



REPUBLIC OF KENYA



**Tembo & 12 others v Kilifi County Land Adjudication & Settlement Officer & 4 others  
(Environment and Land Case 32 of 2023) [2026] KEELC 635 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 635 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE 32 OF 2023  
FM NJOROGE, J  
FEBRUARY 5, 2026**

**BETWEEN**

**KADEEJ KASUKARI TEMBO ..... 1<sup>ST</sup> PLAINTIFF  
DORICE SHUME TEMBO ..... 2<sup>ND</sup> PLAINTIFF  
ALEX SHUME TEMBO ..... 3<sup>RD</sup> PLAINTIFF  
SHEDRACK DECHE TUNJE ..... 4<sup>TH</sup> PLAINTIFF  
BARAKA TEMBO JUSTINE ..... 5<sup>TH</sup> PLAINTIFF  
ALEX TUNJE TEMBO ..... 6<sup>TH</sup> PLAINTIFF  
KWEKWE TUNJE TEMBO ..... 7<sup>TH</sup> PLAINTIFF  
MOSES SHUME MWANGO ..... 8<sup>TH</sup> PLAINTIFF  
EMMANUEL MWANGATA JUSTINE ..... 9<sup>TH</sup> PLAINTIFF  
LUCY SIRYA MAITHA ..... 10<sup>TH</sup> PLAINTIFF  
MERCY JUSTINE TEMBO ..... 11<sup>TH</sup> PLAINTIFF  
EMMANUEL SHUME TEMBO ..... 12<sup>TH</sup> PLAINTIFF  
SALOME ANZAZI MWATELA ..... 13<sup>TH</sup> PLAINTIFF**

**AND**

**KILIFI COUNTY LAND ADJUDICATION & SETTLEMENT  
OFFICER ..... 1<sup>ST</sup> DEFENDANT  
KENAS HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
LAND REGISTRAR KILIFI ..... 3<sup>RD</sup> DEFENDANT  
MOHAMED ALI SAID ..... 4<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. This suit was instituted vide a Plaint dated 16<sup>th</sup> October 2023, in which the Plaintiffs sought judgment against the Defendants for:
  - a. A declaration that the initial registration of JOhn Njuraita Wainaina as the owner of Kilifi/Mtwapa/659 and subsequently to Kenas Holdings Limited Then Mohamed Ali Said was done unprocedurally, illegally and fraudulently and thus both the 2<sup>nd</sup> and 4<sup>th</sup> Defendants did not obtain a valid certificate of title of all that piece of land known as Kilifi/Mtwapa/659;
  - b. A declaration that the subsisting certificate of title firstly registered under Kenas Holdings Limited and subsequently currently to Mohamed Ali Said was done illegally hence is null and void;
  - c. An order that they are entitled to be registered as the bonafide owners of all that piece of land known as Kilifi/Mtwapa/659;
  - d. An order of permanent injunction to restrain the Defendants either by themselves or through their agents/servants, employees or anyone acting under their instructions or anyone from selling, charging, sub dividing, taking possession or otherwise dealing in any manner whatsoever with the said Plot No. Kilifi/Mtwapa/659;
  - e. An order that the 4<sup>th</sup> Defendant delivers up to the 3<sup>rd</sup> Defendant the Certificate of title of all that piece of land known as Kilifi/Mtwapa/659 for cancellation;
  - f. An order that the 3<sup>rd</sup> Defendant acted illegally and unprocedurally in issuing a certificate of title of all that piece of land known as Kilifi/Mtwapa/659 firstly to the 2<sup>nd</sup> Defendant and subsequently to the 4<sup>th</sup> Defendant hence his actions are null and void ab initio;
  - g. An order to the Deputy Registrar to execute all transfer documents of all that piece of land known as Kilifi/Mtwapa/659 in favour of the Plaintiffs;
  - h. General damages for trespass to property and violation of the Plaintiff's constitutional right to own property;
  - i. Any other order that this court deems just to issue for the interest of justice;
  - j. Costs and interest at court rates from the date of judgment till payment in full at court rates.
2. The Plaintiffs' claim concerns all that piece of land known as Kilifi/Mtwapa/659 (formerly known as Plot No. 358-Mtwapa Settlement Scheme), hereinafter also referred to as "the suit property". The Plaintiffs averred that they have at all material times since the year 1970 been in actual occupation of the suit property until during the adjudication process when the 4<sup>th</sup> Defendant fraudulently had the suit property subdivided into two equal portions of 12 acres each and given the numbers Kilifi/Mtwapa/655 registered in the name of Kasukari Tembo Nyenyo (deceased); and Kilifi/Mtwapa/659 registered to one John Njuraita Wainaina, said to be a fictitious person.
3. The Plaintiffs particularized the details of fraud against the Defendants and averred that their family sued the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and others in Kilifi ELC No. E005 of 2020 Alex Kasukari Tembo (Suing as the legal representative of the estate of Kasukari Tembo Nyenyo- deceased) v Chome Tembo Nyenyo



