



REPUBLIC OF KENYA



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**Bemadafu v Njeka & 3 others (Environment and Land Case  
64 of 2021) [2026] KEELC 619 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 619 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE 64 OF 2021**

**AE DENA, J**

**FEBRUARY 9, 2026**

**BETWEEN**

**KOMBOZA MADAFU BEMADAFU ..... PLAINTIFF**

**AND**

**MADENI NJEKA ..... 1<sup>ST</sup> DEFENDANT**

**GURIRO LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**LAND ADJUDICATION & SETTLEMENT OFFICER KINANGO .... 3<sup>RD</sup>  
DEFENDANT**

**THE REGISTRAR OF LANDS KWALE ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of Plaint dated 26<sup>th</sup> September 2018 by the Plaintiff through the firm of Koech and Associates and later O.M Robinson and Company Advocates filed a Notice of Change of Advocates.
2. The Plaint seeks the following reliefs; -
  - a. A declaration that registration of L.R. No. Kwale/Tsunza Adjudication/136 was obtained by fraud and as such is null and void.
  - b. A declaration that the sub-division of L.R. No.Kwale/Tsunza Adjudication/136 by the 2nd Defendant into L.R. No.Kwale/Tsunza Adjudication/133 and L.R. No.Kwale/Tsunza Adjudication/1560 was obtained by fraud and as such is null and void.
  - c. An order compelling the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to re-register L.R. No.Kwale/Tsunza Adjudication/133 and L.R. No.Kwale/Tsunza Adjudication/1560 in the Plaintiff.



- d. A permanent injunction restraining the 1st and 2nd Defendants whether by themselves, their servants or agents or otherwise howsoever from entering upon, remaining on, carrying out any construction or activity or having any adverse dealing with L.R. No.Kwale/Tsunza Adjudication/136, L.R. No.Kwale/Tsunza Adjudication/133 and L.R. No.Kwale/Tsunza Adjudication/1560
  - e. Costs of and incidental to the suit.
3. The Plaintiff avers that he and his ancestors have occupied, lived on, and cultivated the suit property known as L.R. No. Kwale/Tsunza Adjudication/136 for generations, where the extended family of over fifty (50) members has established permanent homesteads, crops, and ancestral graves. In 2013, the 3<sup>rd</sup> Defendant conducted a land adjudication exercise in Tsunza Settlement Scheme, Kinango Sub-County, during which the suit property was demarcated and formally recorded in the names of the Plaintiff and four other family members as trustees and representatives of the larger family. The adjudication process followed public participation and hearings, and the Plaintiff's family was issued with a letter of allotment confirming ownership, the land at the time comprising numerous homesteads, coconut and mango trees, other crops, and graves.
  4. Following the conclusion of adjudication, the 1<sup>st</sup> Defendant, a stranger to the Plaintiff's family, lodged an objection alleging exclusion from the process. The objection was heard by the Kinango Land Adjudication Committee, which initially ruled in favour of the Plaintiff and the other registered representatives. However, when the Plaintiff later sought certified proceedings, he discovered that the official record had been altered to reflect a contrary decision, allegedly due to bias and collusion, as the committee secretary was a close relative of the 1<sup>st</sup> Defendant.
  5. The Plaintiff's alleges although site visits were conducted by land officials and the 1<sup>st</sup> Defendant failed to identify any boundaries, no formal verdict was ever delivered to the Plaintiff, yet the land was subsequently and irregularly registered in the name of the 1<sup>st</sup> Defendant without notice, hearing, or lawful variation of the adjudication records.
  6. The Plaintiff further avers that, acting in bad faith and with full knowledge of the prior adjudication, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fraudulently caused the subdivision and registration of portions of the suit property, including L.R. Nos. Kwale/Tsunza Adjudication/133 and 1560, in favour of the 2<sup>nd</sup> Defendant and other third parties, without the consent of the Plaintiff or the wider family. Despite the Plaintiff lodging a caveat in June 2017 upon learning of an intended sale, the Defendants persisted in unlawful dealings, threatening further alienation of the land. The Plaintiff contends that all registrations and subdivisions arising therefrom are null and void for fraud, illegality, and collusion, prompting the filing of this suit for the orders sought.

### **The 1<sup>st</sup> Defendant's Response**

7. The 1<sup>st</sup> Defendant denied the above allegations vide Defence and Counterclaim dated 28<sup>th</sup> February 2022 through the firm of Ngonze and Ngonze Advocates. He avers that the suit property known as L.R. No. Kwale/Tsunza Adjudication/136 is ancestral land inherited from his grandfather and passed down through generations since around the year 1800, and that his family has been in open, uninterrupted, and exclusive occupation thereof, utilizing the land for farming and livestock keeping.
8. The 1<sup>st</sup> Defendant contends that no adverse claim was ever raised until the year 2013, when a land adjudication exercise was conducted in his absence, prompting him to lodge a formal complaint with the Kinango Lands Office and to appear before the Land Adjudication Committee, which heard the



dispute and lawfully determined it in his favour, thereby confirming him as the bona fide proprietor of the suit property.

9. Further, the 1<sup>st</sup> Defendant avers that the Plaintiff, being dissatisfied with the committee's decision, lodged an appeal before the Arbitration Board, which was dismissed, and subsequently filed an objection that did not in any way disturb the 1<sup>st</sup> Defendant's ownership. He denies having sold, transferred, or otherwise alienated the suit property and maintains that he has at all material times remained in exclusive possession. The 1<sup>st</sup> Defendant denies all allegations of fraud, collusion, or illegality contained in the plaint, joins issue with the Plaintiff on each and every allegation.
10. The 1<sup>st</sup> Defendant raised Counter-Claim and sought the following reliefs:-
  - a. A declaration that the Plaintiff (By Counter-Claim) is the Lawful, Bonafide Proprietor of all that Parcel Reference Title Number Kwale/Tsunza Adjudication/136, situated at Tsunza within Kwale County, together with ALL Buildings, Creations and Improvements created and being thereon.
  - b. A declaration that the Entirety of Claims to Proprietorship by Defendant (By Counter-Claim) over Kwale/Tsunza Adjudication/136, situated at Tsunza within Kwale County, together with all Buildings, Creations and Improvements created and being thereon was, is and remains fraudulent and/or illegal, therefore null and void ab initio;
  - c. An order of permanent injunction do issue restraining the Defendant (By Counter-Claim), whether by Himself, his Agents/Employees/ Servants/ Assigns and/or anyone whosoever laying-Claim through him, Jointly and Severally, from Entering Into, Dwelling Upon, Interfering with the Plaintiff's ( By Counter-Claim) Open, Peaceful, Quiet, Lawful, Continuous, Exclusive and Uninterrupted possession, occupation, enjoyment and derivative use, and/or in any other manner whatsoever, Dealing with the Suit Property in Any Manner Adverse to the Plaintiff's Interest therein and/or if said Party/Parties have entered Upon the Suit Property Parcel Reference Kwale/Tsunza Adjudication/136, Kwale County said Party/ Parties be evicted forthwith.
  - d. An order directing the Defendant (By Counter-Claim) to pay the Plaintiff (By Counter-Claim) General Damages;
  - e. Costs of this Suit and Interest thereon;
  - f. Any other Relief the Honourable Court may deem Fit and Just to Grant/Award in the Circumstances.

### **The Plaintiff's Reply to Defence & Defence to Counterclaim**

11. In response, the Plaintiff filed a Reply to Defence and Defence to Counterclaim dated 29<sup>th</sup> March, 2022. In the said Reply, the Plaintiff joined issue with the 1<sup>st</sup> Defendant and denied all the averments therein save for those expressly admitted. He contended that the Defence was evasive, verbose, and largely composed of general denials, contrary to the requirements of Order 2 of the Civil Procedure Rules.
12. The Plaintiff further averred that although the suit was pleaded in a representative form, it equally raised a personal cause of action, the locus standi to sue being personal and the reliefs sought accruing directly to him. He disputed the chronology of events advanced by the 1st Defendant regarding the land adjudication process and the eventual issuance of title to land parcel number Kwale/Tsunza Adjudication/136, and reiterated the averments contained in paragraphs 9 to 18 of the Plaint,



maintaining that the registration of the suit property in favour of the 1st Defendant was tainted with illegality, irregularity, and fraud.

13. With regard to the Counterclaim, the Plaintiff filed a Defence thereto wherein he denied each and every allegation raised by the 1<sup>st</sup> Defendant. He asserted that the 1<sup>st</sup> Defendant was not a bona fide proprietor of the suit land and that no valid proprietary interest could accrue from a title obtained through an irregular and unlawful process. The Plaintiff further denied the allegations relating to long-standing occupation and possession of the suit land, terming them false, misleading, and incapable of proof. He contended that the Counterclaim disclosed no cause of action known in law, that no declaratory reliefs or damages could issue in favour of a party whose title is impugned by fraud and illegality, and that no demand or notice of intention to sue was ever served. Consequently, the Plaintiff urged the Court to dismiss the Counterclaim with costs and to grant the reliefs sought in the Plaintiff.

