



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 198 OF 2018

TOASH GEORGE AMUMA.....1ST

PLAINTIFF

ELIZABETH HARUFA JILLO.....2ND

PLAINTIFF

HEREMINE MAWATA AMUMA.....3RD

PLAINTIFF

JOSEPH MOROA ABIO.....4TH

PLAINTIFF

NICKSON MWAMBURI MUGHONGO.....5TH

PLAINTIFF

JEREMIAH IGWO NEBERT.....6TH

PLAINTIFF

FRANCIS GALANA ABIO.....7TH

PLAINTIFF

EMANUEL SALUA MARO.....8TH

PLAINTIFF

(Suing on behalf of 2500 residents of Garsen Township).

-VERSUS-

HAGANDA PRIVATE RANCHING

COMPANY LTD.....1ST

DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND

DEFENDANT

**THE CABINET SECRETARY, LANDS AND PHYSICAL
PLANNING.....3RD**

DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH

DEFENDANT

-AND-

THE COUNTY GOVERNMENT OF TANA

RIVER.....1ST INTERESTED

PARTY

THE NATIONAL LAND COMMISSION.....2ND INTERESTED

PARTY

JUDGMENT

1. The plaintiffs have approached this Court seeking various declaratory and injunctive relief regarding Land Reference No. 13599 (hereinafter “the suit property”), claiming ownership on the grounds of long occupation, adverse possession, and alleged fraud in the registration process.

2. The plaintiffs allege that they, together with approximately 2,500 residents, have lived on and derived their livelihood from the suit property for several decades. They aver that they have established homes, farms, and even burial grounds on the land, thereby entitling them to ownership either by adverse possession or through declarations invalidating the 1st defendant’s claim.

3. The plaintiffs further allege that the 1st Defendant, Haganda Private Ranching Company Ltd, purports to claim ownership

based on a letter of allotment dated 1st May 1976. They contend that this allotment was fraudulent, irregular, and unlawful and seek to have it revoked, asserting that the land has since reverted to the public or should be vested in them.

4. The 1st defendant failed to enter an appearance or file a defense despite service. The matter proceeded to a hearing, with the plaintiff and the 2nd to 4th defendants.

Plaintiffs' Case

5. The plaintiffs called one witness, Toash George Amuma (PW1), who relied on his witness statement dated 22nd October 2022 and the exhibits, marked as plaintiff's Exhibits 1-8. He stated that over 2,500 residents represented in this case have occupied Land Reference Number 13599 in Garsen (the "suit property") for many years. These residents have built homes, buried loved ones, and used a significant portion of the land for agricultural and grazing purposes.
6. The court was presented with photographs of the plaintiffs' houses situated on the disputed land, which are annexed as plaintiff's Exhibit-2. The use and possession of the suit property aforesaid by the plaintiffs and the persons represented in this

suit have been peaceful, continuous, and without interruption for over five decades now.

7. Testimony was offered that sometime in 2018, persons identifying themselves as officers of the 1st defendant visited the suit property and threatened to evict the residents.

8. They produced an allotment letter, reference number 94352/13, granting the 1st defendant a 45-year lease of the suit land, effective 1st May, 1976. The plaintiffs aver that they are aware that the 1st defendant has never held a title deed to the suit property. Still, it has a letter of allotment, which is not evidence of title and cannot serve as a basis for the mass eviction and prosecution. Even if the letter of allotment were evidence of title (which is not the position), the plaintiffs and the 2,500 residents (represented in this suit) claim that, having lived openly and continuously for over twelve (12) years, the 1st defendant is barred by the provisions of the Limitations of Actions from recovering the suit property.

9. The plaintiffs aver that the alleged allotment of the suit property in the name of the 1st defendant was done fraudulently. The background to the registration was that,

following independence in 1964, the Government of Kenya established the National Range and Ranch Development Project and the Kenya Livestock Development Project (KLDP Phase I and II).

10. The projects proposed the development of “grazing blocks” by creating ranches to enhance meat and milk production in arid and semi-arid areas. In 1968, the Ministry of Agriculture issued another directive to implement the famous Lawrence (1966) Mission Report, which advised that land registration in arid and semi-arid areas should be conducted in groups rather than individually. The said government directive on the Lawrence Report resulted in the creation of Hagganda Ranch, which comprised lands belonging to the plaintiffs and the residents represented in this suit.