& 6 Others, over Kilifi/Mtwapa/655 which was also alleged to have been fraudulently transferred to the 2<sup>nd</sup> Defendant. The Plaintiffs' claim is that they have since the year 1970 been in actual and uncontested occupation of the suit property until during the adjudication process. They claim that their occupation has caused equitable and beneficial interest in the land to accrue to them; that however, during the adjudication process, the 4<sup>th</sup> Defendant fraudulently had the suit property subdivided into two equal portions of 12 acres each. The two plots were issued numbers. The numbers are Kilifi/Mtwapa/655 registered in the name of Kasukari Tembo Nyenyo (deceased) and Kilifi/Mtwapa/659 registered to one John Njuraita Wainana. The plaintiffs' claim that the latter is a fictitious person, but his plot borders their land. They add that recently, in the year 2023 they became aware of some people who were stating that the suit land was unregistered, and who invaded the suit land. They thus followed up with the land registry Kilifi demanding to know the ownership of the suit land where they were informed that the owner is the 4<sup>th</sup> defendant. They allege that the 4<sup>th</sup> defendant took no action when the suit land was invaded in 2023. They reported the matter to the police and the same is under investigation. They state that there is another piece of litigation Kilifi ELC No E005/2020 Alex Kasukari Tembo Suing as Legal Representative Of The Estate Of Kasukari Tembo Nyenyo (Deceased) V Chome Tembo Nyenyo & 6 Others. It is averred that the 1<sup>st</sup> defendant's actions were meant to dispossess the plaintiffs. They aver that the defendants fraudulently registered John as owner of plot no 659 while aware that the plaintiffs were on the land; that they assigned it a different number -358- without the plaintiff's consent; that they transferred the land from John's name to that of Kenas Holdings Ltd; that they illegally altered government records to reflect the illegal transactions.

4. It is alleged that the 2<sup>nd</sup> defendant connived with the 3<sup>rd</sup> defendant to fraudulently and unprocedurally and through a corrupt scheme to register plot number 659 in its name, thereafter selling and transferring it to the 4<sup>th</sup> defendant while aware that its title was illegally procured. It is also alleged that the 3<sup>rd</sup> defendant illegally altered the government records to reflect the allegedly illegal transactions perpetrated by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants by uttering false documents to the 3<sup>rd</sup> defendant for registration for the purpose; that it purchased the suit land without following the due process of law; that it connived with the 4<sup>th</sup> defendant to sign and present to the 3<sup>rd</sup> defendant transfer documents for registration in favour of the 4<sup>th</sup> defendant.
5. It is alleged that the 3<sup>rd</sup> defendant in connivance with the 2<sup>nd</sup> defendant unprocedurally and fraudulently and through a corrupt scheme registered the suit land in the 2<sup>nd</sup> defendant's name and prepared as certificate of title therefor, and subsequently did the same in favour of the 5<sup>th</sup> defendant; that he illegally altered government records to reflect the illegality committed by the 2<sup>nd</sup> and 4<sup>th</sup> defendants.
6. It is alleged that the 4<sup>th</sup> defendant purchased the suit land unprocedurally and connived with the 2<sup>nd</sup> defendant into entering into an agreement for sale with a view to defrauding the plaintiff, and then signed and presented the documents to the 3<sup>rd</sup> defendant for registration in its favour, thereby in connivance with the 3<sup>rd</sup> defendant, transferring the suit land to his name.

### **5<sup>th</sup> Defendant's Response**

7. The 5<sup>th</sup> Defendant entered appearance on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. They filed a statement of defence dated 26<sup>th</sup> October 2023. They pleaded that the suit property measuring approximately 12 acres was offered to John Njuraita Wainaina on 16<sup>th</sup> January 1981, who sold the same to the 2<sup>nd</sup> Defendant in 1987. That they both paid the requisite fees and the property was discharged and title issued. The Defendants denied the allegations of fraud and illegality.



#### **4<sup>th</sup> Defendant's Response.**

8. The 4<sup>th</sup> Defendant filed a statement of defence and counterclaim dated 1<sup>st</sup> December 2023. He denied ever working as a Land Registrar or Adjudication Officer for him to have any authority to subdivide or allocate land. He averred that he lawfully purchased Kilifi/Mtwapa/659, 1942 and 1943 from the 2<sup>nd</sup> Defendant who legally transferred the same to him. He claimed that the Plaintiffs have without any colour of right trespassed into his properties by cultivating, planting crops and leasing the same to unsuspecting individuals. He counterclaimed for: -
1. A permanent injunction restraining the Plaintiffs, their servants, agents, employees, hirelings or whomsoever taking instructions from them from interfering with the defendant peaceful enjoyment and use of those parcels of land known as Kilifi/Mtwapa/659, Kilifi/Mtwapa/1942 and Kilifi/Mtwapa/1943;
  2. A mandatory injunction compelling the plaintiffs to demolish and remove their illegal permanent structures constructed on parcels number Kilifi/Mtwapa/659, Kilifi/Mtwapa/1942 and Kilifi/Mtwapa/1943, stop cultivating and/or leasing the same and give vacant possession to the defendant and the OCS Kijipwa Police Station to effect the order;
  3. The Defendant be awarded costs of the counter-claim together with interests on costs.