### **The 2<sup>nd</sup> Defendant's Response**

14. The 2<sup>nd</sup> Defendant filed a defense dated 20<sup>th</sup> November 2018 through his advocate A.B Olaba . It avers that it lawfully and for value acquired portions of the suit property, namely L.R. No. Kwale/Tsunza Adjudication/133 from Harrison Munga and L.R. No. Kwale/Tsunza Adjudication/1560 from Samuel Ngwadu Munga, who were the registered and lawful proprietors at the time of sale.
15. The 2<sup>nd</sup> Defendant further denies purchasing parcel 133 from the 1<sup>st</sup> Defendant and further denies in toto, all allegations of fraud, bad faith, or collusion leveled against it, whether acting alone or jointly with the other Defendants. It is averred that the subdivision, registration of the parcels purchased by it was done by the 3<sup>rd</sup> Defendant upon proof that they belonged to Harrison and Samuel respectively.
16. The 2<sup>nd</sup> Defendant states that having lawfully purchased the above parcels from their legitimate registered owners, the Plaintiff or any other person has no valid claims over the same as interest in them had passed to the 2<sup>nd</sup> Defendant. It prays the suit be dismissed with costs.

### **The 3<sup>rd</sup> & 4<sup>th</sup> Defendant's Response**

17. On behalf of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, being the Land Adjudication and Settlement Officer, Kinango, and the Registrar of Lands, Kwale, the Attorney General filed a Statement of Defence dated 27<sup>th</sup> October 2022 by Mr. Martin Mwanje, Senior Litigation Counsel, denying each and every allegation contained in the plaint, save for the descriptive particulars of the parties as pleaded in paragraphs 1 to 6. In particular, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants denied that the 2013 land adjudication exercise conclusively recorded Plot No. 136 in the names of the Plaintiff and four others as trustees for an extended family, denied knowledge of the alleged developments on the suit property, and further denied any procedural impropriety, bias, or irregular conduct in the adjudication committee proceedings, including the alleged involvement of Ruwa Bedundo or any failure by the Sub-County Lands Officer to render a judgment after a site visit. They put the Plaintiff to strict proof of all such allegations.
18. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants further pleaded that following the initial demarcation of Plot No. 136 in the names of Samuel Ngwadu Munga, Harrison Munga Bekanga, Mbaruku Beruwa Ruwa, Komboza Madafu Bemadafu, and Beruwa Meja Munga, a duly constituted Land Adjudication Committee case, being Case No. 15/12/13, was heard between the said persons and the 1st Defendant, Madeni Njeka Nyuni. They averred that upon hearing the parties, the Committee lawfully allowed the objection on or about 15 December 2013, varied the adjudication record accordingly, and registered the suit property in the name of the 1st Defendant.
19. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants denied all allegations of fraud, bad faith, collusion, or illegality, maintained that all subsequent registrations were carried out in accordance with the law and the Committee's



decision, and invited the Plaintiff to strict proof thereof, ultimately praying for the dismissal of the suit with costs.

### **Evidence of the Parties**

20. The case was set down for hearing and proceeded on 27/09/2023, 16/09/2024, 17/09/2024, and 30/09/2024.

### **Plaintiff's Case**

21. PW1, Komboza Madafu Bemadafu, testified on his behalf as the Plaintiff in the matter. He adopted his witness statement dated 4/6/2021 as part of his evidence in chief. According to his witness statement the land belonged to his family where him together with his family resides with other extended family members. Sometime in the year 2013 the District Commissioner of Kinango District visited the larger Tsunza Settlement Scheme and informed the members of the impending demarcation exercise. That in the same year the adjudication officers from Kinango Lands Office visited the area and adjudication was conducted and L.R No. Kwale/Tsunza Adjudication No. 136 was allotted and recorded to him together with other four members being Samuel Gwadu Munga (deceased), Harrison Munga Bekanga (deceased), Mbaruk Beruwa Bekanga and Beruwa Meja Munga on behalf of the entire family.
22. PW1 further stated that he had a boundary dispute with Tumbo Ngando which was resolved in his favour and shortly afterwards the 1<sup>st</sup> Defendant herein, objected to the adjudication process wherein he claimed that the suit property was his. He stated that he was summoned by the Land Adjudication Office, together with Madeni Njeka and they went to the suit property and Madeni Njeka was unable to identify his plot while PW1 was able to identify his. They were informed to await the outcome from the committee which he never received.
23. He further stated Samuel Gwadu Munga lodged an objection with the Land Adjudication Office which was heard and he was informed to await the decision of the committee. That in the year 2014 PW 1 became aware that the objection by Madeni Njeka was decided in Madeni Njeka's favour and a title deed had been issued to him necessitating these proceedings.
24. PW1 added that one of the committee members, Mr. Ruwa Bedundo was related to Madeni Njeka hence being biased and could not have delivered a fair decision. He later found that Samuel Gwadu Munga and Harrison Munga Bekanga (both deceased) had sub divided the suit property into plot 133 and 1560 which sub divisions were later sold to Guriro Limited the 2<sup>nd</sup> Defendant herein. Further that he had lived in that property for a long time and he had cultivated it and various homesteads, trees and graves are within the suit property.
25. He pointed that as a family they do not have a title deed over the land but other documents. He produced the documents in the list of documents dated 26/09/2019 as PW1 Exh 1 – 5 namely a schedule of 50 persons entitled to L.R No. Kwale/Tsunza Adjudication/ 136, a letter dated 10/11/2016 from the Demarcation Officer Tsunza Adjudication section, chiefs letter dated 31/05/2018, a caution dated 25/06/2018 in respect of L.R No. Kwale/Tsunza Adjudication/136 and proceedings of Lands Adjudication Committee.
26. On Cross Examination by Mr. Ngonze counsel on record for the 1<sup>st</sup> Defendant, PW1 confirmed that the letter of allotment together with the acceptance and receipts and discharge and transfer by the SFT were not part of his documents. PW 1 on being referred to the Adjudication Proceedings and the decision of 24/5/2013 agreed that it was the 1<sup>st</sup> case brought by Madeni Njeka against them and which was dismissed and their names were to be removed. He conceded they appealed and a decision was issued on 13/6/2013 dismissing the appeal and upholding the earlier decision.



27. PW 1 agreed that though the property wasn't to be in his name only he has not sued together with others in the present proceedings. PW 1 agreed the allegations in paragraph 10 of the plaint had not been supported with documents such as photos or permits for burial exercises. PW 1 further agreed that Madeni Njeka succeeded in all the previous proceedings. He agreed the schedule of the 50 persons in Block 136 does not indicate its origin.
28. PW1 agreed that one of his brothers did a sub division and sold the property to Guriro in relation to 1560 and 133. He also agreed that there are other sub divisions 600 and 901 registered in other people's names. He agreed that plot 136 no longer exists and is registered to non family members and out of the latter he had only sued Guriro. He concluded by agreeing that there has never been a title issued to his name and the other beneficiaries.
29. Cross examined by Mr. Olaba for the 2<sup>nd</sup> Defendant PW1 confirmed that the 5 names were registered and each one of them could get a portion. PW 1 disagreed that any of them could sale off their portion before the others agree. PW 1 confirmed that he knew Samuel Gwadu Munga and Harrison who were also registered. He disagreed that they could sale their portions. PW 1 agreed that he appealed but he was defeated. He stated that he had not sued Samuel and Harrison because they were deceased and he also did not sue their estate.
30. The witness was also cross examined by Ms. Rukiya and confirmed that he had sued on behalf of 50 others, who are from a family of five people but did not have a letter of authority to sue on their behalf.
31. PW1 told this court that they were before the Adjudication committee twice , were given time to give evidence of which they did and Madeni Njeka was successful. He confirmed that on the second instance that they were sued by Madeni they went to the site with the committee and the committee stated that Madeni had succeeded. He testified they were all at the site and they had an opportunity to give their position. PW 1 confirmed they were informed of their right of appeal and thus they were before court. PW 1 confirmed that to date the title is in the name of Madeni and his problem is with his brothers who sold the land and the Land Adjudication office who did not give him the decision.
32. On reexamination the witness clarified that he did not need any authority from those listed in the list since they were represented by the 5 allotees who are confirmed they owned the land. He confirmed that he was given an opportunity to be heard but his problem is that they were not given the decision. PW1 indicated that plot 136 collapsed upon sub divisions and the lands office makes entries and if there is a mistake they should bear the brunt.
33. PW 2 was Rajab Katsinye Munga. He adopted his witness statement dated 10/5/22 and affirmed its contents. According to his witness statement in 2013 the DCC came to Gandini sub – location held a meeting and one of those who attended were his father Bekanga Munga and his fathers brother Samuel Munga now deceased. The agenda was demarcation of the Tsunza Adjudication section. He confirms that during the demarcation Kwale/Tsunza/ ADJ no. 136 was demarcated as a block to be sub divided later to the five families. He confirmed that Madeni Njeka filed a series of objections and was defeated in all sittings. He confirms attendance at two of the sessions. He told the court he was informed by Mr. Muhoho the surveyor the decision was overturned under the instructions of Mr. Karanja the Kinango Sub- County Lands Office. That he later found Mr. Ruwa Bedundo a Lands clerk at Kinango Lands Office was an officer during the arbitration proceedings. PW2 further testified that it was him together with the Plaintiff who placed the caution since the sub divisions were being done when the cases were still ongoing. That currently the entire family still lives in the land.
34. On cross examination by Mr. Ngonze, PW2 testified that he is the son of Bekanga Munga and Harrison is his brother. That plot 136 was registered under 5 families. The witness reiterated the outcome of the



proceedings filed by Madeni and the subsequent outcomes on appeal which was dismissed through the decision of 13/6/2013 and 21/11/2014 where Samuel Munga sued Madeni and the objection was dismissed. PW 2 confirmed that in all those sessions Madeka Njeka won. According to him plot 136 has been sub divided into 5 plots as listed in paragraph 1 of page 2 of his witness statement and other than Harrison the rest are not family members. According to him there is no sub division because of the cases and if there is any they were illegal.

