



Hamisi aka Hamisi Mangale Shomari v Sombo (DECD) & 4 others (Environment and Land Case 34 of 2013) [2026] KEELC 260 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELC 260 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 34 OF 2013**

**JO OLOLA, J
JANUARY 29, 2026**

BETWEEN

**SHOMARI MANGALE HAMISI AKA HAMISI MANGALE
SHOMARI PLAINTIFF**

AND

**MWANAJUMA SHOMARI SOMBO (DECD) 1ST DEFENDANT
SOFIA YUSUF 2ND DEFENDANT
BAKARI YUSUF (SUIING ON HIS OWN BEHALF AND ON BEHALF OF THE
ESTATE OF MWANAJUMA SHOMARI SOMBO) 3RD DEFENDANT
ALI YUSUF 4TH DEFENDANT
COUNTY GOVERNMENT OF MOMBASA 5TH DEFENDANT**

JUDGMENT

Background

1. By a Plaint dated 12th February 2013 as amended on 27th October 2016, Shomari Mangale Hamisi (the Plaintiff) prays for judgment against the five (5) Defendants, jointly and severally for the following:-
 - a. A declaration that the entry upon, and all dealings, howsoever described, with sub-division Number 2010 of Section VI Mainland North by the 1st, 2nd, 3rd and 4th Defendants is wrongful and actionable trespass for which ejectment shall and is hereby issued to remove the said Defendants from the suit land and restore possession thereof upon the Plaintiff;
 - b. An injunction be and is hereby issued directed against the 1st, 2nd, 3rd and 4th Defendants, by themselves or through their agents, servants, employees or workmen or otherwise howsoever



(from carrying out) any construction or other works howsoever described, on sub-division Number 2010 of Section VI Mainland restore possession for the following (sic);

- c. A declaration that the 5th Defendant has failed in enforcing the building code; and/or connived at the trespass upon and wrongful development of sub-division Number 2010 of Section VI Mainland North by the 1st, 2nd, 3rd and 4th Defendants, thereby occasioning damage to the Plaintiff;
 - d. A declaration that the approval of any building plans in respect of sub-division Number 2010 of Section VI Mainland North is wrongful exercise of statutory power and an order to rescind such approval is issued forthwith;
 - e. An order of mandamus do issue under Article 23 and 40 of the Constitution of Kenya 2010 directed to the 5th Defendant to enforce The Local Government (Adoptive By-Laws) (Building) Order 1968 so as to restore the land known as Plot 2010 of Section VI Mainland North of the state it was in before the impugned activities;
 - f. General damages for trespass and wrongful development of sub-division Number 2010 of Section VI Mainland North and for demolition of sub-division Number 2010 of Section VI Mainland North, and for demolition of the old daub and wattle structure hitherto on the suit land; and
 - g. Costs of this suit are borne by the Defendants jointly and severally.
2. The basis of those prayers is the Plaintiff's contention that he is the registered owner of the said sub-division number 2010 of Section VI Mainland North comprising 0.1302 Ha delineated on Survey Plan No. 68470 having acquired the same from Manajuma and Manahamisi Binti Shomari in January 1995.
 3. The Plaintiff avers that on 30th November 2012, the Defendants without the consent of the Plaintiff or the 5th Defendant wrongfully and surreptitiously entered upon the land demolished the daub and wattle house and broke ground for laying a foundation with intent to develop a storey structure thereon. The Plaintiff further avers that the said acts of trespass has occasioned substantial damage, irreversible and irreparable waste and that the same have violated his right to property under Articles 22, 23 and 40 of the Constitution of Kenya.
 4. Mwanajuma Shomari Shombo (the 1st Defendant) is opposed to the Plaintiff's claim. In her Amended Statement of Defence dated 20th June 2017, the 1st Defendant denies that the Plaintiff is the registered proprietor of the suit property. It is the 1st Defendant's case that the suit land belonged to her jointly and in common with her sister and the Plaintiff's mother – Mwanahamisi Binti Shomari.
 5. The 1st Defendant denied that she had transferred her interest in the suit property and asserted that she had as a matter of right occupied the same since the year 2010.
 6. The 1st Defendant accused the Plaintiff of fraudulently conspiring with his mother to defraud the 1st Defendant of her lawful share and interest in the suit property. She accordingly prayed for judgment against the Plaintiff and for:
 - a. A declaration that the suit land legally belongs to her and Mwanahamisi Binti Shomari in equal shares;
 - b. A declaration that the fraudulent title registered in the name of the Plaintiff does not vest ownership in him;