#### **Evidence**

##### **Plaintiffs' Evidence**

9. Kwekwe Tunje Tembo (PW1), the 7<sup>th</sup> plaintiff, testified orally on her own behalf and on behalf of all the plaintiffs and adopted her witness statement dated 16<sup>th</sup> October 2023 as her evidence-in-chief. She produced documents in the list of documents dated 29<sup>th</sup> February 2024 as P. Exh. 1-24. She testified that the Plaintiffs have lived on the suit property, Kilifi /Mtwapa/659, since the 1970s until in the year 2023 when they were informed that the suit property does not belong to them. When she got married into the family in 1977, her husband's family was residing on the suit land; the information that the family settled on the land in 1970 was given to her by her late husband, whose name she does not reveal; that due to the fact that the land was a large parcel measuring 24 acres, the family decided to develop their dwellings only on one side of the land, leaving the other side exclusively for farming; that in May 2023 strangers violently invaded the land claiming it was unregistered and a family member was injured; that the family then complained to the police. Thereafter they asked their lawyer to investigate the status of the suit land, who wrote to the county Adjudication and Settlement Officer seeking the relevant details. The Officer provided them with various documents that showed that during adjudication the 4<sup>th</sup> defendant subdivided the suit land into two portions. The portion hosting their dwellings was baptized Kilifi/ Mtwapa /655 which they rightly registered in the name of one of their kin, Kasukari Tembo Nyenyo, while the portion they were farming on was baptized Kilifi/ Mtwapa /659 and registered in the name of one John Njuraita Wainaina. John subsequently transferred his portion to Kenas Holdings Ltd, the 2<sup>nd</sup> defendant sometime in 2001. Kenas Holdings Ltd in turn transferred the land to Mohamed Ali Said, the 4<sup>th</sup> defendant in 2022. The plaintiffs have never seen Kenas Holdings Ltd or the 4<sup>th</sup> defendant on the suit land. The 4<sup>th</sup> defendant only came to the land recently and warned the plaintiff not to enter the suit land. He also began erecting a fence around the land with their crops still growing thereon.
10. Upon cross-examination, she testified that the suit property is 12 acres and that the Plaintiffs never made any application for allocation. They did not have any title for the suit property. She added that



though her family was allocated two plots within Mtwapa Settlement Scheme, she did not know the actual numbers of those plots.

11. PW1 added in re-examination that the suit property has not been sub-divided, and that she has sued on behalf of her late husband, who is a brother to Kasukari. She asserted that they have coconut trees on the suit property among other trees.

### **Defence Evidence**

12. Mohamed Ali Said (DW1) adopted his witness statement dated 12<sup>th</sup> April 2024 and produced documents listed in the list of documents evenly dated as D. Exh. 1-8; those in the list dated 4<sup>th</sup> June 2024 as D. Exh. 9-22; and that in the list dated 23<sup>rd</sup> September 2024 as D. Exh. 23. DW1 testified that the suit property was formerly owned by one John Wainaina who sold it to the 2<sup>nd</sup> Defendant, while Plot No. 1942 and 1943 was originally Plot No. 354 and at one-point number 655. He testified that Plot No. 655 was initially owned by two brothers who sub-divided it equally. One of the brothers, Nyenyo, sold his 6 acres, which formed part of now 1943. He explained that he was unable to transfer 1943 to himself because it had been subdivided and sold to third parties, yet he held the original title in the name of the 2<sup>nd</sup> Defendant.
13. DW1 narrated that he did due diligence prior to purchasing the suit property and that immediately he took possession, he was raided and removed therefrom. He told the court on cross-examination that he conducted a search at the registry before purchasing the suit property. He stated that he paid Kshs. 20,000,000/- for the three parcels. The witness was referred to the agreement exhibited as D. Exh. 1. He testified that the improvements referred to therein belonged to Mzee Swaleh (the 2<sup>nd</sup> Defendant's director). He added that Plot 1943 was subdivided without their knowledge.
14. Chome Tembo Nyenyo (DW2) testified that the suit property belonged to John Wainaina who sold it to one Omar Zubeidi who purchased it on behalf of a company, which DW2 later identified as the 2<sup>nd</sup> Defendant; that he and his brother, Kasukari Nyenyo went to the Chief who showed them their land, identified as Plot No. 655; that they shared that plot into two portions between himself and his brother who sold his share to Omar Zubeidi, who in turn sold it to Swaleh. DW2 sold 3 acres of his own portion to Omar Zubeidi, and 2 to one Ombachi. The witness added that he was forced to move out of his portion after his brother's sons attacked him when he (his brother) moved out of the land and sued him in Kilifi.
15. During cross-examination, the witness testified that he got a title in the year 2001. He added that his brother's family had lived near the suit property and only moved into the suit property after the attack.
16. The witness clarified in re-examination, that Plot 655 was jointly owned but registered in the name of Kasukari; that pursuant to an agreement before the area chief, they agreed to split the land equally.
17. John Wachira Karanja (DW3), a Land Adjudication and Settlement Officer based in Kilifi, adopted his written statement dated 26<sup>th</sup> October 2023 as part of his evidence-in-chief, and produced the documents in the list of documents dated 27<sup>th</sup> October 2023 as 2 D. Exh 1-8. He testified that Plot No. 358 was allocated to John Wainaina who complied with the required conditions. He gave a narration of the process of adjudication from the point of identification to when a discharge of charge is signed and a title processed.
18. During cross-examination, he added that the procedure is usually public and that it was followed when the suit property was allocated to John. He confirmed that Clause 3 (b) of the Charge says that one cannot transfer without prior consent of the Trustees. He stated that he did not have that consent, and that John was not discharged by the time he transferred to the 2<sup>nd</sup> Defendant.