35. The witness conceded he did not have any evidence to prove that Ruwa Bedundo is Madeni's nephew. PW 2 confirmed that his name does not feature in the 5 names listed in the letter of 31/5/2018 but insisted it was included in the list of the 50 people which he affirmed does not disclose the author nor its date.
36. On cross examination by Mr. Olaba PW 2 confirmed that his case is that the five were trustees of the family pursuant to the allotment letter. That it was him and the Plaintiff who registered the caution and swore the statutory declaration thereto. PW 2 confirmed that Harrison sold 3 acres to Guriro at Ksh. 900,000/= and he had no problem with that. He confirmed that to the best of his knowledge Samuel never sold his land.
37. On cross examination by Ms. Rukiya PW 2 confirmed that the 1<sup>st</sup> Defendant is the one who instituted the arbitration proceedings. He confirmed he is aware fraud is a criminal offence but he did not have an investigation report. He also had no title deed under the five people.
38. On re-examination PW 2 confirmed that his name is in the beneficiaries list and they were not required to sign the list since they were family members. He confirmed that plot 133 was a separate plot which is not related to 136. He confirmed that he had no issue with Harrison selling plot 133 since it was his land. He reaffirmed that the letter dated 10/11/2016 mentioned 76 acres but it was supposed to be 400 acres.
39. PW 3, was Mr. Chuphi Dzuha Mbui. He testified that he knows the Plaintiff since he gave him land and he is his neighbour. He adopted his witness statement dated 4/6/2021. His witness statement echoes the averments in PW 1 statement on the adjudication culminating into the issuance of title to Madeni. According to PW3, Samuel Gwadu and Harrison Munga abused the trust bestowed on them, sub divided the land to plot 133 and 1560 which were later sold to the 2<sup>nd</sup> defendant herein.
40. On cross examination by Mr. Ngonze PW 3 confirmed he knows the Plaintiff as his neighbour who gave him land and not as a relative. He confirmed the contents of paragraph 3 of his witness statement to the effect that he had stayed on the suit property his entire life before the demarcation and that him and his other family members had lived on the suit property and inherited it from their forefathers and his family has lived in the suit property since time immemorial was not true.
41. PW 3 went ahead and confirmed that plot 136 has been sub divided. He acknowledged that he knows Samuel Gwadu and Harrison Bekenga and they did not sub divide the land which is inconsistent with his statement. PW 3 denied that the dispute has been heard and adjudicated upon or resolved in favour of Madeni Njeka contrary to his witness statement. PW 3 confirmed that his name does not appear on the letter dated 10/11/2016. He agreed his witness statement does not specify the size of the land belonging to him and his ancestors. PW 3 confirmed that he attended three of the adjudication sessions and none was ruled in favour of Madeni Njeka. The witness concluded by agreeing that his witness statement was not entirely truthful.
42. On cross examination by Mr. Olaba PW 3 confirmed that his father was given the land by the Plaintiff in 1964 verbally when PW 3 was 18 years and PW 3 knew this in 1970. That his National Identification Card revealed he was born in 1964. PW 3 confirmed that they had not inherited the suit property from



his fore father as had been stated in paragraph 3 of his witness statement. He confirmed that he knew Samuel Gwadu and Harrison Bekanga that the land is 350 acres but was not aware of the size of the land Harrison was given. PW 3 further stated that he is not aware that Harrison sold his piece. PW 3 was evasive in the question whether Samuel and Harrison had the right to sell their pieces of land.

43. On cross examination by Mr. Mwanjeje the witness confirmed that his father died in 2005 and he does not know Madeni Njeka. PW 3 confirmed that he knew the proceedings before the adjudication committee and his father Dzuha Mbui listed in plaintiffs list was a witness. PW 3 confirmed that the case was heard in 2013. PW 3 confirmed that it was not true that the findings were in favour of Madeni Njeka and Madeni was not given the land by the Adjudication Committee. He further confirmed that Madeni Njeka had a title of the suit property. He confirmed that his father is not listed among the beneficiaries.
44. On reexamination PW 3 clarified that it was his father who was given the land by Munga. PW 3 reiterated he has lived on the land for a long period.
45. With the above, the Plaintiff's case was marked as closed.

### **1<sup>st</sup> Defendants Case**

46. DW 1 was Mr. Madeni Njeka Nyuni, the 1<sup>st</sup> Defendant. He adopted his statement dated 21/3/2022. According to his statement he is currently the owner of plot 136 Tsunza/ Adjudication scheme which was passed to him upon the demise of his father Njeka Nyuni. According to him no one had claimed the land until 2013 when the adjudication exercise was carried out in his absence. The exercise was meant to be done on Tuesday but the Lands Office carried it out on Monday. He raised an objection in relation to that claim and his objection was upheld. He further stated that the Plaintiff being dissatisfied with the arbitration committee decision appealed to the Land Arbitration board and the appeal was dismissed. DW 1 contends that he has never sold his land to anyone and he is the rightful owner of the suit property. DW 1 produced before court the documents in list of documents dated 21/3/2022 as DW 1 Exh 1 – 4 namely DW 1 National Identification Card, a letter dated 24<sup>th</sup> June 2009 empowering Mr. Chuphi Beja Mnyika to be the caretaker of some plots in various locations, minutes of the various adjudication proceedings and a letter dated 21/4/2015 from the Land Adjudication and Settlement Officer Kinango sub county Mr. John Karanja confirming Madeni Njeka Nyuni as having been recorded as the owner of plot 136 Tsunza Adjudication Section.
47. On cross examination by Mr. Mwanjeje DW 1 confirmed that the land was adjudicated on a Monday instead of the designated day, Tuesday. The exercise was done in his absence. He lodged a complaint to the adjudication office against Samuel who had stated that was his land. DW 1 was able to identify his land together with the coconut trees in it while Samuel was unable to identify the land and the 31 coconut trees that Samuel had stated were inside the land. DW 1 confirmed that the adjudication committee ruled in his favour. DW 1 confirmed that there is nothing happening on the land at the moment due to the court case.
48. On cross examination by Mr. Muhamed, DW 1 stated that he does not have a document to proof his ownership. He confirmed that he inherited the land from his father since all his brothers are deceased, however he could not remember the year. DW 1 confirmed that though the suit property is his land he has not received a title deed. DW1 confirmed that before 2013 there was no dispute over the land. DW 1 stated that he does not know the size of his land. DW 1 confirmed that Mr. Chuphi Beja is the one who lives in the land as his caretaker and that his father was buried in the suit property.
49. On cross examination by Mr. Olaba, DW 1 confirmed that he is not staying in the suit property but stays in Vikolani which isn't far from the suit property. DW 1 further stated that he is not staying in



- the suit not because the Plaintiff had chased him. He restated that Mr. Chuphi is the one who stays in the land with his permission and Mr. Komboza was aware of this. DW 1 stated that Komboza, the Plaintiff, lives in Tsunza town and not in the suit property and had no any tree in the land.
50. On reexamination DW1 reaffirmed that the committee gave him the land after they had been heard and explained themselves. He reaffirmed that it is Chuphi Beja, his grandson, who lives in the land. He confirmed that he does not have a title to the suit property because the same has not been issued to him.
  51. DW 2 was Mr. Chuphi Beja Mnyika, a fisherman. He adopted his witness statement dated 21/3/2022. According to his statement his grandfather, Madeni Nyuni, owns the suit property. He states that the Plaintiff colluded with the adjudication officers to cause plot 136 to be allotted to him. However, Madeni Njeka lodged a complaint with the Adjudication committee which ruled in his favour. The plaintiff being aggrieved with the decision lodged an appeal at the arbitration board and the same was dismissed. DW 2 confirmed that he lives in the plot and that he has been appointed by his kinsmen to oversee the security of the plot. DW 2 contended that the challenges started when the adjudication exercise was conducted on Monday instead of the designated day, Tuesday, a day that they were absent.
  52. On cross examination by Mr. Mwanjeje, he confirmed that his grandfather attended the adjudication proceedings and it was decided that the land belongs to his grandfather.
  53. On cross examination by Mr. Muhamed, DW 2 confirmed that he was not on the land during the adjudication exercise. He confirmed that the land office informed them of the adjudication exercise on a Friday and it was verbal communication. He testified that they were all not around the Monday of the adjudication as everyone had gone to their business activities. They later learnt of what had transpired and occasioned filing of the objection. DW 2 confirmed that during the adjudication proceedings the committee visited the suit property and he was present on the suit property.
  54. On cross examination by Mr. Olaba, DW 2 confirmed he is related to Madeni Njeka who is the one who appointed him as the caretaker.
  55. On reexamination DW 2 confirmed that he lives in the land with his wife and children.
  56. DW 3, Mr. Saidi Ali Nyongo, a wine tapper. He adopted his witness statement dated 21/3/2022. According to his witness statement DW 3 states that initially land in Tsunza village was owned by clans and plot 136 is owned by Mwanyawa clan while he was from Muchanda clan. DW 3 confirmed that Muchanda clan and Mwanyawa clan have been neighbours and have related well. That the Plaintiff colluded with the adjudication office to have the land allocated to him however, Madeni objected and he was successful.
  57. On cross examination by Mr. Muhamed, DW 3 confirmed that he neighbours Madenis land to the South. He was aware that the adjudication exercise was conducted on a Monday instead of a Tuesday. DW 3 contended that the lands were owned by clans and Mwanyawa clan had owned the land for over 40 years. DW 3 confirmed that since adjudication the land is occupied by Chuphi Beja and not Komboza's family.
  58. Mr. Olaba and Mr. Mwanjeje did not cross examine the witness.
  59. DW 4 Mr. Chigudu Ngandu Chigudu, was the oldest of the above witnesses. He confirmed that he was a witness for Madeni in the proceedings pertaining to the suit property. According to him the land belongs to Madeni Njeka.
  60. On cross examination by Mr. Muhamed, DW 4 confirmed that his land neighbours that of Madeni Njeka. He confirmed that all the land in Tsunza is owned by clans. DW 4 stated that Samuel Munga lives very far approximately 11.5 miles away. DW 4 confirmed that he was Madenis witness during the