11. It is averred that, unknown to the plaintiffs, the suit property, which is land belonging to the plaintiffs, was fraudulently allotted by the 1st defendant and officers of the 2nd and 3rd defendants, discreetly and deliberately, with the view to dispossessing the plaintiffs of their land, without following due process, including advertisement and auction, as required by

the Government Lands Act. The fraud was brought to the attention of the 2nd and 3rd defendants, who, acting on the residents' complaint, have to date not issued a title deed to the 1st defendant. In the absence of a title deed to the suit property and in light of the fraud outlined above, the 1st defendant cannot purport to prosecute the residents for trespass or even attempt to evict the residents as intimated.

12. It is the plaintiffs' position that even if fraud is not proved, the letter of allotment, issued to the 1st defendant on the condition that the suit property be used for ranching purposes, extinguishes any title, if at all, and that the suit property has since reverted to the public.

13. There are currently over 5,000 people who live on and/or derive a living from the suit property. There are also cemeteries and permanent structures on the suit property. Should this suit be dismissed, over 5,000 people living on and deriving a living from the suit property will be rendered destitute and homeless, as they will be forced to evacuate the land they have lived on, derived a living from, and come to call home for decades. In light of the foregoing, the plaintiffs now

pray that this Court enter a judgment as against the defendants for injunctive and declaratory orders as sought in the plaint.

2nd - 4th Defendants' Case

14. The 2nd-4th defendants called one witness, Mr. Sego Manyarkiy, the Land Registrar of Mombasa, as DW1. He testified that the Land Register number does not have a corresponding file with the Land Administration Office and that no records exist therein. It was his evidence that no Title Deed has been issued to any party in this litigation.

Analysis and Determination.

15. Based on the evidence and the parties' submissions, the issues I frame for the court's determination are whether the plaintiffs or the 1st defendants have a proprietary interest in the suit property; whether the allegations of fraud against the 2nd and 3rd defendants have been proved to the required standard; whether the plaintiffs are entitled to the relief sought; and who should bear the costs of this litigation.

16. The plaintiffs extensively submitted on the issue of ownership of land in this country post the 2010 Constitution and that the suit property qualifies to be classified as public land, which ought to have been allotted in accordance with the dynamics expounded in the Supreme Court decision in **Dina Management Ltd v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment)**.

17. Further, the plaintiffs submit that if the 1st defendants have title to this land, it was fraudulently acquired and ought to be extinguished by the doctrine of adverse possession, since the plaintiffs have been on the land for an aggregate of over 12 years. The doctrine of adverse possession would attach. See **Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR**.

18. The 2nd-4th defendants contend that neither party, the plaintiffs nor the 1st defendant, has legitimate title to this land. They further contend that, since the plaintiffs concede this land is public, adverse possession will not apply, and that the prayers sought in the plain cannot be attained.

19. I agree with the submissions of the 2nd-4th defendants that, in the present case, the plaintiffs have not produced any certificate of title or even a certified extract from the land register to show that the 1st defendant or any other person was ever registered as the proprietor of the suit property. Instead, they rely on a letter of allotment allegedly issued to the 1st defendant in 1976, a document which, even if authentic, does not confer a title capable of sustaining a claim for adverse possession.

20. The Land Registrar, in his testimony, confirmed that the allotment process for the suit property was never completed. No correspondence file exists, and no evidence of the issuance of a title deed was tendered. Therefore, there is no proof of private ownership against which time could have commenced to run for purposes of adverse possession.

21. Additionally, because the ownership details of the suit property are absent, it is reasonable to conclude that the land is public land based on Article 61 of the Kenyan Constitution. Accordingly, under section 41 of the Limitation of Actions Act, the land cannot be subject to adverse possession. Refer to

**Chira & 99 Others v Kenya Power and Lighting Company
(Environment and Land Case No. 94 of 2019) [2022]**

eKLR, which reaffirmed the reasoning in the Court of Appeal case of **Faraj Maharus v J. B Martin Glasses Industries & 3 others CA Civil Appeal No 130 of 2003**. The court clarified that adverse possession cannot occur on public or government land, regardless of how long the occupier has remained without interference. Therefore, the plaintiffs cannot rely on the duration of their occupation to override the law, as there was no proof that the land property was transferred into private ownership capable of being extinguished under the Limitation of Actions Act.

22. The 1st defendant, who did not participate in the matter, has no proprietary interest in the suit property. By law, a letter of allotment does not confer ownership rights over land property. See **Dr. Joseph N. K. Arap Ngok v Justice Moiyo Ole Keiuwa [1997] eKLR**, where the court stated and observed as follows:

“It is trite that such title to landed property can only come into existence after issuance of letter of allotment,

meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.”