19. During re-examination, the witness added that one can transfer to a buyer but that the transfer has to be done through a Land Control Board, and any pending dues are transferred to the buyer, as it happened in the present case.

## Submissions

### Plaintiffs' submissions

20. The Plaintiffs' counsel submitted that three issues arose for determination: whether they had proved their case to the requisite standard; whether they were entitled to the reliefs sought; and who should bear costs.
21. On proof of their case, Counsel contended that the plaintiffs had met the threshold of a balance of probabilities; that that they had been in continuous occupation of the suit land since the 1970s, cultivating crops such as coconuts, cashewnuts, maize and cassava, and had constructed houses thereon. They relied on photographic evidence accompanied by a certificate of photographic prints. They urged the Court to adopt the reasoning in *Jack & Jill Supermarket Ltd v Viktar Maina Ngunjiri* (2016) eKLR, where the Court interpreted Sections 106A and 106B of the *Evidence Act* on the admissibility of electronic evidence, including the mandatory requirement of a certificate under Section 106B (4).
22. The Plaintiffs further submitted that the identity of the alleged original allottee remained unascertainable from official records, as conceded by the defence witness, John Wachira. They argued that this indicated that the allottee was fictitious and that the process amounted to a fraudulent scheme. To support this proposition, they cited *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) (2023) KESC 79 (KLR), in which the Supreme Court held that an allotment letter did not confer title and that even upon fulfilment of its conditions, an allottee could not pass valid title until registration.
23. On the challenge to the 4<sup>th</sup> Defendant's certificate of title for Plot 659, the Plaintiffs relied on the *Land Registration Act*, No. 3 of 2012. They acknowledged the statutory protection under Section 26(1) but asserted that such protection was conditional and did not extend to titles procured through fraud, misrepresentation, illegality, procedural impropriety, or corrupt schemes. They argued that the 4<sup>th</sup> Defendant's title failed the sanctity test, as *Kenas Holdings Limited*, from whom he purportedly acquired title, had itself obtained no valid title, having bought from an unregistered allottee.
24. They submitted that once a certificate of title was challenged and evidence showed irregular acquisition, the sanctity of title was impeached, the Court was empowered to interrogate its legitimacy, and the burden shifted to the holder to demonstrate procedural acquisition. They relied on the Court of Appeal decision in *Chemey Investment Limited v Attorney General & 2 Others* (2018) eKLR, which held that titles obtained illegally or fraudulently were not sacrosanct and did not enjoy statutory protection.
25. On remedies, the Plaintiffs submitted that they were entitled to the reliefs sought under Section 80(1) of the *Land Registration Act*, which empowered the Court to order cancellation or amendment of the register where registration was obtained through fraud or mistake. They cited *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others*, where the Court reiterated that titles acquired through fraud, misrepresentation, illegality, or corrupt schemes were impeachable under Section 26.
26. On costs, the Plaintiffs argued that they were entitled to costs pursuant to the general principle that costs follow the event.