adjudication proceedings. DW 4 confirmed that Samuel came into the Mwanyawa clan but he was not originally from mwanyawa clan.

61. Mr. Olaba and Mr. Mwanjeje did not examine the witness.
62. On reexamination DW 4 reaffirmed the survey was done fraudulently and that the suit property was not Samuel's. DW 4 reiterated that Samuel Munga was not from the Mwanyawa clan.
63. The 1<sup>st</sup> Defendant case was closed at this juncture.

### **The 2<sup>nd</sup> Defendants Case**

64. Mr. Swaleh Athman Mwakwaza, testified on behalf of the 2<sup>nd</sup> Defendant as DW 5. He confirmed that he is an Attorney and director for Guriro Limited. DW 5 adopted his witness statement dated 1/3/2022. According to his witness statement L.R No Kwale/Tsunza/133 was purchased from Harrison Munga Bekanga for a sum of Ksh. 2,218,799.00 wherein a sum of Ksh. 352,600.00 had been paid to Harrison as deposit upon signing the agreement. Unfortunately, Mr. Harrison passed away before completion of the transaction was finalized. He further states that Plot 1560 was purchased from Samuel Ngwadu Munga at a sum of Ksh. 7,700,000.00 and Ksh. 50,000.00 was paid to him as deposit upon signing the agreement. Unfortunately, Samuel also died and the 2<sup>nd</sup> Defendant is awaiting succession proceedings to be completed by the family of the vendor before the balance is paid.
65. DW 5 produced documents the list of documents dated 1/3/2022 as DW 5 Exh 1- 6. DW 5 Exh 1 – 6 namely, adjudication record in favour of Guriro, an agreement for sale dated 13<sup>th</sup> May 2015 between Harrison Munga and Guriro Ltd, Title deed of title number Kwale/Tsunza/133, Power of Attorney, Adjudication record for 1560 and payment vouchers. DW 5 also produced documents in the Supplementary list of Documents dated 2/8/2022 as DW 5 Exh 7 being notice of completion of Tsunza Adjudication register for Tsunza Adjudication section by Mr. James K. Nguzo, the District Land Adjudication and Settlement Officer, Kinango.
66. On cross examination by Mr. Muhamed, DW 5 confirmed that he had produced a specific power of attorney. DW 5 agreed that the case was filed in 2018 and his understanding is that he will act for the company in all matters including previous matter. DW 5 contended that the case herein was not included in the power of attorney because he was to deal with all cases. DW 5 confirmed that he had stated in his witness statement that the transaction 133 was not completed due to the demise of the seller yet he has also produced a title in relation to plot 133. DW 5 stated that there was no correlation of plots 133, 136 and 1560.
67. On cross examination by Mr. Ngonze DW 5 confirmed that Guriro was in purchase agreements in relation to plot 133 and 1560 and Guriro has never transacted in respect of plot 136 and has never transacted with Madeni Njeka and is not privy to the ownership of plot 136. DW 5 stated that plot 133 and 1560 are not sub divisions of plot 136 but they are independent plots.
68. On cross examination by Mr. Mwanjeje DW 5 confirmed that the 2<sup>nd</sup> Defendant is not aware of any restriction placed by the Plaintiff against the property acquired by Guriro.
69. On reexamination DW 5 confirmed that apart from the power of Attorney he is also a director at Guriro and as a director he can represent the company in any business such as giving evidence in court. DW 5 confirmed that the company paid the deposits but did not finalize the payments which were to be paid after registration but the vendors died and the company is awaiting succession to be finalized.
70. With the above the 2<sup>nd</sup> Defendants case was marked as closed.



### **The 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Case**

71. Mr. Davis Mwenda Njeru, Principal Land Adjudication Officer, testified as DW 6 and produced the copy of the Land Committee case No. 15/2012/2013 and a copy of the proceedings of the Arbitration Board case no 6/2012/2013 as his evidence as per the Attorney General's list of documents dated 27/10/2022 as DW6 Exh 1 and 2. He confirmed that as per the records at Kinango office, initially during demarcation the land was demarcated and adjudicated to 5 people as already named hereinbefore. A land committee case no 15/12/2013 was filed. The case was heard and determined on 24/05/2013 and the land committee decided that the 5 names were to be deleted and that of Madeni Njeka Nyuni was to be entered.
72. It was his testimony that however, an Arbitration board case no. 6/12/2013 was filed by Samuel Gwadu Munga for inclusion of their names. The arbitration board committee on 13/06/2013 dismissed the case and the decision of the committee was upheld. Plot 136 remained under the name of Madeni Njeka Nyuni. An objection case was lodged by Samuel Gwadu Munga against Madeni Njeka Nyuni and a new number 1560 was created under the name of Samuel Gwadu Munga. Later plot 1560 in another objection case was transferred to Guriro LTD. DW 6 confirmed that there is no any further appeal to the minister lodged by any party. Therefore, plot 136 remained under Madeni Njeka Nyuni.
73. On cross examination by Mr. Mohamed, DW 6 confirmed that adjudication proceedings happen within 14 days after the demarcation has happened. DW 6 clarified that land committee cases come before the notice of completion. DW 6 confirmed that Gwadu after the notice of completion filed a case against Madeni Njeka and the plot 1560 was created by the Land Adjudication officer who heard the objection. DW 6 confirmed that plot 1560 came from plot 136. DW 6 confirmed that the objections were filed in 2013 and finalized in 2013 and only the arbitration board case that was filed in 2013 was finalized in 2015. The witness testified that the letter dated 10/11/2016 (see Plaintiffs list) does not tally with his record and hence the need to go by the proceedings of the committee and DW 6 disowned the letter.
74. On cross examination by Mr. Ngonze, DW 6 confirmed that he is not aware of the current status of plot 136 but initially it was a single unit. DW 6 confirmed that in all the proceedings the plot in issue was 136 and the proceedings were between individuals and not clans. DW 6 confirmed that Madenis objection were successful and his records are that Madeni is the rightful owner. DW 6 confirmed that plot 136 was sub divided before registration into 1560 and given to Samuel Gwadu Munga. DW 6 confirmed that even after sub division plot 136 retained its original number in favour of Madeni.
75. On cross examination by Mr. Olaba, DW 6 confirmed that the proceedings he had produced are the official government records in respect of plot 136 and the said proceedings state that Madeni is the original allottee of the plot. DW 6 further stated that Madeni Njeka has never appealed against the decision that 1560 was created in favour of Samuel Gwadu and plot 133 was never discussed. DW 6 stated that Madafu could have appealed if he was a party but Madafu had never lodged any objection.
76. On reexamination DW 6 confirmed that the due process of adjudication was followed at the Lands Adjudication Committee stage and the Arbitration Board. He confirmed that the parties were awarded a fair hearing and plot 136 is in the name of Madeni Njeka before registration
77. With the above the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' case was marked as closed.

### **Submissions**

78. Parties filed and exchanged closing written submissions pursuant to the court's directions.



## **Plaintiff Submissions**

79. The plaintiffs' submissions are dated 9<sup>th</sup> December 2024 filed through the firm of O.M. Robinson & Company Advocates. The Plaintiff identified three (3) key issues for determination, namely:
- i. Whether this Honourable Court has jurisdiction to entertain the suit in light of the provisions of the *Land Adjudication Act*;
  - ii. Who between the parties is the lawful owner of land parcels Kwale/Tsunza Adjudication/136, Kwale/Tsunza Adjudication/133 and Kwale/Tsunza Adjudication/1560; and
  - iii. Whether the Plaintiff is entitled to the reliefs sought in the Plaintiff and
  - iv. Whether the Counterclaim should be dismissed.