- c. An order revoking the title deed in favour of the Plaintiff; and an order dismissing the Plaintiff's suit.
7. Sofia Yusuf, Bakari Yusuf and Ali Yusuf (the 1st, 2nd, 3rd and 4th Defendants) are equally opposed to the Plaintiff's claim. In their joint Further Amended Statement of Defence and Counterclaim dated 1st March 2022, the Defendants deny that the Plaintiff is the registered proprietor of the suit land. It is their case that the suit land and the residential house erected thereupon legally belong to the 1st Defendant jointly and in equal shares with Manahamisi Binti Shomari.
8. The 2nd, 3rd and 4th Defendants further aver that the suit land was gifted by Shomari Hamud Sombo who had transferred the same to his daughters. They deny trespassing onto the property and assert that they had been in lawful occupation of a part of the residential house since the year 1974 with the full knowledge of the Plaintiff.
9. In their Counterclaim, the said Defendants aver that the 1st Defendant had no intention of gifting the suit land to the Plaintiff as the Plaintiff was to inherit from his mother's share of the suit land. It is the Defendant's case that the Plaintiff caused the suit land to be transferred to himself fraudulently and that the 1st Defendant only learnt of the fraud in the year 2012.
10. Accordingly, the Defendants pray for Judgment against the Plaintiff for orders listed as follows:
- a. A declaration that the suit land parcel known as sub-division Number 2010 of Section VI Mainland North legally belongs to Mwanahamisi Binti Shomari and Mwanajuma Binti Shomari in equal shares;
 - b. That an order be issued revoking and/or cancelling the title of the Plaintiff herein Shomari Mangale Hamisi to the land parcel known as sub-division Number 2010 of Section VI Mainland North;
 - c. That the register of the land parcel known as sub division Number 2010 of Section VI Mainland North be rectified, so as to remove the entries in favour of Shomari Mangale Hamisi and the title to revert back to the Estate of Mwanajuma Binti Shomari and Mwanahamisi Binti Shomari;
 - d. An order that the Plaintiff do deliver up to the 6th Defendant the title deed to the suit property known as sub division Number 2010 of Section VI Mainland North after transferring the same to the Estate of Mwanajuma Binti Shomari and Mwanahamisi Binti Shomari, in default the Deputy Registrar to execute all necessary documents to aid the said transfer to the Estate of Mwanajuma Binti Shomari and Mwanahamisi Binti Shomari;
 - e. An order be issued directing the Plaintiff herein and/or his agents to unconditionally return original titles to Plot sub division Numbers 2007, 2006 and 2011 of Section VI Mainland North to the Estate of Mwanajuma Binti Shomari and Mwanahamisi Binti Shomari or in the alternative to effect a transfer of the said plots to the two Estates; and
 - f. An Order dismissing the Plaintiff's suit against the Defendant with cost to the 2nd, 3rd and 4th Defendants.
11. The Land Registrar Mombasa (the 6th Defendant in the Counterclaim) is opposed to the orders sought in the Counterclaim. In its Statement of Defence dated 16th March 2023, the 6th Defendant asserts that it is not privy to the particulars of fraud enumerated in the Counterclaim. The 6th Defendant denies that it took part in a fraudulent exercise and avers that they executed their duties in good faith and in accordance with the statute.