## The 1<sup>st</sup>, 3<sup>rd</sup> And 5<sup>th</sup> Defendants' Submissions

27. The Defendants submitted that 3 issues arose for determination: whether the Plaintiffs had proved their case; whether they were entitled to the reliefs sought; and who should bear costs.
28. On the burden of proof, the Defendants relied on Section 107(1) of the *Evidence Act*, which placed the obligation upon the party asserting the existence of facts to prove them. They emphasized that the Plaintiffs' witness, on cross-examination, admitted having no documentary evidence demonstrating ownership of the suit property, had never applied for allocation, but only confirmed occupation.
29. The Defendants invoked Section 26(1) of the *Land Registration Act*, reiterating that a certificate of title constituted prima facie proof of ownership, subject only to the statutory exceptions of fraud, misrepresentation, illegality, procedural impropriety, or corrupt schemes under Section 26(1)(a)–(b). They cited *Mbarak v Freedom Limited* (Civil Appeal E028 of 2022) [2024] KECA 160 (KLR), which in turn adopted the reasoning in *Embakasi Properties Limited & Another v Commissioner of Lands & Another* [2019] eKLR, affirming that indefeasibility of title could only be impeached on these limited grounds. They argued that the Plaintiffs adduced no evidence demonstrating fraud, illegality, or any corrupt scheme on the part of the Defendants.
30. On the legality of the 4<sup>th</sup> Defendant's title, the Defendants relied on the testimony of John Karanja, a Land Adjudication and Settlement Officer, who explained the statutory framework governing settlement schemes and allocation processes. He detailed the roles of allocation committees, demarcation, issuance of letters of offer, charges and allotment letters, and the payment of settlement dues. The Defendants referred to the original allotment of Plot 358 to John Njuraita Wainaina (Defendants' Exh.1), the payment of Settlement Fund Trustees (SFT) dues vide receipt No. AE856933 of 28 July 1987, the Land Control Board consent permitting transfer to the 2<sup>nd</sup> Defendant (Defendants' Exh. 5), and subsequent discharge of the land reflected in SFT records and receipts.
31. To support the legal position applicable under the repealed regime, the Defendants cited Sections 167, 174 and 175 of the repealed Agriculture Act (Cap. 318), which established the Settlement Fund Trustees, as providing for allocation subject to repayment conditions, and entitled an allottee to discharge and full ownership rights upon repayment. They also relied on Sections 27 and 28 of the repealed Registered *Land Act* (Cap. 300), affirming that a discharged proprietor acquired all rights of ownership.
32. The Defendants cited *Kide & Another v Sawe & 3 Others* [2025] KEELC 2908 (KLR), where the Court explained the procedural pathway for transfer by an allottee, including discharge of charge and Land Control Board consent. They maintained that the Plaintiffs had not proved that the original allottee was fictitious, and that the Plaintiffs' assertions were unsupported and speculative.
33. They argued that the Plaintiffs' contention—that an allottee could not transfer land was grounded in the current *Land Act*, 2012, which was inapplicable to transactions undertaken under the former regime. They invoked the principle of non-retrospectivity, legitimate expectation, and the settled rule that disputes must be determined according to the law applicable at the time they arose.
34. On reliefs, the Defendants submitted that the Plaintiffs had failed to establish any ground for impeaching the Defendants' titles within the meaning of Section 26 of the *Land Registration Act*, and therefore no substantive remedy could issue. They accordingly urged the Court to dismiss the Plaintiffs' suit with costs.



#### 4<sup>th</sup> Defendant's Submissions

35. The 4<sup>th</sup> Defendant identified several issues for determination, including the commencement date of the Land Adjudication (Application) (Kilifi District) Order, 1970; the statutory processes under the [Land Adjudication Act](#) (Cap 284); the identity of the first allottee of Portion No. 358 (later Kilifi/Mtwapa/659); whether fraud occurred in the adjudication, allotment or registration processes; the legal meaning of fraud; the age and presence of the 7<sup>th</sup> Plaintiff at time of adjudication; the legality of the registration and transfers; and whether the Plaintiffs' case was competently before the Court.
36. He submitted that the Land Adjudication (Application Kilifi District) Order, 1970 (L.N. 55/1970) came into force on 20 June 1972 and applied to Trust Land within parts of Kilifi District. He outlined the statutory adjudication procedures under Sections 5 and 6 of the [Land Adjudication Act](#), including establishment of adjudication sections, publication of notices, lodging of claims, demarcation, and appointment of adjudication committees.
37. The 4<sup>th</sup> Defendant asserted that one John Njuraita Wainaina was the lawful allottee of Portion No. 358 by a letter of offer dated 8<sup>th</sup> August 1978 issued by the Settlement Fund Trustees. He argued that the subsequent change of numbering from Portion 358 to Kilifi/Mtwapa/659 was regular, as the number changed upon transmission of the adjudication records from the Director of Land Adjudication to the Chief Land Registrar and thereafter to the District Land Registry for opening of the Green Card.
38. He denied the plaintiffs' allegations of fraud and emphasized the definition of fraud in Halsbury's Laws of England, noting that fraud required intentional deception, knowledge of falsity, and resulting detriment. He argued that no fraud had been proved against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> or 4<sup>th</sup> Defendants, and that the Plaintiffs had never lodged any criminal complaint to substantiate their allegations.
39. On the 7<sup>th</sup> Plaintiff's assertions of occupation since 1971, he submitted that her own witness statement indicated she married in 1977 and had produced no documentary proof of earlier occupation. Demarcation having commenced in 1971, he argued that she could not credibly claim to have witnessed the process.
40. The 4<sup>th</sup> Defendant further argued that the first allottee lawfully transferred his interest through the former "informal transfer" mechanism known under the then applicable procedures, after which the 2<sup>nd</sup> Defendant became the first registered owner. He submitted that the District Land Registrar (3<sup>rd</sup> Defendant) merely acted on records received from the Chief Land Registrar and could not be faulted.
41. He maintained that the Plaintiffs, having alleged long-standing occupation without documentary title, ought to have commenced proceedings by Originating Summons, and that the suit brought by plaintiff was incompetent ab initio. He further contended that the Plaintiffs, purportedly suing as a group, had contravened Section 23(4), (5) and (6) of the [Land Adjudication Act](#) because the alleged group was not recognized and it had no chairman, and the 7<sup>th</sup> Plaintiff lacked capacity to sign on behalf of the other Plaintiffs.
42. With respect to his own claim, the 4<sup>th</sup> Defendant submitted that he had lawfully purchased Kilifi/Mtwapa/659, 1942 and 1943 from Kenas Holdings Ltd under a Sale Agreement dated 24<sup>th</sup> January 2022 for Kshs. 20,000,000/-, having undertaken due diligence including inspection, official searches, and verification that the land had no squatters. He stated that he obtained Land Control Board consents and paid stamp duty; that his case was supported by the Land Adjudication and Settlement Officer, Kilifi, who confirmed that before repeal of the Registered [Land Act](#) (Cap 300), a holder of an allotment letter from the Director of Land Adjudication could transfer his interest prior to payment