23. See also **Ocean View Plaza v The Attorney General [2002] eKLR**, where the court made the following statement and observation:

“Allotment of land to a citizen or others protected under the Constitution, which action is symbolized by title deeds, invests the allottee with inviolable and indefeasible rights that can only be defeated by a lawful procedure under the Land Acquisition Act.”

24. No evidence has been adduced of any steps taken by the 1st defendant to procure title to the property and become a registered proprietor. Title to the allotted land can crystallize or issue only upon meeting the conditions of the letter of allotment. Until then, the allottee has no private ownership rights under either the Land Registration Act or Article 40 of the Constitution.

25. In this matter, no title deed exists in favor of the 1st defendant, no records from the Lands Office confirm completion of the allotment process, and no extract of title has

been exhibited to this Court. Without such proof, neither the plaintiffs nor the 1st defendant can assert proprietary interests in the suit property, and the doctrine of adverse possession is inapplicable as a matter of law.

26. The law governing adverse possession is settled beyond peradventure. Before a court can entertain such a claim, a certificate of title must be issued under the relevant land statutes that identifies a registered proprietor against whom time can run. Without a registered owner of the suit property, there can be no question of extinguishment of title by the running of time.

27. This requirement flows directly from Order 37, Rule 7 of the Civil Procedure Rules, which mandates that an application for adverse possession be accompanied by a certified extract of the title to the land in question. The rationale for adverse possession is a claim against the registered owner of land, who, by operation of law, loses title upon the expiration of the statutory period prescribed under the Limitation of Actions Act, Cap 22. Where no registered owner exists, time cannot begin

to run, and the doctrine of adverse possession cannot be invoked.

28. The Court of Appeal emphatically underscored this position in **Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR**, where it cited with approval the earlier decision in **Teresa Wachuka Gachira v Joseph Mwangi Gachira, Civil Appeal No. 325 of 2003**, holding that:

“Because a claim based on adverse possession is anchored on the fact that the suit property belongs to a registered owner, evidence of such ownership in the form of a copy of the title must be exhibited. Failure to do so has consistently been held to be fatal because it is only through such an exhibit that the existence and ownership of the suit property can be ascertained by the court.”

29. Additionally, in **Beatrice Wanjeri Mwangi (Substituted as the Legal Representative of Mwangi Kanyari (deceased)) v Githii Kanyari 2019 KECA 128**, the Court of Appeal referenced its previous decision delivered in **Mbira v Gachuhi (2002) 1 EALR 137**, wherein the Court held that:

“... a person who seeks to acquire title to land by the method of adverse possession for the applicable

statutory period, must prove non permissive or non-consensual actual, open, notorious, exclusive and adverse use by him or those under whom he claims for the statutorily prescribed period without interruption...”

30. No person can claim to have extinguished property rights that were never legally vested in another individual in the first place. The doctrine of adverse possession presupposes the existence of a lawfully registered owner whose proprietary rights may be extinguished by long, uninterrupted, exclusive, and hostile occupation.

31. Adverse possession requires possession that is open, continuous, exclusive, and hostile for the statutory period, against the interests of the registered owner. Critically, the court noted that there must be documentary evidence of ownership so the court can determine when the claimant’s possession became adverse to the title holder’s rights.

32. The plaintiffs alternatively request a declaration that the 1st defendant holds the property in trust for them and the community that depends on it. The law regarding land trusts is clear: anyone claiming the existence of a trust must prove it

with credible evidence. Sections 107 and 109 of the Evidence Act place the burden of proof on the person asserting a fact. This was confirmed in **Phillicery Nduku Mumo v Nzuki Makau [2002] KECA 302 (KLR)**, where the Court of Appeal held that a trust is a question of fact that must be proven with evidence. A trust is not implied solely by long occupation or possession; there must be proof of an express or implied intention to create one. The plaintiffs have not provided any documentary evidence showing that the 1st defendant ever held the property in trust for them or the wider community. The plaintiffs have not met the threshold for this Court to declare the existence of a trust, whether express, implied, or constructive, over LR No. 13599 in their favor or in favor of the community.