### **Whether this Honourable Court has jurisdiction to entertain the suit in light of the provisions of the *Land Adjudication Act***

80. The Plaintiff submitted that the adjudication process in respect of Kwale/Tsunza Adjudication/136 had been completed and the land initially recorded in the names of the Plaintiff and four other members the particulars are as given herein. Subsequently, following objection proceedings, the suit property was registered in the name of the 1st Defendant and a title deed issued.
81. It was therefore submitted that once adjudication culminated in registration and issuance of title, the dispute resolution mechanisms under the *Land Adjudication Act* were overtaken by events. Any dispute touching on ownership, legality of title, or allegations of fraud thereafter fell squarely within the jurisdiction of this Honourable Court pursuant to Section 13 of the *Environment and Land Court Act*.
82. The Plaintiff placed reliance on *Stringer Muzungu Lumwe & another v Shida Tuji Tsuma & 2 others* [2021] eKLR, where the Court held that the doctrine of exhaustion does not apply where adjudication has been finalized and titles issued. The Plaintiff urged the Court to find that it is properly seized of jurisdiction to determine the dispute.

### **Who between the parties is the lawful owner of land parcels Kwale/Tsunza Adjudication/136, Kwale/Tsunza Adjudication/133 and Kwale/Tsunza Adjudication/1560**

83. The Plaintiff submitted that the evidence on record clearly demonstrates that prior to and during adjudication, the suit land belonged to the Mwayawa clan and was occupied by the Plaintiff and his extended family. During adjudication in 2013, the land was lawfully demarcated and recorded in the names of the Plaintiff and the four other family members as trustees for the wider family.
84. The Plaintiff contended that subsequent changes to the adjudication record, including the cancellation of the initial entries and the registration of the land in the name of the 1st Defendant, were undertaken without notice, without the involvement of all the recorded allottees, and in violation of the rules of natural justice.
85. It was further submitted that the subdivision of Kwale/Tsunza Adjudication/136 into Kwale/Tsunza Adjudication/133 and Kwale/Tsunza Adjudication/1560, and the eventual registration of the said parcels in the name of the 2nd Defendant, was undertaken fraudulently and without the consent or authority of the Plaintiff and the other original allottees.



86. The Plaintiff submitted that fraud was specifically pleaded at paragraph 19 of the Plaint and strictly proved through oral and documentary evidence. Reliance was placed on the definition of fraud in Black's Law Dictionary, 11th Edition, and the Court of Appeal decision in *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR, on the requirement that fraud be distinctly pleaded and strictly proved.
87. It was contended that fraud was demonstrated through, inter alia:
- i. The secret determination of the objection proceedings in favour of the 1st Defendant without communicating the verdict to the Plaintiff, thereby denying him the right of appeal;
  - ii. The unlawful variation of adjudication records without hearing all the registered allottees;
  - iii. The subdivision and transfer of the suit land by some of the allottees acting in breach of trust and in collusion with the 2nd Defendant; and
  - iv. The existence of conflict of interest in the objection proceedings involving a land officer related to one of the beneficiaries.
88. The Plaintiff further submitted that the evidence of PW1, PW2 and PW3 established long-standing occupation of the suit land by the Plaintiff's family, including homesteads, graves, and perennial crops, which evidence was not displaced by the Defendants.
- Whether the Plaintiff is entitled to the reliefs sought in the Plaint and whether the Counterclaim should be dismissed.
89. On the reliefs sought, the Plaintiff urged the Court to find that the registration of Kwale/Tsunza Adjudication/136 in the name of the 1st Defendant was obtained through fraud and is therefore null and void.
90. The Plaintiff further urged the Court to declare that the subdivision of the suit land into Kwale/Tsunza Adjudication/133 and Kwale/Tsunza Adjudication/1560, and the subsequent registrations, were equally fraudulent and incapable of conferring valid title.
91. Reliance was placed on Section 80 of the *Land Registration Act*, which empowers the Court to order rectification of the register where registration is obtained by fraud or mistake. The Plaintiff urged the Court to compel the 3rd and 4th Defendants to cancel the impugned registrations and restore the suit properties in favour of the Plaintiff.
92. On injunctive relief, the Plaintiff submitted that having proved lawful occupation and entitlement, the Court ought to issue a permanent injunction restraining the 1st and 2nd Defendants from interfering with the suit properties. Reliance was placed on *Bandari Investments & Co. Ltd v Martin Chiponda & 139 others* [2022] eKLR.
93. On costs, the Plaintiff urged the Court to apply the principle that costs follow the event and award costs of the suit and the Counterclaim in his favour.
94. The Plaintiff submitted that the 1st Defendant's Counterclaim is unsustainable in law and fact, having been founded on a title obtained through fraud and illegality. The Plaintiff contended that no declaratory or injunctive relief, nor damages, can issue in favour of a party whose title is impeachable under Article 40(6) of the *Constitution* and Sections 26 and 80 of the *Land Registration Act*.
95. In conclusion, the Plaintiff submitted that he had proved his case on a balance of probabilities, and to the higher standard required in claims founded on fraud. He urged the Court to allow the Plaint



as prayed, dismiss the Counterclaim with costs, and grant such further orders as the Court may deem fit and just.

### **1<sup>st</sup> Defendants Submissions**

96. The 1<sup>st</sup> Defendant filed submissions in the CTS on 29/01/2026 which was out of time without leave. The court did not consider the same.

### **The 2<sup>nd</sup> Defendants Submissions**

97. The 2<sup>nd</sup> Defendant's written submissions are dated 20<sup>th</sup> November 2024. The 2<sup>nd</sup> Defendant confines its submissions strictly to the claim mounted against it, contending that no cause of action was proved against it either in pleadings or in evidence.
98. The 2<sup>nd</sup> Defendant submits that although the Plaintiff pleaded that he was suing on his own behalf and on behalf of at least fifty (50) other persons, no such persons testified or were identified at the close of the Plaintiff's case. Consequently, the Plaintiff's claim stood solely on his own testimony, unsupported by evidence from the alleged beneficiaries on whose behalf the suit was purportedly brought.
99. It is the 2<sup>nd</sup> Defendant's case that it is the lawfully owner of the land parcel Kwale/Tsunza Adjudication/133 having purchased it from Harrison Munga Bekanga, and land parcel Kwale/Tsunza Adjudication/1560 from Samuel Ngwadu Munga, both of whom were recorded allottees at the material time. The 2<sup>nd</sup> Defendant maintains that the purchases were undertaken procedurally and denies all allegations of fraud, collusion, or bad faith as pleaded by the Plaintiff.
100. The 2<sup>nd</sup> Defendant relies on the testimony of the Sub-County Land Adjudication and Settlement Officer, Kwale, who confirmed that land parcel Kwale/Tsunza Adjudication/136 was the subject of adjudication disputes between the Plaintiff and the 1st Defendant, which disputes were heard and determined by the relevant Land Committee. Following the determination, the names of the initial allottees were deleted and the 1st Defendant was recorded as proprietor of parcel number 136.
101. It was further submitted that a subsequent objection lodged by Samuel Ngwadu Munga resulted in the creation of a new parcel, Kwale/Tsunza Adjudication/1560, which was lawfully transferred to the 2<sup>nd</sup> Defendant. The Land Adjudication Officer confirmed that no appeal to the Minister was ever lodged against the creation of parcel number 1560, and that the subdivision process was undertaken through the adjudication machinery and not by the 2<sup>nd</sup> Defendant as alleged.
102. The 2<sup>nd</sup> Defendant further submits that evidence on record established that Kwale/Tsunza Adjudication/133 was not a subdivision of Kwale/Tsunza Adjudication/136, but a distinct parcel that belonged to Harrison Munga Bekanga, who voluntarily sold it to the 2<sup>nd</sup> Defendant. It is contended that the Plaintiff failed to adduce any evidence demonstrating fraud, illegality, or procedural impropriety attributable to the 2<sup>nd</sup> Defendant in the acquisition of either parcel.
103. The 2<sup>nd</sup> Defendant therefore submits that the Plaintiff failed to discharge the burden of proof required to impeach its titles, and that the allegations of fraud were neither strictly proved nor supported by cogent evidence as required in law.
104. In conclusion, the 2<sup>nd</sup> Defendant urges the Court to find that the Plaintiff's claim against it is devoid of merit and to dismiss the suit as against the 2<sup>nd</sup> Defendant with costs.