of standard premium, and that the processes leading to registration of the 2<sup>nd</sup> and thereafter the 4<sup>th</sup> Defendant were regular.

43. He relied on Section 26(1) of the *Land Registration Act*, No. 3 of 2012, submitting that the certificates of title held by the 2<sup>nd</sup> and 4<sup>th</sup> Defendants were absolute and indefeasible, there being no proof of fraud, misrepresentation, illegality, or procedural impropriety.
44. The 4<sup>th</sup> Defendant cited *Joseph Githinji Gathiba v Charles Kingori Gathiba*, HCCC No. 1647 of 1984, where Khamoni J emphasised that first registrations under the Registered *Land Act* were to be made strictly in accordance with adjudication records received from the Director of Land Adjudication, and that first registration was generally not challengeable.
45. In conclusion, the 4<sup>th</sup> Defendant submitted that the registration of the 2<sup>nd</sup> Defendant as first proprietor of Kilifi/Mtwapa/659 and his subsequent transfer to the 4<sup>th</sup> Defendant were lawful; that the Plaintiffs' suit was defective, that the plaintiffs lacked locus standi, and that their suit amounted to an abuse of court process; that his counterclaim, including claims that the Plaintiffs had encroached on Kilifi/Mtwapa/1942 and 1943, ought to be allowed as prayed.

### **Analysis And Determination.**

46. The Plaintiffs' claim is that they have since the year 1970 been in actual and uncontested occupation of the suit property until during the adjudication process. They claim that their occupation has caused equitable and beneficial interest in the land to accrue to them; that however, during the adjudication process, the 4<sup>th</sup> Defendant fraudulently had the suit property subdivided into two equal portions of 12 acres each. The two plots were issued numbers. The numbers are Kilifi/Mtwapa/655 registered in the name of Kasukari Tembo Nyenyo (deceased) and Kilifi/Mtwapa/659 registered to one John Njuraita Wainana. The plaintiffs' claim that the latter is a fictitious person, but his plot borders their land. They add that recently, owing to third party invasion of the suit land, they followed up with the Land Registry Kilifi demanding to know the ownership of the suit land where they were informed that the owner is the 4<sup>th</sup> defendant. It is averred that the defendants' actions were illegal and fraudulent, in breach of statutory duty and meant to dispossess the plaintiffs of the suit land.
47. The issues arising for determination in the present suit are thus as follows:
  - a. Was the registration of John Njuraita Wainana as proprietor of the suit land Kilifi/Mtwapa/659 fraudulent?
  - b. Were the subsequent transactions transferring the suit land to the 2<sup>nd</sup> and 4<sup>th</sup> defendants fraudulent?
  - c. Does the defendants' counterclaim have merit?
  - d. Who should bear the costs of the suit and the counterclaim?
48. Regarding the first issue it is noteworthy that the only witness for the plaintiffs testified that the Plaintiffs have lived on the suit property since the 1970s until the year 2023 when they were informed that the suit property does not belong to them. They however have conceded that the suit land borders the land that they call theirs. The plaintiffs have by their own evidence proved to the court that the land was allocated by the SFT to one John Njuraita Wainana and subsequently registered in his name long ago. Their claim however is that his allocation registration was fraudulent since the aggregated acreage of both what came to be later known as Kilifi/Mtwapa/655 and Kilifi/Mtwapa/659 on registration at the land registry belonged to them. It is noteworthy that when testifying, PW1 seemed to refer the land as one parcel measuring 24 acres.



