

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E004 OF 2024

GOVERNMENT OF MAKUENI COUNTY
.....PLAINTIFF

-VERSUS-

CATHERINE WANJIRU NJENGA1ST DEFENDANT
JARO MOHAMED ABDI2ND
DEFENDANT
THE LAND REGISTRAR, MACHAKOS COUNTY3RD
DEFENDANT
THE LAND REGISTRAR, MAKUENI COUNTY4TH
DEFENDANT
MACHAKOS COUNTY GOVERNMENT5TH
DEFENDANT
THE ATTORNEY GENERAL6TH
DEFENDANT

JUDGMENT

1. The Plaintiff filed the suit herein vide the Plaint dated 26th February, 2024 seeking the following reliefs against the Defendants: -
 - 1) A declaration do issue that the certificate of title for all that parcel of land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285 located in Malili Town in Makueni County registered in the name of the 5th Defendant as Lessor and leased to the 1st Defendant who later transferred to the 2nd Defendant was fraudulently obtained and therefore illegal, null and void.
 - 2) A declaration do issue that all that parcel of land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285 is within the territorial boundary of Makueni County.

- 3) An order do issue cancelling the registration of the 1st, 2nd and 5th Defendants and any other person whose names appear in the register and/or certificate of title for all that parcel of land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285.
- 4) An order do issue directing the 3rd Defendant herein to issue a new certificate of title for all that parcel of land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285 located in Malili Town in Makueni County in the name of the Government of Makueni County.
- 5) An order do issue directing the 3rd Defendant to transfer all the leasehold registry records from Machakos County land registry to the Makueni County land registry for all that parcel of land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285 as the same is within the territorial boundary of Makueni County administered by the 4th Defendant.
- 6) An order of eviction do issue against the 1st and 2nd Defendants jointly and severally whether by themselves, their agents, servants, employees, assignees, third parties and/or any other party claiming through them from the suit property being all that parcel of land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285.
- 7) An order of permanent injunction do issue against the 1st and 2nd Defendants jointly and severally whether by themselves, their agents, servants, employees, assignees, third parties and/or any other party claiming through them from trespassing, remaining thereon, charging or in any other way from dealing with all that parcel of

land known as KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285.

8) Costs of this suit be borne by the Defendants jointly and severally.

2. The 1st and 2nd Defendants filed a Statement of Defence on 30th December, 2024 denying the Plaintiff's allegations of fraudulent acquisition of the suit property. They urged the court to dismiss the suit with costs.
3. The 3rd, 4th and 6th Defendants filed a memorandum of appearance on 17th May, 2024. However, no statement of defence nor documents were filed. The 5th Defendant did not file any pleadings.
4. The Plaintiff called one witness at the hearing of its case. PW1, Paul Wainaina Gicheru, adopted his statement dated 19th August, 2025 as his evidence in chief. He went on to produce the list and bundle of documents dated 20th August, 2025 in support of the Plaintiff's claim. He averred that he is the Sub-County Surveyor for Kilome Sub-County in Makueni County. It was his testimony that the suit property is located within his area of jurisdiction as per the Registry Index Map Sheet Nos. 11 and 12 of Malili Trading Centre.
5. PW1 stated that the suit property had been reserved for a petrol station and that it was surveyed under Malili Ranch Cooperative Society Limited as Commercial Plot No. 2671. He added that in or about the year 2022, the 1st Defendant approached the County Physical Planner seeking removal of kiosks surrounding the suit property but she was unable to provide the title deed and the relevant survey plans required for beacon reestablishment.
6. PW1 averred that the issue of beacon reestablishment resurfaced when the current owner, the 2nd Defendant, commenced construction. It was further averred that the registry documents for Malili Ranch have historically been domiciled at the Machakos land registry. That even though there was a directive

that those records be transferred to Makueni land registry, only the records for *Aimi Ma Kilungu Ranch* were transferred. It was PW1's testimony that the processing of documents for Malili Ranch is usually done in Machakos and that from a survey perspective, this creates misalignment between mapped (RIM) location of the suit property in Makueni against the registry records in Machakos.

7. It was PW1's testimony that despite the registry records being in Machakos, development control for Malili is exercised by the County Government of Makueni. Hence, any development (construction, approvals, change-of-user and relevant consents) ought to proceed through Makueni.
8. On cross-examination by Mr. Ochieng, PW1 stated that he did not have evidence confirming that the suit property had been reserved as a public utility. He further stated that he did not have evidence showing how the suit property had been surrendered to Makueni County from the initial owners Malili Ranch Cooperative Society Limited. PW1 stated that he did not have any evidence showing that the title document issued to the 1st Defendant was a forgery. He added that he did not have any evidence showing that there was a conspiracy between the 1st Defendant and the 3rd Defendant to have the land registered in favour of the former.
9. On cross-examination by Mr. Kuria, PW1 stated that there is a boundary dispute between Machakos County and Makueni County. He added that his duties are limited to determining the boundaries of land and so, he is not involved in the process of registration and issuance of title documents.
10. In re-examination, PW1 reiterated that the suit property is in Makueni County as all the approvals have been coming from Makueni County.
11. The 1st and 2nd Defendants called one witness for the hearing of their case. DW1, Jaro Mohamed Abdi, adopted his statement dated 3rd February, 2025 as

his evidence in chief. He further produced the list and bundle of documents of even date in support of his evidence in chief.