### **The 3<sup>rd</sup> and 4<sup>th</sup> Defendants Submissions**

105. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants' written submissions are dated 16<sup>th</sup> December 2024. They oppose the Plaintiff's suit and submit that the orders sought cannot issue, as the adjudication, objection, arbitration and subdivision processes relating to Kwale/Tsunza Adjudication/136 were conducted strictly in accordance with the law.
106. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants identify the central issue for determination as whether the adjudication and demarcation of the suit property, together with the subsequent creation of Kwale/Tsunza Adjudication/1560, were tainted by illegality or fraud as alleged by the Plaintiff.
107. Reliance is placed on the testimony of DW1, Davies Mwenda Njeru, the Sub-County Land Adjudication and Settlement Officer, Kwale, who confirmed that parcel Kwale/Tsunza Adjudication/136 was initially demarcated in the names of five individuals, including the Plaintiff, but that a Land Committee Case No. 15/12/13 was lodged by Madeni Njeka Nyuni, which was allowed, resulting in the deletion of the five names and the registration of the parcel in favour of the 1st Defendant.
108. It was further submitted that an Arbitration Board Case No. 6/12/13 lodged by Samuel Ngwadu Munga challenging the Land Committee's decision was dismissed on 13th June 2013, thereby affirming the registration of the 1st Defendant. Subsequently, an objection lodged by the said Samuel Ngwadu Munga led to the lawful creation of a new parcel, Kwale/Tsunza Adjudication/1560, which was later transferred to the 2nd Defendant.
109. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit that no appeal to the Minister under the [Land Adjudication Act](#) was ever lodged by any party against the Land Committee or Arbitration Board decisions. Consequently, the adjudication process attained finality, and the Plaintiff is deemed to have acquiesced to the determinations made thereunder.
110. It is contended that the Plaintiff failed to discharge the burden of proof required under Sections 107, 108 and 109 of the [Evidence Act](#). Reliance is placed on *Kanyungu Njogu v Daniel Kimani Maingi* [2000] eKLR and *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR, for the proposition that a party who alleges must prove, and that where no sufficient evidence is tendered, the claim must fail.
111. On the allegation of fraud, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit that although particulars of fraud were pleaded, the same were not strictly proved to the heightened standard required in law. Reliance is placed on *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR and *Kinyanjui Kamau v George Kamau* [2015] eKLR, which affirm that fraud must be distinctly pleaded and distinctly proved, and cannot be inferred from conjecture or suspicion.
112. It is urged that the Plaintiff tendered no cogent evidence demonstrating manipulation of adjudication records, collusion by adjudication officers, or procedural impropriety attributable to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The allegations of fraud and illegality are therefore said to remain unsubstantiated.
113. In conclusion, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit that the Plaintiff has failed to prove his case on a balance of probabilities, or to the heightened standard required where fraud is alleged. They urge the Court to dismiss the Plaintiff's suit with costs.

### **Issues for Determination**

114. Upon considering the pleadings, the evidence led, the rival submissions of the parties and the law and authorities cited the following issues commend determination.



1. Whether this Honourable Court has jurisdiction to determine the dispute in light of the provisions of the [Land Adjudication Act](#);
2. Whether the Plaintiff established a lawful proprietary or beneficial interest over the suit property;
3. Whether the 1<sup>st</sup> Defendant's title or interest over the suit property was acquired irregularly, unlawfully or fraudulently;
4. Whether the 2<sup>nd</sup> Defendant titles should be impeached
5. Whether the Plaintiff is entitled to the reliefs sought in the Plaint;
6. Whether the 1<sup>st</sup> Defendant's Counterclaim is merited; and
7. Who bears the cost of the suit and of the Counter - Claim

### **Analysis and Determination**

115. Briefly, my understanding of the Plaintiff's claim as discerned from the pleadings and submissions, is anchored on the assertion that during the land adjudication process in 2013, the suit land was lawfully demarcated and recorded in the names of the Plaintiff and four other members of the Mwayawa clan as trustees for the wider family. The Plaintiff contends that he and his family have occupied the land from time immemorial, and that the subsequent deletion of their names and registration of the land in the name of the 1st Defendant was carried out secretly, without notice, and in violation of due process and the rules of natural justice.
116. The Plaintiff further alleges that the subdivision of parcel Kwale/Tsunza Adjudication/136 into parcels 133 and 1560, and the eventual transfer of those parcels to the 2nd Defendant, was fraudulent, undertaken without consent, and in breach of trust by some of the original allottees acting in collusion with the Defendants.
117. The 1st Defendant, on the other hand, maintains that he is the lawfully proprietor of parcel Kwale/Tsunza Adjudication/136 following the determination of adjudication disputes by the Land Committee and Arbitration Board. The 2nd Defendant similarly asserts that it lawfully acquired parcels 133 and 1560 from duly recorded allottees, denies any fraud or collusion. The 3rd and 4th Defendants support the position that the adjudication process was conducted strictly in accordance with the [Land Adjudication Act](#) and that no appeal was lodged to challenge the decisions made thereunder.

### **Whether this Court has jurisdiction in light of the [Land Adjudication Act](#)**

118. It is trite that jurisdiction is everything as the same gives the court the power to determine matters before it. The importance of a court's jurisdiction was illustrated in the cases of Owners of Motor Vessels "Lillian S" – Versus - Caltex Oil Limited [1989] KLR 1 and Samuel Kamau Macharia and another – Versus - Kenya Commercial Bank Limited and 2 others [2012] eKLR.
119. The Supreme Court of Kenya in an extensive analysis of the issue of its own jurisdiction quoted with approval the often cited case of "Owners of Motor Vessel 'Lillian S' (Supra) in the first advisory opinion



rendered by the Court in “In Re the Matter of the Interim Independent Electoral Commission” where the Court stated: -

“(29) Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel ‘Lillian S’ – Versus - Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”

(30) The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

120. Additionally, in the case of:- “Samuel Kamau Macharia & Another v. Kenya commercial Bank & 2 Others, Application No. 2 of 2011 [2012] eKLR, the Supreme Court of Kenya pronounced itself on jurisdiction thus [paragraph 68]:-

“(68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

121. Similarly, the provision of Article 162 (2) (b) of the Constitution of Kenya, 2010 provides for the establishment of the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Section 13 of the Environment & Land



Court Act, No. 19 of 2011 on the other hand provides that the Court shall have power to hear and determine disputes:—

relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

relating to compulsory acquisition of land;

relating to land administration and management;

relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

any other dispute relating to environment and land.

122. I will look at the Jurisdiction in matters concerning land under adjudication whose framework is the [Land Adjudication Act](#). The preamble to the Act states that it is; -

“An Act of Parliament to provide for the ascertainment and recording of rights and interests in community land... and for purposes connected therewith and purposes incidental thereto.”

123. Sections 13 through 29 of the Act lay out the procedural roadmap. During adjudication, claimants present their interests to the Recording Officer, who records and maps them. If a dispute arises, the Recording Officer refers it to the Adjudication Committee as provided under Section 19(2) and (3). Thereafter, dissatisfied parties may escalate the matter to the Arbitration Board pursuant to Section 21(3). Upon conclusion, the adjudication register is compiled and published. Section 26 then grants any aggrieved person sixty days to file an objection with the Adjudication Officer, stating how and why the register is incorrect. The final stage, under Section 29(3), is the closure and certification of the adjudication register. Only then does the matter progress to registration.

124. The provisions of Section 30(1) of the said Act is pertinent to this discourse. It provides thus; -

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3).”

125. Arising from the above the jurisdiction of the court does not kick in until the register becomes final. The above section is expressed in mandatory language and bars any judicial proceedings except with the consent of the adjudication officer.

126. The Court of Appeal in *Bhaijee & Another -Vs- Nondi & Another* [2022] KECA 119 held that the effect of Section 30 is to conditionally limit judicial jurisdiction emphasizing thus; -

“the rationale for Section 30 was that there exists an elaborate process under the [Land Adjudication Act](#) on how to determine persons entitled to interests in land under adjudication... and where such a mechanism exists, it must be exhausted before invoking the court's jurisdiction.”

127. From the evidence adduced before court it is clear that the adjudication process in respect of Kwale/ Tsunza Adjudication/136 progressed through demarcation, objection proceedings, Land Committee hearings and Arbitration Board determinations, and ultimately resulted in registration. Once title



is issued, disputes touching on ownership, validity of title, and allegations of fraud fall within the mandate of this Court.

128. The Court is guided by the decision in *Stringer Muzungu Lumwe & another v Shida Tuji Tsuma & 2 others* [2021] eKLR, where it was held that the doctrine of exhaustion does not apply once adjudication has been finalized and titles issued. I therefore find that this Court is properly seized of jurisdiction to hear and determine the dispute since the adjudication process has been completed culminating into issue of title deeds in respect to Kwale/ Tsunza Settlement Scheme 133 and 1560 issued and currently registered to the 2<sup>nd</sup> Defendant (see DW5 Ex 3). There was also no evidence that the matter was pending appeal before the Minister.
129. It is the finding of this court that it is seized of jurisdiction to hear and determine the dispute before it.

### **Whether the Plaintiff established a lawful proprietary or beneficial interest in the properties**

130. He who asserts must prove. Section 107 of the *Evidence Act* Cap 80 of the laws of Kenya requires that
- Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
131. The Plaintiff’s claim to proprietary interest is premised on the initial adjudication records which reflected his name and those of four others whose particulars have already been given hereinbefore as allottees of Kwale/Tsunza Adjudication/136.
132. According to the evidence of PW1 (Komboza Madafu Bemadafu), the land was initially demarcated and recorded to the five family members on behalf of the entire family following the adjudication exercise conducted in 2013. However, it is not disputed that these initial entries were subsequently cancelled following formal Land Committee and Arbitration Board proceedings. DW6 (Davis Mwenda Njeru, Principal Land Adjudication Officer) confirmed that Land Committee Case No. 15/12/2013 was heard and determined on 24th May 2013, resulting in the deletion of the five names and the registration of parcel 136 in favour of the 1st Defendant. An Arbitration Board appeal (Case No. 6/12/2013) filed by Samuel Gwadu Munga was dismissed on 13th June 2013, affirming the Land Committee decision.
133. The Plaintiff did not produce any final adjudication record, certified register, or title deed showing that he remained a recorded proprietor after the conclusion of the statutory dispute resolution mechanisms under the *Land Adjudication Act*. PW1 adduced in evidence letter dated 10/11/2016 signed by D.Muhoho which still retained the 5 individuals of the initial demarcation which clearly did not tally with evidence before court on the verdicts. The same was also disowned by DW6. The evidence of DW6 established that once the Arbitration Board decision became final in June 2013, the adjudication process concluded and plot 136 remained registered solely in the name of Madeni Njeka Nyuni.
134. Moreover, the Plaintiff did not lodge any appeal to the Minister under Section 29 of the *Land Adjudication Act* to challenge the decisions of the Land Committee or the Arbitration Board. Section 29 of the Act provides the ultimate statutory remedy for aggrieved parties following adjudication determinations. I agree with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submission that the failure to exhaust this remedy constitutes acquiescence to the adjudication decisions, rendering those decisions final and binding
135. Cross examined on the above point PW1 agreed that he had appealed but was defeated. He was unable to articulate any further action taken to challenge the Arbitration Board’s dismissal of his appeal.



