

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLC NO. 2 OF 1980**

**HASSAN MFIKIRINI SULEIMAN
(As Administrator of the Estate Of Fatuma Binti Hamisi
Mwangala (Deceased)) & ANOTHER**
PLAINTIFF

VERSUS

MARIAMBHAI SHABBIRHUSSEIN & OTHERS
DEFENDANTS

RULING

1. The Notice of Motion dated 25th June 2025 has been filed by Alfred Mwangira Deche, Administrator of the estate of Deche Chinyaka Deche who is the second plaintiff in this case. The following orders are sought:
 - a. Leave be granted to the applicant for the registry file for Parcel Number 67 Takaungu Group 1 Takawungu CR14388 Deed Plan No 93536 measuring approximately 13.16 hectares which cannot be traced and/or lost at Mombasa Land Registry to be reconstructed for the purpose of execution of the court decree/order herein and or any other necessary action;
 - b. That a Provisional Certificate of Title for the said land be issued to the applicant, Alfred Mwangira Deche, and the provision for gazettelement be waived;
 - c. That the Deputy Registrar be directed to sign all instruments and relevant documents in execution of the court decree and orders herein;
 - d. Costs of the application.

2. The application is supported by the sworn affidavit of Alfred Moringa Deche. He depones that on 4th August 2015, the court delivered its judgment herein and declared that the said land, among two other parcels, be registered and issued with title deeds in the name of Alfred Moringa Deche, the Administrator of the Estate of Deche

Chinyaka Deche. The applicant states that he is now 48 years, was born on the suit land, grew on the suit land and is still in continuous possession, occupation and use of the three parcels. The judgment has not been appealed or set aside. The order and decree were extracted approved and signed on 5th February 2016, and, sometimes in 2024, served upon Land Registrar Mombasa for execution of the decree; that the land register files for the other two parcels, which are said to be Parcel number 41 and parcel number 42 were traced at the Mombasa land registry but the registry file for the suit parcel was not traced and the deponent was asked to wait for it to be traced. The applicant's counsel sought the intervention of the Cabinet Secretary and the Permanent Secretary, Ministry of Lands. The Cabinet Secretary directed the applicant to the Mombasa land registry, who in a letter dated 20th June 2025 confirmed that the registry file for parcel number 67 cannot be traced and advised commencement of reconstruction proceedings hence the present proceedings; that since the defendants have not surrendered to the Land Registrar their Certificate of Title for parcel number 67, the Applicant does not have its original Certificate Of Title and it is in the interest of justice that a provisional certificate of title for that parcel be issued to him and the provision for gazette to be waived.

3. The application is unopposed.

Analysis and determination.

4. **Section 63e** of the Civil Procedure Act and **Section 13** of the Environment and Land Court Act have been relied on by the applicant. A perusal of those sections does not disclose any specific legal provisions specifically authorizing the sort of orders sought by the applicant. Reconstruction of land records is usually done in the Lands Registries without recourse to court, and, to the knowledge of

the court regarding the usual practice, involves an application to the land registry and the mandatory gazettelement of the intention to issue a provisional title, which gazettelement the present applicant appears to be abhorrent of. This court finds that the applicant has not only failed to properly direct the court to the law that applies to his application and sound grounds upon which is application is premised, but he has also failed to show that the Land Registrar has refused, failed or neglected to perform his duties. The letter dated 20th June 2025 addressed to a legal firm by the Land Registrar advices that they should commence proceedings to reconstruct the Land Register but it does not recommend that they come to this court. The application dated 25th June 2025 is unmerited and is hereby struck out with no orders as to costs.

5. However, having considered the application, several issues required to be noted follows:
 - a. This is an ancient case in which the court that heard the suit apparently took the unusual step of not only deciding the merits of the case but also directing where the judgment would be executed;
 - b. The sanctity of the record would only be authenticated using various vestigial antecedents not forming part of the file but which can probably be traced at the original station where the suit was heard;
 - c. Though it is in practice proper and pragmatic for some judgments and decrees to be sent to other courts for execution where good ground obtains for that kind of dispatch, in cases where there has been acrimony regarding the whereabouts of original court records and original land records and only one party appears to be active, it is quite unsafe for any step, whether in execution or otherwise, to be undertaken in a station away from where the suit was heard;

- d. In a case such as the one in **para (c)** herein above, there is serious risk of issuing inappropriate orders or processing and effecting inappropriate decrees as has happened in the past at the instance of criminals who intercepted the process, thus leading to embarrassment to the justice system. Two recent cases come to mind: In the most recent case of **Alfelt Mumbo Abio and Others Versus Robinson Tsuma Munga and Others - Malindi ELCC E006 Of 2021**, the 1st defendant was joined in the suit for having forged a whole court record, being all the proceedings and judgement, purporting them to have been taken or prepared by the late Mukunya J., by which fake documents he obtained title in his name to the suit land. The fraud was detected and he was arrested arraigned and imprisoned for the offence in **Malindi CM Criminal Case No E496 of 2021 - Republic Vs Robinson Tsuma Munga**. Notably, and even without doubting its authenticity, it is noted that the judgment in the present case is by Mukunya J. Also, in **Maneno & 3 others v Ibrahim & 3 others [2025] KEELC 18436 (KLR)** a degree was forged to include additional land which the court's judgment never gave them, and they went and subdivided the land and disposed of the same, only for that offense to be discovered later during their internal squabbles, and recommendations have been made by this court for investigations to be undertaken by the Directorate of Criminal Investigations with a view to prosecution of the culprits. Notably both decrees emanated from the same station.
- e. It is recommended that certified copies of all remaining registration records for the suit land be exhibited in any future process.

6. In the circumstances, this court shall issue administrative directions in the following terms:

- a. **In view of the complexities surrounding simultaneous disappearance of the both the Court File and the Land Registry file in the past, Malindi Law Court is not the appropriate place for execution of the decree in this matter, but Mombasa, at which station the case was heard and determined;**
- b. **For the purpose of preserving the sanctity of record this file record shall be dispatched by the Deputy Registrar of this court to the Mombasa Station for whatever other orders the applicant desires to apply for, which station is nearest to the affected Land Registry for ease of operations.**

It is so ordered.

Dated, signed and delivered at Malindi on this 19th February 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

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