12. At the trial herein the Plaintiff called 2 witnesses in support of his case. The 3rd Defendant testified on behalf of himself and the 1st, 2nd and 4th Defendants.
13. I have carefully perused and considered the pleadings filed by the parties, the testimonies of the witnesses as well as the evidence adduced by the parties at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
14. By his suit as filed in February 2013, Shomari Mangale Hamisi (the Plaintiff) had sought for a declaration against the 1st to 4th Defendants that their entry and dealing with the parcels of land known MN/VI/2010 (the suit property) was wrongful and actionable trespass and sought to have them ejected therefrom. In addition, he urged the court to issue an order of injunction restraining the said Defendants from carrying on any construction on the suit property.
15. The Plaintiff equally sought a declaration that the 5th Defendant County Government had failed in enforcing the building code and/or that it had connived with the 1st to 4th Defendants in the trespass and wrongful development that was being carried out on the suit property. In addition, the Plaintiff sought a declaration that the approval of any building plans in respect of the suit property was a wrongful exercise of statutory power and sought an order to rescind the same.
16. The Plaintiff further prays for an order of mandamus to issue directed at the 5th Defendant to enforce the Local Government (Adoptive By-Laws) (Building) Order 1968 so as to restore the suit property to the state it was before the activities complained of. Ultimately, the Plaintiff prays for general damages to issue for the said trespass and wrongful development of the suit property.
17. Those prayers arise from the Plaintiff's contention that he is the registered proprietor of sub-division No. 2010 Section VI Mainland North comprising 0.1302 Ha (the suit property) having acquired the same from Mwanajuma Shomari Sombo (the 1st Defendant) and Mwanahamisi Binti Shomari in January 1995.
18. It is the Plaintiff's case that on 30th November 2012, the 1st to 4th Defendants had without his consent and/or that of the 5th Defendant wrongfully and surreptitiously entered upon the suit property whereupon they had proceeded to demolish the daub and wattle house thereon and proceeded to break ground for laying a foundation to construct a storey building. The Plaintiff told the court that the construction commenced on the land had occasioned him substantial and irreversible damage and that the same constituted a violation of his constitutional rights.
19. Before she passed away on 16th November 2017, Mwanajuma Shomari Sombo (the 1st Defendant) had strongly opposed the Plaintiff's claim. In her Amended Statement of Defence dated 20th June 2017, she denied that the Plaintiff was the registered proprietor of the suit property. The 1st Defendant asserted that the suit land belonged to herself jointly in common with her younger sister Mwanahamisi Binti Shomari who was the Plaintiff's mother.
20. In particular, the 1st Defendant vehemently denied having transferred her interests in the suit property to the Plaintiff. She told the court she had occupied a portion of the suit property since the year 2010 and that neither herself nor her children, sued herein as the 2nd, 3rd and 4th Defendants, were trespassers on the land.
21. Accordingly, the 1st Defendant urged the court to find and declare that the suit land legally belonged to her and her sister, and to proceed to revoke the title deed in the name of the Plaintiff.



22. Following the 1st Defendant's death on 16th November 2017, her son and Legal Representative Bakari Yusuf (the 3rd Defendant) was substituted in her stead. Upon the said substitution, the Defendants filed a Further Amended Statement of Defence and Counterclaim dated 7th March 2019 wherein they made basically the same prayers that had been made by the deceased Defendant.
23. From the material placed before the court, there was no dispute that the suit property initially belonged to one Shomari Hamud Sombo who was the father of the deceased Defendant and her younger sister Mwanahamisi Binti Shomari who was the Plaintiff's mother. On 16th February 1960, the said Shomari Hamud Sombo transferred the suit property to his two daughters as tenants in common to hold in equal shares. Built on the property was a Swahili House with 8 rooms.
24. While the two sisters have since died, they were both alive in February 2013 when the Plaintiff instituted these proceedings. Mwanahamisi Binti Shomari, the Plaintiff's mother passed away in 2014 while her elder sister sued as the 1st Defendant herein passed away on 16th November 2017.
25. According to the Plaintiff, he had acquired the property in January 1995 when his mother and her elder sister had voluntarily and in consideration of their love and affection towards him transferred the suit property to himself. In support of that position, the Plaintiff produced a transfer document thumb-printed by the two sisters before Stephen Macharia Kimani Advocate on 26th January 1995. The said transfer documents registered a day later as CR No. 10904/4 concludes as follows:

“ ... In consideration of the Vendors love and affection towards Hamisi Mangale Shomari of Post of Office Box number 81783 Mombasa in the Republic aforesaid (hereinafter called “The Transferee”) do hereby transfer unto the said transferee all the rights Title and interest of the vendors in and to the said parcel of land and to all buildings and other improvements now erected and being thereon if any.”
26. According to the Plaintiff some 17 years later on 30th November 2012, he was informed by his brother one Amani Hamisi Abdulrahman (PW2) that some people had entered into the suit property and had broken ground with the intention of erecting a structure thereon. The Plaintiff told the court that since he was far away in Nakuru where he worked, he asked his brother (PW2) to ascertain who the intruders were. He told the court that after several visits, PW2 was able to ascertain that the construction works were being undertaken by the Defendants.
27. While the Plaintiff insisted that his aunt (the 1st Defendant) had voluntarily transferred her portion of the property to himself for love and affection, his aunt had denied that she had so much love and affection for the nephew. In a statement recorded some four (4) years before her death, the deceased Defendant asserted that she could not transfer her interests in the property as she had her own children who require to use and occupy her part of the family house with herself.
28. The deceased Defendant asserted that the suit property had been fraudulently transferred to the Plaintiff and that she had only learnt of the fraud sometime in the year 2012 when her son Bakari Yusuf (DW1) had gone to the 5th Defendants offices to pay land rates but was unable to do so after he (DW1) was told that the property was registered in the Plaintiff's name. The deceased Defendant further asserted that her younger sister had conspired with her son (the Plaintiff) and had taken advantage of her illiteracy to have the property registered in the Plaintiff's name. Upon learning of the registration, the deceased had registered a criminal complaint with Changamwe Police Station under the Occurrence Book (OB) No. 53/1/12/2012.
29. While the Criminal Case instituted against the Plaintiff following the complaint lodged by the deceased was dismissed, it was difficult to believe the Plaintiff's contention that the deceased had voluntarily



transferred her share of the suit property to himself on the basis of “love and affection.” From the material placed before the court there was nothing adduced to support the so-called love and affection theory.

30. According to the Plaintiff, he had instituted this suit upon receipt of information by his brother (PW2) that some strangers had trespassed onto the land on 30th November 2012 and had started developing the same. I was unable to see how PW2 would not have known that those who were carrying out the construction on the land were his aunty and his cousins sued herein as the 2nd to 4th Defendants.
31. From the evidence placed before the court, it was apparent that for a long period of time, it was the Plaintiff’s aunty (the 1st Defendant) and the 3rd Defendant who had been exercising control over the suit property. Aggrieved by that situation, the Plaintiff’s Advocate on record S.M. Kimani had on 21st October 1992 written to the deceased Defendant as follows:

“Re: Plot No. MN/VI/2010

Our Client: Mwanahamisi Binti Shomari

We have been consulted by our above named client with instructions to address you as hereunder:

That you and our client are the registered owners of the captioned plot. However, all along our client has not enjoyed the proceeds from the ground rent paid by the owners of houses (without land) which rent is paid directly to your son. Our client has never received or seen a statement of account despite the fact that the rent is paid monthly.

In the circumstances, our client has instructed us to advise you that she would like to have the property sub-divided so that she can take full control over all issues regarding her portion of the captioned plot. We now call upon you to tender your confirmation that you are willing to have the property sub-divided and further that you will share half the costs that may be incurred in the exercise.

Further, we have instructions to call upon you to confirm in writing that you will render a true statement of account reflecting all the moneys collected as ground rent over the years.

Take notice that if we do not receive your suitable reply within the next 14 days from the date herein, our firm instructions are to commence appropriate legal proceedings for an order to sub-divide the property and further restrain you from collecting ground rent until you render a true copy and up-to-date statement of account...”

32. As it turned out, the deceased Defendant agreed with the contents of the letter that the suit property be sub-divided so that each of the sisters could take control of their respective portions. On that account, the Plaintiff’s counsel on record wrote to the Plaintiff’s mother Mwanahamisi Binti Shomari as follows on 5th November 1992:

“Re: Plot No. MN/VI/2010

Please refer to the captioned matter and be advised that your sister has agreed to all your demands. I would now like to meet both parties on the 19th November 1992 at 12.00 noon.