- The Plaintiff accepted the finality of the adjudication process without invoking the ministerial appeal mechanism expressly provided by statute.
136. While the Plaintiff purported through his evidence and that of PW2, and PW3, regarding occupation of the land, PW 1 agreed the allegations in paragraph 10 of the plaint had not been supported with documents such as photos or permits for burial exercises. The burden of proof was upon the Plaintiff. Evidence was led by the 1<sup>st</sup> defendant that he had put in Mr. Chuphi Beja Mnyika as caretaker. DW2 testified and confirmed that he was related to the 1<sup>st</sup> Defendant and who had appointed him caretaker.
  137. PW1 acknowledged during cross-examination that as a family, they did not have a title deed over the land. PW3 (Chuphi Dzuha Mbui) similarly failed to provide documentary evidence of his proprietary interest. His testimony was riddled with inconsistencies. He initially claimed he had lived on the suit property since time immemorial, but when confronted with his National Identification Card showing he was born in 1964, he admitted that his father had given him land verbally in 1964 when he was eighteen years old—a chronological impossibility. He is a witness who did not withstand the test of cross examination finally conceding his testimony contained untruths.
  138. PW2 (Rajab Katsinye Munga) similarly could not demonstrate a recorded proprietary interest in his own name. Although he testified that he and the Plaintiff had jointly placed a caution in respect of parcel 136, and confirmed that his name appears in the beneficiaries list of fifty persons, he was unable to produce evidence that his name appears in the five names officially recorded as allottees. His involvement remained peripheral.
  139. Moreover, Plaintiff purported to sue on behalf of fifty persons but did not join them as parties to the suit. He acknowledged during cross-examination that he had no letter of authority to sue on their behalf. Furthermore, no member of the alleged fifty beneficiaries testified or was identified during the Plaintiff's case. It was not enough to allege that there was no need for authority to act for them.
  140. The initial five allottees were recorded as trustees "on behalf of the entire family," but the subsequent deletion of their names following the Land Committee and Arbitration Board determinations extinguished their recorded interest, whether as trustees or in any other capacity. The Plaintiff's claim to represent the wider family was therefore unsupported by both legal authority and corroborating evidence. However, the court recognizes the Plaintiff personal claim to the property as one of the initial allottees.
  141. To me the Plaintiff failed to establish a lawful proprietary or beneficial interest in the suit properties. His initial recorded interest, derived from the initial adjudication entries, was lawfully cancelled through formal adjudication dispute resolution mechanisms to which he had full notice and opportunity to be heard. Cross examined by state counsel PW1 affirmed they were before the Adjudication committee twice, were given time to give evidence of which they did and Madeni Njeka was successful. Indeed, he failed to invoke the ministerial appeal mechanism provided under the *Land Adjudication Act*, thereby accepting the finality of the Arbitration Board decision.
  142. The evidence further demonstrates that the subsequent subdivision and transfers of parcels 133 and 1560 were undertaken through lawful adjudication processes or by recorded allottees in respect of parcels in which they held legitimate interests. I will later show that parcel 133 was not from plot 136.
  143. It is the finding of this court that the Plaintiff failed to prove his beneficial or legal interest in the property. The Plaintiff's claim therefore would fail at this foundational stage.



**Whether the 1<sup>st</sup> Defendant's title or interest over the suit property was acquired irregularly, unlawfully or fraudulently**

144. The foregoing notwithstanding, it is well established law that fraud is a serious allegation that can lead to cancellation of a title or an interest in land.

145. The Court of Appeal of Uganda held in “Katende – Versus - Haridas and Company Limited (2008) EA 173 that has been cited with approval in many of our judicial decisions held that:-

“for a party to plead fraud in registration of land a party must first prove fraud was attributed to the transferee. It must attribute either directly or by necessary implications that is, the transferee must be guilty of some fraudulent act or must have known such act by someone else and taken advantage of such act. Fraud can be participatory that is, the party participates in the fraudulent dealings. Fraud can also be imputed on a person, that is, when he or she was aware of the fraud and condoned it, or benefited from it or used it to deprive another person of his rights. All those people who actually participate in the fraudulent transactions and who had knowledge of it are privy and had notice of fraud.”

146. The burden of proof requires that the Plaintiffs must specifically plead

fraud and prove it, since it's a question of evidence as stated in the provision of Sections 107, 108 & 109 of the *Evidence Act*, Cap. 80. I will rely on the case of: - R. G Patel – Versus - Lalji Makanji (1957) EA 314 where the court had this to say; -

“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.”

147. Fraud has been defined in Black's Law Dictionary 11<sup>th</sup> Edition as: -

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”

148. The particulars of fraud in the present case are pleaded in paragraph 8 of the Joint Statement of Claim and the particulars thereof itemized.

149. On the standard of proof required for claims based on fraud, courts have held that the standard of proof is slightly higher than that of the ordinary civil cases of a balance of probabilities. In the case of Koinange & 13 others – Versus - Charles Karuga Koinange 1986 KLR at page 23 the court held thus:

“When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”

150. I reiterate the point that under the provisions of Sections 107 to 109 of the *evidence Act*, the burden of proof is on the Plaintiff to prove that the transactions were fraudulent.

151. In his testimony PW1 alleged that the objection proceedings were conducted in his absence and that the decision was rendered secretly, without communication, thereby denying him the right of appeal. PW1 testified that he and his family were not given notice of the final decision, learning of it only in 2014.



152. However, the evidence of DW6 (Davis Mwenda Njeru, Principal Land Adjudication Officer) clearly demonstrated that the statutory procedures were followed with precision. DW6 confirmed that Land Committee Case No. 15/12/2013 was formally heard and determined on 24th May 2013 after proper notice and hearing. My review of the minutes of the adjudication proceedings, produced as evidence, reveal that the parties were present, heard, and given opportunity to present their cases. DW6 further confirmed that the Plaintiff and his associates appealed the Land Committee decision on 28th May 2013, resulting in Arbitration Board Case No. 6/12/2013, which was heard and dismissed on 13th June 2013, thereby affirming the original decision.
153. The allegation that the decision was kept secret is not supported by evidence. The Plaintiff's own conduct filing an appeal within days of the Land Committee decision in my view demonstrates that he received notice of the determination. An appeal cannot be filed without knowledge of the decision being appealed against. The Plaintiff's claim to have been uninformed is therefore self-contradictory and lacks credibility.
154. Moreover, the evidence does not support any suggestion that the 1st Defendant and 2<sup>nd</sup> defendant manipulated the proceedings or that adjudication officers acted in collusion with him.
155. The Plaintiff alleged through PW2, that one of the committee members, Mr. Ruwa Bedundo, was a relative to the 1st Defendant and therefore biased. This allegation was not substantiated by any documentary evidence or credible testimony. Infact PW2 admitted in cross examination that he had no evidence to prove that Ruwa Bedundo was the 1st Defendant's nephew. The Plaintiff did not call any witness to establish the alleged familial relationship, did not produce documents evidencing such a relationship, and provided no testimony from independent sources confirming the alleged bias.
156. In *Kinyanjui Kamau v George Kamau* [2015] eKLR, the Court held:
- “It is trite law that any allegations of fraud must be pleaded and strictly proved. In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”
157. The bare allegation of bias, without more, is insufficient to establish fraud. Moreover, the court was not led to any evidence how the 1<sup>st</sup> Defendant influenced the decision of the committee noting that this was decision of the committee and not an individual person.
158. There were also allegations through PW2, that the decision was overturned at the instruction of Mr. Karanja, the Kinango Sub-County Lands Officer, on the direction of Mr. Muhoho, a surveyor. This allegation of collusion was not supported by any direct evidence.
159. Neither Mr. Karanja nor Mr. Muhoho testified in these proceedings. The Plaintiff did not produce any documentary evidence such as written instructions, correspondence, or memoranda that would establish a conspiracy between the 1<sup>st</sup> Defendant and these officials. The evidence of PW2 amounts to hearsay in this regard since he claimed to have been "informed" by Mr. Muhoho of certain instructions, but he neither produced nor corroborated this information.
160. Consequently, I cannot find fraud based on unsubstantiated allegations of collusion. I'm reminded that fraud cannot be inferred.
161. The Plaintiff alleged that the objection proceedings were secretly determined and that the outcome was never communicated to him. However, the evidence of DW1, which was not controverted, demonstrates that the Land Committee Case and Arbitration Board proceedings were heard and determined, and that no appeal was lodged thereafter.