49. In cross-examination, PW1 conceded that she and her family never made any application to be allocated the suit land. Though she stated that she has even interred her kin on the suit land, it was not possible to tell whether on the ground, that took place on either plot no 655 (as it was prior to subdivision). Be that as it may be, upon cross-examination by Ms. Mona, PW1 stated that her husband is brother to Kasukari, and her family owns Kilifi/Mtwapa/655 which was registered in Kasukari's name. It is that evidence that persuades the court to believe that the interment must have occurred on the portion earlier on owned by Kasukari, her family patriarch, prior to his sale thereof to the 2<sup>nd</sup> defendant.
50. It is very significant that PW1's evidence was sharply contradicted by the evidence of DW2, Chome Tembo Nyenyo (hereinafter referred to simply as "Chome"). Chome, is PW1's brother-in-law, he and her husband being brothers.
51. DW2's evidence is that he and Kasukari owned plot no 655. They occupied it. They could not pay some dues to the authorities, so they subdivided the plot into two equal portions, one for each; that Kasukari sold his entire portion to Kenas Holdings Ltd and left for Chonyi with his entire family, leaving no-one behind. Chome got his title in the 2000s and also sold 3 acres out of his portion to Kenas Holdings Ltd, two acres to one Ombachi, and remained with one acre. His nephews (Kasukari's sons) assaulted him after Kasukari left for Chonyi and he fled from the suit land due to the assaults. They also sued him in Kilifi Magistrate's court. According to him John was his neighbour. Kasukari is now deceased. Kasukari's family have lived next to the disputed land for only 3-5 years now. At the time of his being assaulted by his nephews, they were not living next to the suit land. Two of them were apprehended for the assault and jailed.
52. DW3's evidence was that Plot No 358 was allocated to John Njuraita Wainaina who met all the allocation conditions; that the proper procedure was followed in allocating John the suit land. According to DW3 no one by the name Kadeej Kasukari was allocated Plot No 358. It was not possible to have an allocation of one parcel to two persons. According to DW3, transfer of an allotted land parcel is allowed, and though DW3 could not confirm that title was however issued to John, he is aware that a Land Control Board consent for the sale of the property was issued and the property was sold to Kenas Holdings Ltd while John was still an allottee. He stated that individuals are normally issued with only one allotment in order to be fair to all settlers. Pending dues to the SFT, if any, are usually transferred to the transferees of the land along with the land.
53. Parcel no 655 was at the adjudication stage known as plot no 354 Mtwapa Settlement Scheme and was allocated to the two families of Chome Tembo and Kasukari Tembo, the grandsons of one Nyenyo; the two brothers subdivided the land. The subdivisions emanating from parcel no 655 were parcel nos 1941,1942 and 1943. Kasukari sold his whole parcel to Kenas Holding and Chome sold 5 acres in two transactions and remained with only one acre, on which he does not live due to hostility from Kasukari's family members.
54. There is no evidence that the plaintiffs brought to court to demonstrate as claimed at para 9 of plaintiff that the 4<sup>th</sup> defendant either adjudicated plot no 358 (later known as parcel no 659, John's parcel), or subdivided it into two portions. That parcel was sold as a whole to Kenas Holdings. It is rather parcel no 655 that was subdivided by the two brothers and most of it sold to different persons. John's parcel was never part of plot no 354 which was subdivided into two. The transactions over plot no 659 therefore never affected any rights of the plaintiff at all. The plaintiffs had their own land and it was all sold by their patriarch. They have nothing to demand from John or Kenas Holdings in the circumstances.
55. The pleading that the plaintiffs have been resident on the suit land since the 1970s is untrue. I have no reason to doubt that the evidence of Chome Tembo, brother to the plaintiff's family patriarch Kasukari Tembo, that Kasukari moved from the area to Chonyi after selling all his entitlement that came by way



of subdivision of parcel no 655. Kasukari's family members must have returned to the area long after the migration, on the three mistaken views: 1: that Chome sold their patriarch's land; 2: mistaking John's land to have been part of Plot NO 358 (parcel no 655); and 3: that the sale of plot no 659 was effected by Chome Tembo. Further they were of three rather mistaken views regarding the role of the 4<sup>th</sup> whom they alleged adjudicated the land and split plot 358 into two. First, the 4<sup>th</sup> defendant was not a government officer who could have undertaken such a process; secondly, he never subdivided plot no 358 (parcel No 659) but bought the whole of it (11.5 acres) from Kenas Holdings Ltd; thirdly, he came into the scene much later only to purchase the suit entire suit land from the 2<sup>nd</sup> defendant and the plaintiffs have not by any nexus connected him to the adjudication era. The plaintiff's claim having been premised on such fundamental errors of fact has no chance of success from the outset. It was doomed to fail.

