



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC SUIT NO. 180 OF 2011**

**MONIKA KIOKO** .....

**PLAINTIFF**

**-VERSUS-**

**RENSON MUNGA** .....

**DEFENDANT**

**JUDGMENT**

**1.** The Plaintiff instituted this suit on 30<sup>th</sup> November 2011 through a Plaint dated 28<sup>th</sup> November 2011, wherein she claimed ownership of some three plots situated within the Maweni Area of Mtwapa Township, being portions arising from the subdivision of **Plot No. 334/111/MN, together with a three-bedroomed house erected on one of the said plots.** The Plaintiff averred that she had acquired the plots single-

handedly, but that the Defendant, with whom she had been in an intimate relationship, unlawfully and in breach of trust laid claim to them.

2. The Defendant filed a Further Amended Defence and Counterclaim dated **6<sup>th</sup> July 2023**, wherein he denied the allegations raised in the Plaintiff. He averred that he invited the Plaintiff to cohabit with him at the Plot No. 334/III/MN, wherein the Plaintiff made minimal improvements with the intention of marriage, which did not take place. During their cohabitation, they purchased an unsurveyed plot from Karisa Kazungu Chengo in 2008, but were unable to occupy it due to disputes over the land.

3. The Defendant added that he purchased **Plot No. 458 Mtwapa Settlement Scheme** in the year 2006, long before the Plaintiff came into the picture. He averred that the Plaintiff, using hired goons, had denied him access to his property without any justifiable reason. The Defendant counterclaimed for:

*a) A permanent or perpetual injunction do issue against the Plaintiff or any other person whomsoever and whatsoever for wasting, dealing*

- with, selling, leasing, parting with possession, or using it as residential premises, and or in any way whatsoever interfering with the Defendant's proprietary rights and interests in the suit property, and an order for vacant possession thereof do issue.*
- b) A declaration that the Defendant is the sole owner of the Plot No. Mtwapa/Maweni Settlement Scheme/458 measuring 0.0571, having acquired the same solely by way of purchase from one Karisa Ngala Mkenga, and 50% share of the plot co-owned between him and the Plaintiff, bought from one Karisa Kazungu Chengo.*
- c) Eviction orders of the Plaintiff, her servants, agents, proxies, assigns, representatives, or anyone whatsoever acting on her behalf from the premises standing on Plot No. Mtwapa/Maweni Settlement Scheme/458 measuring 0.0571 owned by the Defendant.*
- d) Any other relief that this honourable court deems fit and just for grant.*
- e) Costs of this suit.*

**4.** The Plaintiff failed to file a reply to the counterclaim, prompting the Defendant to apply for entry of interlocutory judgment against her. The hearing of the counterclaim proceeded in the Plaintiff's absence on 14<sup>th</sup> May 2025, when the Defendant testified as PW1 and called one witness. The Defendant adopted his witness statement filed on 8<sup>th</sup> June 2021 and

produced the documents in his bundle as PEXH 1-5. Similarly, PW2 – Alex Kazungu Kea, adopted his written statement filed on 8<sup>th</sup> June 2021.

5. In his final submissions, the Defendant relied on section 26 (1) of the Land Registration Act and argued that the validity of his title to the Plot No. Mtwapa/Maweni Settlement Scheme/458 was never challenged. He reiterated that the unsurveyed plot was jointly purchased, as seen in the agreement dated 20<sup>th</sup> February 2008. He urged the court to allow his counterclaim.

### **Analysis and Determination**

6. The issues for determination arising from the pleadings, evidence, and submissions are:
- i. Whether the Defendant proved his ownership of Plot No. Mtwapa/Maweni Settlement Scheme/458;*
  - ii. Whether the Defendant proved joint ownership of the unsurveyed plot allegedly purchased from Karisa Kazungu Chengo;*
  - iii. Whether the Defendant is entitled to the injunctive, declaratory, and eviction orders sought; and*
  - iv. Who should bear the costs of the suit?*

7. Although the Plaintiff did not submit a response to the counterclaim and abstained from participating in the hearing, it is well-established law that a claim does not automatically succeed. The Defendant remains responsible for demonstrating his claim on a balance of probabilities. This position aligns with sections 107 to 109 of the Evidence Act and the fundamental principle that he who alleges must prove. See **Mati & another v Gicheru [2025] KEHC 2062 (KLR)**.
8. On the question of ownership of Plot No. Mtwapa/Maweni Settlement Scheme/458, the Defendant produced a title deed issued in his name on 14<sup>th</sup> September 2022. Any contrary evidence did not challenge the said title, nor was any allegation of fraud, misrepresentation, illegality, or acquisition through an unprocedural process pleaded or proved.
9. Under **section 26(1)** of the **Land Registration Act, 2012**, a certificate of title issued by the Registrar is *prima facie* evidence that the person named therein is the absolute and indefeasible owner of the land, subject only to the exceptions set out in the statute, that is, fraud, misrepresentation, illegality, or acquisition through unprocedural processes. In the

absence of any evidence falling within those exceptions, this Court finds that the Defendant proved that he is the lawful and absolute proprietor of Plot No. Mtwapa/Maweni Settlement Scheme/458.

**10.** Regarding the unsurveyed plot allegedly purchased jointly by the Plaintiff and the Defendant from Karisa Kazungu Chengo in 2008, the Defendant relied on a sale agreement dated February 20, 2008. Although the agreement indicates that both parties were involved in the transaction, the Defendant did not present evidence to the Court of the extent of each party's contribution to the purchase price, nor did the Defendant provide proof of subsequent steps taken to perfect title, such as surveys, allocations, or registrations. Without clear evidence of contribution, the Court finds that the Defendant did not discharge the burden of proving entitlement to a defined 50% share in the unsurveyed plot.

**11.** On the prayer for eviction and injunctive relief in respect of Plot No. Mtwapa/Maweni Settlement Scheme/458, the Defendant asserted that the Plaintiff denied him access to the property and continued to occupy or interfere with it without

lawful justification. Having found that the Defendant is the registered proprietor of the said plot, and there being no evidence of any legal or equitable interest held by the Plaintiff therein, the Defendant is entitled to protection of his proprietary rights under Article 40 of the Constitution.

**12.** I am therefore satisfied that the Defendant has proved his counterclaim to the extent relating to Plot No. Mtwapa/Maweni Settlement Scheme/458. However, the prayers relating to ownership and sharing of the unsurveyed plot are declined for want of proof.

**13.** On costs, the general rule under section 27 of the Civil Procedure Act is that costs follow the event. In the circumstances of this case, and considering that the Defendant has substantially succeeded in his counterclaim, he is entitled to costs.

**14.** In the result, judgment is entered for the Defendant on the counterclaim in the following terms:

***a) A declaration is hereby issued that the Defendant is the sole and absolute owner of Plot No. Mtwapa/Maweni Settlement Scheme/458.***

***b) A permanent injunction is hereby issued restraining the Plaintiff, her agents, servants, or any person claiming through her, from trespassing upon, occupying, wasting, dealing with, or in any manner interfering with Plot No. Mtwapa/Maweni Settlement Scheme/458.***

***c) An order of eviction is hereby issued against the Plaintiff, her agents, or any person claiming through her from Plot No. Mtwapa/Maweni Settlement Scheme/458, with vacant possession to be delivered to the Defendant within 60 days of the delivery of this judgment.***

***e) The Defendant shall have the costs of the suit and the counterclaim.***

**Dated, signed, and delivered electronically in Nyeri on January 21, 2026.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Ms. Marubu for the Defendant**

**Kendi: Court Assistant**

**In the absence of:**

## **The Plaintiff**