162. No documentary or independent evidence was tendered to demonstrate manipulation of records, collusion by adjudication officers, or procedural impropriety sufficient to impeach the 1st Defendant's as the recorded owner.
163. It is my finding that the allegations of fraud therefore remain unproven to the required standard as against the 1<sup>st</sup> Defendants and the adjudication officers.

#### **Whether the 2<sup>nd</sup> Defendant titles should be impeached**

164. The court finds it necessary to firstly draw an appreciation of why the 2<sup>nd</sup> Defendant has been sued in these proceeding based on the pleadings. According to Plaintiff herein, the Plaintiff avers that the 2<sup>nd</sup> Defendant together with the 1<sup>st</sup> Defendant fraudulently caused the subdivision and registration of portions of the suit property, including L.R. Nos. Kwale/Tsunza Adjudication/133 and 1560, in favour of the 2<sup>nd</sup> Defendant and other third parties, without the consent of the Plaintiff or the wider family. The Plaintiff has stated that the 2<sup>nd</sup> Defendant fraudulently sub divided the suit property and acquired titles to portions LR. NO. Kwale/Tsunza Adjudication/133/ and LR. No. Kwale/Tsunza Adjudication/1560 and prayed to the court to cancel the titles.
165. The 2<sup>nd</sup> Defendant acquired two parcels through purchase agreements: Parcel 133 - Purchased from Harrison Munga Bekanga under an Agreement for Sale dated 13th May 2015 for a sum of Ksh. 2,218,799.00; Parcel 1560 - Purchased from Samuel Ngwadu Munga for a sum of Ksh. 7,700,000.00. Titles were presented in this regard.
166. Again, before I delve further into analyzing this issue, I must also resolve the emerging allegation by DW5 that these two parcels had nothing to do with the initial plot 136. In other words they did not emanate from the mother title.
167. As regards plot 133 PW2 testified that it was a separate plot which is not related to plot 136 and that he had no qualms with Harrison selling the same since it was his land. The evidence presented by DW5 shows that the 2<sup>nd</sup> Defendant entered into a sale agreement with Harrison Munga Bekanga. DW6 testified in cross examination that plot 133 was never discussed which I understood to mean that it never featured in the disputes and has never been in issue and I think I can safely conclude on a balance of probabilities that it did not form part of plot 136.
168. As regards plot 1560 the evidence on record confirms it was excised from the original plot 136. Based on DW6 their records indicate an objection case was lodged by Samuel Gwadu Munga against Madeni Njeka Nyuni and a new number 1560 was created under the name of Samuel Gwadu Munga.
169. As indicated hereinbefore the burden of proof was on the Plaintiff to prove the allegations raised against the 2<sup>nd</sup> Defendant.
170. Firstly it is in my view that since the Plaintiff did not successful prove his interest in the suit property 136, then he has no business impeaching the 2<sup>nd</sup> Defendants title. Moreover the subdivisions were through a lawful process as discussed shortly.
171. The successful party being the 1<sup>st</sup> Defendant, then only the 1<sup>st</sup> Defendant can impeach the title held by the 2<sup>nd</sup> Defendant and this would be in respect of plot 1560. This then effectively takes me to the Counterclaim that has been raised herein.



### **Whether the 1st Defendant's Counterclaim is merited.**

172. The 1<sup>st</sup> Defendant has raised a Counterclaim dated 2/11/2022. The 1<sup>st</sup> Defendant's counterclaim is predicated on the assertion that his title to parcel 136 was lawfully acquired through the adjudication process and that the Plaintiff's claims constitute a baseless attack on his valid title. The 1<sup>st</sup> Defendant contends that the Plaintiff should be restrained from further interference with the suit property and that the 1st Defendant is entitled to damages for the disruption caused by the frivolous litigation.
173. A look at the pleadings shows that the Counterclaim is raised against Komboza Madafu Bemadafu the Plaintiff as the only defendant in the counterclaim. There is no counterclaim raised against the 2<sup>nd</sup> Defendant. It is trite law that parties are bound by their pleadings and the issues for the courts determination flow from the pleadings. See *Mwinyihaji -vs- Mwebeyu & Another* 2025 KECA 858 [KLR]; *David Sironga Ole Tukai Vs Francis Arap Muge and Raila Amolo Odinga & Another vs. IEBC & 2 others* (2017) eKLR. If his intention was to recover the plots 1560 or even 133 herein then he would have done so in the counterclaim against the registered owner, Guriro Ltd.
174. Assuming I'm wrong on the above, I would still be vindicated in the sense I have already noted that DW6 explicitly confirmed that Plot 1560 came from plot 136 and was created following an objection lodged by Samuel Gwadu Munga against the 1<sup>st</sup> Defendant. The plot to me therefore was lawfully created by the Land Adjudication officer through the subdivision process as part of the adjudication machinery and not by the 1<sup>st</sup> Defendant nor the 2<sup>nd</sup> Defendant. No appeal to the Minister was lodged by any party against the creation of parcel 1560. The 1<sup>st</sup> Defendant conceded in cross examination that he never appealed this decision accepting the decision therefore as final.
175. There being no counterclaim against the 2<sup>nd</sup> Defendant and the Plaintiff in the main suit having failed to prove its interest in the suit property then the suit against the 2<sup>nd</sup> Defendant must be dismissed.
176. Back to the counterclaim , from the evidence there is no doubt the 1<sup>st</sup> Defendant lawfully acquired interest to parcel 136 through the completed adjudication process. Indeed , the 1<sup>st</sup> Defendant objected to the initial allocation in favor of the five family members; The Land Committee heard both parties on 24<sup>th</sup> May 2013 and ruled in favour of the 1st Defendant; The Plaintiff appealed, and the Arbitration Board dismissed the appeal on 13<sup>th</sup> June 2013, affirming the Land Committee's decision; No further appeal to the Minister was lodged by the Plaintiff; The adjudication process attained finality, and parcel 136 was recorded in the name of the 1<sup>st</sup> Defendant and which was confirmed by the Land Adjudication and Settlement Officer in a letter dated 21<sup>st</sup> April 2015.
177. Consequently, and arising from the above the Court finds that the 1st Defendant is indeed the lawful recorded owner of parcel 136. As such the counterclaim must succeed having been proved to the required standard.
178. The 1<sup>st</sup> Defendant is therefore entitled to a declaration of ownership of the suit property except for General Damages which are discretionary and I decline to burden any party in this regard.

### **Whether the Plaintiff is entitled to the reliefs sought**

179. The reliefs sought by the Plaintiff have already been set out at the beginning of this judgement. From the foregoing it is clear that the Plaintiff has failed to discharge the burden of proof on the foundational elements of his claim. I will therefore not belabor the point, they are not entitled to the reliefs sought.



## Who bears the cost of the suit and of the Counter - Claim

180. It is now well established that the issue of Costs is at the discretion of the Court. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. In the case of Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
181. In the case of Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another – Versus - Mutula Kilonzo & 2 others [2013] eKLR quoted the case of “Levben Products – Versus - Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227” the Court held;
- “It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (Fripp vs Gibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
182. In the present case, the Court finds that the Plaintiff has failed to prove his case on a balance of probabilities as pleaded and supported by the evidence on record. On the other hand, the 1st Defendant has successfully established his Counter-Claim. A keen look at the proceedings and the interactions of the parties and the witnesses I would for purposes of harnessing harmonious living order that each party bears its own costs of the suit and the Counterclaim.
183. In conclusion this Court finds, that the Plaintiff has failed to establish his case against the Defendants to the required standard and the suit must be dismissed.
184. Conversely, the Court finds that the 1st Defendant has proved his Counter-Claim as pleaded to the required standard as against the Plaintiff.
185. Accordingly, the Court proceeds to make the following specific orders:
1. That the Plaintiff's suit as pleaded in the Plaint dated 26<sup>th</sup> September 2018 is hereby dismissed.
  2. That Judgment is hereby entered in favour of the Plaintiff (by counter claim), in the following terms; -
    - a. That a declaration be and is hereby issued that the Plaintiff (by counter claim) is the lawful and bonafide proprietor of all that land parcel Kwale/Tsunza Adjudication/136 situated at Tsunza within Kwale County.
    - b. That an order of permanent injunction be and is hereby issued restraining the Defendant (by Counterclaim), Whether by himself, his agents, employees, servants, assigns or any person claiming through him jointly and severally from entering upon, remaining on, cultivating, constructing upon, trespassing on, or in any other manner interfering with the 1st Defendant's possession and enjoyment of land parcel Kwale/Tsunza Adjudication/136 situated at Tsunza within Kwale County.
    - c. That Vacant possession to be given to the Plaintiff (by counter claim) within one Hundred and Twenty (120) days of this judgement and shall be carried out in accordance with the law.



3. That the prayers for general damages are declined.
  4. That each party shall bear their own costs on the suit and the counterclaim.
- Orders accordingly.

**JUDGEMENT DATED SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF FEBRUARY 2026**

**HON. LADY JUSTICE A.E DENA**

**JUDGE**

**09.02.2026**

Judgement delivered virtually through Microsoft teams Video Conferencing Platform; -

In the presence of:

Ms. Malombo holding brief for Mr. Malombo for the Plaintiff

Mr. Ngonze for the 1<sup>st</sup> Defendant

Mr. Olaba for the 2<sup>nd</sup> Defendant

No appearance for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant

Mr. Daniel Disii – Court Assistant.

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