Kindly avail yourself without fail.

Mrs. Mwana Juma Binti Shomari has already been notified of this meeting.”



33. It would appear that it took a while before the transaction was concluded. One year after the last letter, Mr. S.M. Kimani Advocate wrote to the 5th Defendant's Treasurer forwarding a cheque of Kshs. 3,000/= to settle some of the outstanding rates for the suit property. A carbon copy of the letter was addressed to the deceased Defendant with the following instructions from the Learned Counsel:

“c.c. Mwanajuma Binti Shomari

Our client is very worried as you have not started paying the rates for the plot mutually agreed will be transferred to you or your nominees. Our client has nevertheless continued to pay the rates for plot No. 2010/VI/MN as agreed in our chambers. Indeed, the transfer documents in favour of our clients are ready and as soon as the full rates are remitted, we shall forward the same to you for execution.

Kindly co-operate.”

34. That being the case, I was totally unable to comprehend how the deceased Defendant, an old and illiterate woman was one year down the line made to thumb-print the Transfer document written solely in English transferring her share of the land, not to herself or her nominee, but to the name of her sister's son (the Plaintiff) in the presence of the same Advocate who was handling the transaction.

35. When asked in cross-examination the circumstances under which the documents came to be executed, the Plaintiff testified as follows:

“On the last page the transferor thumb-printed meaning they did not know how to read or write that they were illiterate. The transfer was in the English Language and not Kiswahili. The transfer was drawn by S.M. Kimani Advocate.”

36. Questioned further about the tenor and purport of the letter written by his Advocate on 21st October 1992, the Plaintiff responded as follows:

“... The 3rd Paragraph was for the plot to be sub-divided. There is no agreement to indicate that the two had agreed to transfer the land to me. There has been no response to the letter by S.M. Kimani Advocate on sub-division. I only saw the transfer by the two parties.”

37. The Plaintiff further alleged that there was an agreement by the two sisters that they divide their four parcels of land being plot numbers 2006, 2007, 2010 and 2011 between themselves. It was his case that by that Agreement said to have been deposited with his Advocates on record, plot Nos. 2006 and 2007 were to be registered in the name of the deceased Defendant while Plot Nos. 2010 and 2011 would go to his mother Mwanahamisi Binti Shomari. There was however no evidence of any such agreement or any proof of its implementation.

38. From the material placed before me, there was no evidence that the deceased Defendant and/or her children had relinquished their possession and control of the suit property to warrant the allegation of trespass. While the deceased Defendant did thumb-print the transfer documents, it was clear to me that she did so in the knowledge that they were sub-dividing the suit property amongst themselves as had been written to her by the Advocate acting for the Plaintiff and not that she was transferring her share of the property to her sister's son.

39. In the premises I was not persuaded that there was any merit in the Plaintiff's claim. On the other hand, I find and hold that there is merit in the Defendant's Counterclaim dated 7th March 2019.

40. Accordingly, I hereby make orders as follows:



- a. The Plaintiff's suit is hereby dismissed with costs.
- b. A declaration is hereby made that the suit property – MN/VI/2010 legally belongs to both Mwanajuma Binti Shomari and Mwanahamisi Binti Shomari in equal shares.
- c. An order is hereby issued that the title for the said LR. No. MN/VI/2010 in the name of the Plaintiff be henceforth revoked and cancelled.
- d. An order is hereby issued that the register for the parcel of land known as MN/VI/2010 be rectified so as to remove the entries made in the Plaintiff's name and to revert the same back to the estates of Mwanajuma Binti Shomari and Mwanahamisi Binti Shomari.
- e. The costs of the Counterclaim shall be borne by the Plaintiff.

41. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 29TH DAY OF JANUARY, 2026

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. S.M. Kimani Advocate for the Plaintiff
- c. Mrs. Nyange holding brief for Mr. Nyange Advocate for the 1st, 2nd, 3rd and 4th Defendants
- d. Ms. Saru Advocate for the 6th Defendant
- e. No appearance for the 5th Defendants