12. DW1 averred that he lawfully acquired the suit property from the 1st Defendant at a purchase price of Kshs.19,000,000/=. He added that he conducted due diligence and followed the necessary legal procedures in purchasing the land. DW1 vehemently refuted the Plaintiff's allegations of fraud in the acquisition of the suit property stating that his certificate of lease is valid.

13. On cross-examination by Mr. Njeru, DW1 stated that interest being transferred to him in the sale agreement dated 21/1/2022 was leasehold as opposed to absolute interest as indicated. DW1 asserted that he did not receive any notice from the County Government of Makueni stating that he had no approval to conduct developments of the suit property.

14. On cross-examination by Mr. Kuria, DW1 stated that the suit property was sold to him by the 1st Defendant and that he later on learnt that the land was owned by Malili Ranch Limited.

15. The parties agreed to dispose of the suit by way of written submissions at the close of their respective cases.

16. The Plaintiff filed its submissions on 21st November, 2025. On its behalf, Counsel submitted that the evidence of the 2nd Defendant does not rebut the expert evidence tendered by the Plaintiff. Counsel contended that the Defendants did not exhibit beacon certificates, survey schedules, mutation forms or documents linking commercial Plot No. 2671 to LR No. 4285. Counsel concluded that the evidence shows that the 2nd Defendant's title is tainted with illegality bringing it squarely within the statutory exceptions for a valid title under Section 26 (1)(a) and (b) of the Land Registration Act.

17. In the 1st and 2nd Defendants' submissions filed on 24th November, 2025, Counsel contended that the Plaintiff had failed to demonstrate evidence of fraud

or illegality attributable to either Defendant in addition to any procedural violation in the acquisition process. Counsel argued that the 2nd Defendant was a bona fide purchaser of the suit property for value without notice of any competing interest or adverse claim.

18. Counsel contended that the Plaintiff had failed to produce any part development plan (PDP), gazette notice, any survey or registry extract or any certification from the National Land Commission (NLC) declaring the suit property as public land. Counsel urged the court to safeguard the integrity of the land register and to dismiss the suit with costs as the Plaintiff had failed to substantiate its claim of fraud and illegality.

19. The 3rd, 4th and 6th Defendants filed their submissions dated 4th December, 2025. On their behalf, learned State Counsel submitted that the Plaintiff had failed to establish that the suit property was set aside as public utility and that it had a beneficial interest over the land. It was contended that the Plaintiff did not adduce evidence in the form of an allotment letter showing that an easement had been established.

20. It was further submitted that through his evidence, DW1 was able to demonstrate all the steps taken for him to acquire title to its current ownership. Learned State Counsel submitted that the court cannot interfere with the 2nd Defendant's title which enjoys the protection accorded by Section 26 of the Land Registration Act, 2012. It was argued that the Plaintiff was asking the court to infer fraud from unsubstantiated allegations and hence the court should dismiss the suit with costs.

21. After a perusal of the pleadings, the evidence and submissions herein, the following particulars are not in dispute: -

- i) The suit property Parcel No. KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285 is registered in the name of the 2nd Defendant;
- ii) The nature of title held by the 2nd Defendant in the suit property is leasehold;
- iii) The Lessor of the suit property is the National Government/County Government of Machakos.

22. The apparent issues for determination are as follows: -

- i) Whether the Plaintiff is the lawful proprietors of the suit property; and*
- ii) Whether the Plaintiff has proved fraud and illegality in the registration of the 2nd Defendant as proprietor of the suit property.*

23. It is the Plaintiffs' case that the suit property was reserved for a public utility and therefore the land lawfully belongs to the Plaintiff. The Plaintiff further claims that the land was fraudulently allocated to the 1st and 2nd Defendants by the 3rd Defendant. The Plaintiff contends that the land is located within the territorial boundaries of Makueni County and not Machakos County and therefore all the entries made by the 3rd Defendant are a nullity.

24. The Plaintiff's cause of action is on the basis of fraud particulars of which are outlined in paragraph 12 of the Plaint. The Plaintiff bears the legal burden of proof for all the fraudulent acts complained of. Section 107 (1) of the Evidence Act outlines as follows: -

- (1) 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.**

25. The evidential burden is also cast upon the Plaintiff to prove any particular fact which he desires the court to believe in its existence. That is captured in sections 109 and 112 of the Evidence Act which sets out thus: -

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.