56. From the foregoing analysis, it is clear to this court that the two parcels of land, No 655 and 659 were distinct parcels from the time of land adjudication. DW1's evidence that individuals were normally issued with only one allotment in order to be fair to all settlers is crucial in this case. It would then not have been possible for the plaintiff's family to be issued with allotments to two plots bordering one another. It is worth noting that the rules governing a settlement scheme created by the government over its land differ from those governing an adjudication of ancestral land under Cap 284 laws of Kenya. In the latter, the ancestral nature of the land holdings matter and the government's say in the demarcation thereof is minimal, limited to adjudication of claims by individuals, and registration of those who prove their claims after certain procedural mechanisms have been satisfied under Cap 284. This ancestral nature of land holding did not apply to the suit land herein as it was purely a government settlement scheme to settle its own people and it had right to allocate land to citizens as it deemed it to be proper. The plaintiff's claim that they had been living on the suit land since the 1970s is not therefore helpful to their claim. What would have helped them is evidence showing that they had applied for allocation of the suit land or that it had been otherwise allocated to them which they never did. Usually allocation of land in a settlement scheme is dependent on a purposed application for allotment by a prospective allottee and the issuance of a letter of offer or letter of allotment which the plaintiffs had none. PW1 admitted expressly that they never applied for allocation of the suit land to them.
57. It is evident from the evidence of all the parties herein that Parcel No 659 was formerly called plot no 358-Mtwapa Settlement Scheme prior to titling and was allocated as a whole to John Njuraita Wainaina. It is inconceivable that since the 1970s up to the year 2023, the plaintiffs never knew that the suit land was a distinct portion allocated to and titled in the name of John. The very fact that their patriarch was registered as owner of a neighbouring plot and that he sold it and moved away to an entirely new area where he is presumed to have had other land militates against the claim that the plaintiffs discovered only recently that the suit land was John's. They must have known it all along but feigned ignorance until ownership was firmly asserted by the 4<sup>th</sup> defendant. If they had been farming on the land, they must have realized that that opportunity was gone forever hence the present suit to try and salvage their livelihood and they can not be blamed for seeking relief. However, the fact remains that if the land was not theirs, the rights of the registered owner must be upheld as indefeasible unless the legally proved otherwise.
58. The plaintiffs never called any expert evidence to prove that the list of beneficiaries of the settlement scheme bearing John's name and the Land Control Board application for consent and consent to transfer to Kenas Holdings Ltd were forged.
59. I therefore find that the plaintiffs have failed to establish that the registration of John Njuraita Wainaina as proprietor of the suit land was fraudulent or illegal in any manner. In the same vein, the transfer of the suit land to Kenas Holdings Limited was not fraudulent.



60. On the other hand, the 4<sup>th</sup> defendant's evidence is that he conducted a search and found that the suit land (parcel No 659) belonged to Kenas Holdings Ltd and thus made a decision to purchase it. Digging deeper into the register, a history of the land showed that the two brothers had sold the neighbouring plot to, inter alia, Kenas Holdings Ltd too. He stated that he had visited the area several times before the purchase of the parcels, where he was regaled with madafu, a local beverage with no signs of trouble. He paid Kshs 20,000,000/- for the parcels. He knows his neighbour is called Moses and the 4<sup>th</sup> defendant used to park his car in Moses' home when visiting the area. He may not have engaged the proverbial village drunk for titbits over the land, but he clearly knows people on the ground, including Moses' rasta-coiffured son. He also employed the services of an advocate in his transactions. His agreements with the registered owners were in writing. He conducted searches at the land registry and availed the search certificates to his advocates. However, violence only happened after he took possession of the lands and he was injured. The Police O.B. copies were produced in evidence. Now he fears entering the suit land and the plaintiffs are farming on it. However, none of the plaintiffs live on the suit land. The plaintiffs were not able to demonstrate that the houses in the photographs they produced in evidence were standing on the suit land. Besides, some of their photographic evidence, perchance it was to be taken as genuine, shows very new structures coming up yet they have pleaded that they have lived on the suit land since the 1970s. The improvements on the suit land belonged to Mzee Swaleh of Kenas. There is a transfer of share in Kenas Holdings Ltd that was produced by the 4<sup>th</sup> defendant. The 4<sup>th</sup> defendant also sought a Land Control Board consent for the transfer of the suit land to him. He paid stamp duty. This court is of the view that the 4<sup>th</sup> defendant conducted all due diligence that could have been expected of a buyer of land in the area. He never handled the matter from afar but took a hands on approach. Considering all these efforts by the 4<sup>th</sup> defendant, and the fact that it was not established as claimed that John Njuraita Wainaina was a fictitious person, then this court is of the view that the evidence of the defendants overwhelms that of the plaintiffs. This court thus finds that the subsequent transactions transferring the suit land to the 2<sup>nd</sup> and 4<sup>th</sup> defendants were not fraudulent, and thus the 4<sup>th</sup> defendant's counterclaim must succeed.
61. The upshot of the foregoing is that this court finds that the plaintiffs' claim lacks merit and is for dismissal while the 4<sup>th</sup> defendant's counterclaim has merit and it ought to be allowed. I therefore make the following final orders:
- a. The plaintiff's case in the main suit vide plaint dated 16/10/23 is hereby dismissed with costs;
  - b. The 4<sup>th</sup> defendant's counterclaim dated 1/12/2023 has merit and is granted in terms of prayers no 1, 2 and 3 thereof.
- It is so ordered.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

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