33. The plaintiffs have alleged that the 2nd and 3rd defendants fraudulently and unlawfully conspired with the 1st defendant to deprive them of the suit property by issuing an allotment letter without due process. The law is clear that allegations of fraud must not only be specifically pleaded but also strictly proved. The standard of proof for fraud, while not as high as in criminal

cases, must be more than a mere balance of probabilities because fraud imputes dishonesty and quasi-criminal conduct on the part of a party.

34. The Court of Appeal in **Kinyanjui Kamau v George Kamau [2015] eKLR** emphatically stated that the burden of proof lies on the party alleging fraud. Mere allegations, suspicion, or conjecture are not enough; credible evidence must be presented. Fraud cannot be inferred from the facts; it must be proved by way of cogent and credible evidence showing the alleged fraudulent acts, the persons involved, and their specific roles.

35. Section 107 and 109 of the Evidence Act (Cap 80) provide that the burden of proof lies squarely on the party who alleges. In this case, the plaintiffs have alleged that the 2nd and 3rd defendants colluded with the 1st defendant to allocate the suit property illegally and fraudulently. No documentary evidence, minutes, letters, internal memos, or witness testimony were tendered to support these allegations. Reliance purely on assertions contained in their pleadings cannot take the place of proof.

36. Article 40(6) of the Constitution of Kenya, 2010, provides that property rights obtained unlawfully are not protected under the law. However, for the court to invoke this provision, the party alleging illegality or fraud must first establish, through credible evidence, that the title or allotment was indeed acquired illegally or fraudulently.

37. In **Arthi Highway Developers Ltd v West End Butchery Ltd & 6 Others [2015] eKLR**, the Court of Appeal, cited Bullen & Leake & Jacobs, Precedent of Pleadings 13th Edition at page 427, where the author stated that where fraud is alleged, it must be distinctly proved, not merely inferred. The author further stated that general allegations, however strong the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice.

38. In the present matter, there is no evidence to suggest that the 2nd and 3rd defendants acted unlawfully or engaged in any fraudulent conduct. No witnesses from the Lands Office have been shown to have forged signatures, falsified records, or otherwise manipulated the allocation process (if any), or to have acted outside what is provided to be regularly done and

presumed to be regularly done in the normal course of business. See the Court of Appeal in **King'oo v Mwangi [2019] KECA 734 (KLR)**.

39. The plaintiffs acknowledged in their pleadings that the 1st defendant has no title document. This acknowledgment undermines their fraud claims, as their primary argument is predicated on the alleged illegal allocation. Because the process was never completed and the 1st defendant did not acquire ownership rights, it is inconsistent to contend that the 2nd and 3rd defendants usurped the plaintiffs' ownership through fraudulent means.

40. Building on the foregoing, the plaintiffs have sought wide-ranging declaratory orders, including ownership rights to the suit property, a declaration of trust, and, in the alternative, adverse possession. However, the law is clear that declaratory and proprietary relief can be granted only when a party demonstrates a clear legal or equitable right to the property in question. Property rights in land must be proved by evidence and cannot be inferred from mere allegations or assumptions.

The plaintiffs have not met this burden at the required threshold.

41. Further, even if the plaintiffs were in occupation of the land, that alone would not entitle them to the reliefs they seek unless they follow the due process for acquiring ownership rights over land. The Land Act, 2012, and the Land Registration Act, 2012, provide elaborate procedures for the regularization, allocation, or settlement of individuals on public or unalienated land. For instance, our legal regime provides for settlement programmes under the Settlement Fund Trustees (SFT), through which squatters may be settled and issued titles after proper survey, planning, and approval by the National Land Commission.

42. Therefore, if the plaintiffs indeed wish to claim ownership of the land they allege to occupy, the proper course would be to petition the relevant authorities, such as the National Land Commission, to consider their case under the legal frameworks for settlement and regularization. Until and unless such lawful processes are followed, it would not be prudent for this Court to issue sweeping declarations of ownership rights or trust in their

favor. Allocation of land is the province of the executive, not the judiciary. See Republic v National Land Commission & 6 others [2023] eKLR.

43. To grant the reliefs sought, clear evidence of ownership or fraud must be proved. In a nutshell, the plaintiffs should follow the proper legal procedures to acquire land rights rather than seeking broad, unsupported reliefs. Thus, the plaintiffs' suit is hereby dismissed.

44. I will make no orders as to costs.

Dated, signed, and delivered virtually at Nyeri on this 28th day of January 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Indesia for the Plaintiffs

Kendi: Court Assistant

In the Absence of:

Mr. Munga for 2nd - 4th Defendants