26. As per the Plaintiff's witness statement, Malili Ranch (where the suit property falls under) was allocated by the Government and surveyed under Malili Ranch Cooperative Society Limited. It was further testified that the land register and the Registry Index Map (RIM) have historically been domiciled at Machakos Land Registry and that there was a directive for the transfer of the same to Makueni Land Registry. According to the Plaintiff, the subdivision scheme for Malili Ranch surveyed the suit property as commercial plot No. 2671 which proceeded to be registered as Parcel No. KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285.

27. In the case of **Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] eKLR** the Court of Appeal rendered itself thus:-

“It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls

short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of rebuttal by the other side.”

28. Firstly, the Plaintiff was under a duty to prove that the suit property was reserved as public utility for the Plaintiff. Section 9 of the Land Act, 2012 outlines the criteria for conversion of land from private to public land. Section 9 (2) (c) provides as follows: -

(1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

(2) Without prejudice to the generality of subsection (1)—

a) ...

b) ...

c) private land may be converted to public land by—

(i) compulsory acquisition;

(ii) reversion of leasehold interest to Government after the expiry of a lease; and

(iii) transfers; or

(iv) surrender.

29. As correctly submitted by the Defendants, the Plaintiff did not adduce evidence of a surrender of the suit property to the Government of Makueni County or either of the three remaining options. The Plaintiff did not adduce evidence of a gazette notice transferring the suit property, the land register and the relevant documents from Machakos County to Makueni County. In the circumstances, this court cannot make a finding that the suit property should be vested within the territory of Makueni County or that the suit property is a public utility reserved for the Plaintiff.

30. The Plaintiff went on to allege fraud in the registration of the 1st and 2nd Defendants as former and current proprietors of the suit property respectively. Section 26(1) of the Land Registration Act, 2012 outlines as follows:-

‘The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or**
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.’**

31. In **Bullen & Leake & Jacob’s, Precedents of Pleadings 13th Edition** at pg 427, the authors outlined as follows: -

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford -vs- Mutual Society (1880) 5 App. Cas. 685 at 697, 701, 709, Garden Neptune -vs- Occidental [1989] 1 Lloyd’s Rep. 305, 308). The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrance -vs- Lord Norreys (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly

proved (Davy -vs- Garrett (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice.”

32. Similarly, in the case of Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR Tunoi JA (as he then was) adopted the above position when he aptly held as follows: -

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

33. Section 25 (1) of the Land Registration Act, 2012 protects the title of a registered proprietor in the following terms: -

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

b. To such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

34. The Plaintiff did not adduce evidence demonstrating that the suit property was reserved as a public utility in its favour either as commercial plot No. 2671 which preceded registration of the land Parcel No. KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285.
35. The Plaintiff did not adduce evidence of any conspiracy or a fraudulent scheme between the 3rd Defendant and the 1st and 2nd Defendants to disentitle the Plaintiff of the land. Again, as earlier noted, the Plaintiff did not adduce evidence of fraud in the registration of the 5th Defendant as the Lessor of the suit property.
36. On the other hand, the 2nd Defendant produced an allotment letter as DEX 1 showing that the suit property was issued to Julius Maweu Kilonzo by Malili Ranch Cooperative Society Limited as a commercial plot. The land was subsequently sold to Peter Kanyi then to the 1st Defendant and lastly the 2nd Defendant.
37. DW1 produced evidence of the processes undertaken and fees paid to Malili Ranch Cooperative Society Limited for the subsequent change of commercial plot No. 2671 into land Parcel No. KONZA NORTH/KONZA NORTH BLOCK 2 (MALILI)/4285. That is how the 1st Defendant became the registered lessee of the suit property.
38. DW1 also produced a couple of approvals (DEX 7 and DEX 9) showing that the Ministry of Lands (3rd Defendant) was well aware of the transactions that were being undertaken in respect of the suit property by the 1st Defendant. The suit property was eventually transferred and registered in the name of the 2nd Defendant. There is no semblance of fraud in the pertinent processes leading to

his registration. The 2nd Defendant's title is therefore valid and enjoys the protection of Section 25 (1) of the Land Registration Act.

39. Finally, in determining whether the Plaintiff has been proved its case in accordance with the required legal standard, the Court is drawn to the observations made in the case of **In re Estate of Francis Waita Mbaki (Deceased) [2018] eKLR** as follows: -

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind the factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.... Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighting the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be evidence that it did occur before, on the balance of probability, its occurrence will be established.”

40. In the end, the Plaintiff has failed to substantiate its claim against the Defendants on a balance of probabilities. The suit is hereby dismissed with costs.

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HON. E. O. OBAGA

JUDGE

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 5TH DAY OF MARCH, 2026.**

IN THE PRESENCE OF:

Ms. Manyara for Mr. Ochieng for 1st and 2nd Defendants.

Court assistant – Steve Musyoki

ORIGINAL