated by the 4th to 8th defendants long after the adjudication process had been completed. They claim that beaconing of the land was done as recently as the year 2025, which pleading also ousts the claim that the suit is time barred. Ground a), b), and c) of the Notice of Preliminary Objection dated 23rd September 2025 have been thus answered and they must fail.

13. Regarding indefeasibility as the first registered owners, it is clear that the provisions of the Land Registration Act under which the title in the year 2025 was issued do not exclude any title from challenge on the basis of fraud, not even a first registration title. The matters regarding fraud claimed by the plaintiffs would have to be investigated, with the background being their claim that the land was their ancestral land that was adjudicated properly and stolen between the date of adjudication in 1995 and the date of issuance of title to the extent that the resultant misappropriated portions were being beaconed in 2025, and so the claim of extinction of their rights does not therefore arise. This court would be in a position to order, if such fraud was proved at the hearing, that the titles issued to the 4th to the 8th defendants be cancelled.

14. Regarding want of *locus standi* in the relation to the grant of letters of administration issued to the plaintiffs, this court finds that there is no proper ground given by the defendants in their submissions so as to

establish that the plaintiffs lack right to litigate on behalf of the estates in this case.

15. Consequently, this court finds that the Preliminary Objection dated 23rd September 2025 is lacking in merit and it is hereby dismissed with costs to the plaintiffs. The defendants shall file submissions on application dated 6/6/25 within 14 days from today and the matter shall be mentioned on 25/2/26 for a ruling date.

Dated, signed and delivered at Malindi on this 21st day of January, 2026.



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