



**Mazuri (Suing as Herself and as Legal Representative of the Estate of Mariam Juma Mwamuke) v Wanguhu (Environmental and Land Originating Summons E010 of 2023) [2025] KEELC 5845 (KLR) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5845 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2023**

**LL NAIKUNI, J**

**JULY 28, 2025**

**BETWEEN**

**MWANAISHA ALI MAZURI (SUING AS HERSELF AND AS  
LEGAL REPRESENTATIVE OF THE ESTATE OF MARIAM JUMA  
MWAMUKE) ..... APPLICANT**

**AND**

**MARGARET NJERI WANGUHU ..... RESPONDENT**

**JUDGMENT**

**Preliminaries**

1. The Judgment before this Honourable Court regards the Originating summons instituted by Mwanaisha Ali Mazuri the Plaintiff/ Applicant herein dated 6<sup>th</sup> December 2023. It was instituted in court on 20<sup>th</sup> December 2023 against Margaret Njeri Wanguhu the Defendant/Respondent herein.
2. The service of the Originating summons and the Summons to Enter Appearance upon the Defendant was effected through substituted means pursuant to the leave of Court granted on 27<sup>th</sup> February 2024. An advertisement was published in one of the local dailies with a wide national circulation – “The Standard Newspaper” on 29<sup>th</sup> April 2024 at page 33. A six (6) Paragraphed Affidavit of Service dated 13<sup>th</sup> June 2024 attaching an extract of the advertisement was filed to that effect. The Respondent did not however file any response to the suit despite service.
3. Subsequently, on 6<sup>th</sup> February 2025 the court pursuant to the provisions of Order 10 Rules 4,5, 6, 7, 9 and 10 of the *Civil Procedure Rules* 2010, set down the matter for formal proof with directions that all witnesses adduce evidence physically i.e. “Viva Voice”. The Land Surveyor was allowed to adduce evidence and to produce his land survey report by virtual means in accordance with the High Court practice directions issued by the Chief Justice on 11<sup>th</sup> January 2022 vide Kenya Gazette Notice no. 189.



## II. The Plaintiff's case

4. The Plaintiff claimed to be entitled to the ownership of all that Parcel of land known as numbers Kwale/Diani Settlement Scheme/76 by virtue of acquiring a title through the doctrine of land adverse possession. (Hereinafter referred to as "The Suit Land")
5. The Plaintiff/Applicant sought for the following orders before court:-
  - a. The Applicant herein be declared the rightful owner of the suit properties Kwale/Diani Settlement Scheme/76.
  - b. An order do issue to the registrar of Land Kwale to strike out the name of the respondent from the register and subsequently enter the names of the applicant as the sole proprietor of the suit property Kwale/Diani Settlement Scheme/76.
  - c. A permanent injunction do issue restraining the respondents whether by themselves, their servants, representatives, agents and/or assigns howsoever from dealing with, entering in, obstructing any activities on, interfering with the Applicant's agents and or representatives subdividing, demolishing any structures on selling, alienating, occupying and/or in any other was interfering with the suit property
  - d. That costs of this suit be provided for.
6. The suit was premised on the 14 Paragraphed supporting affidavit of Mwanaisha Ali Mazuri sworn on 6<sup>th</sup> December 2024 with six (6) annexures marked as "MAM - 1 to 5" where the Plaintiff averred that: -
  - a. The suit property had been in the use and occupation of her family for a period of over 12 years from the year 1961 even before the demarcation of Kwale/Diani Settlement Scheme/76 to the present.
  - b. They had been living on the land and cultivating it.
  - c. Her occupation of the land was further corroborated by the occupation survey report of 2006 carried out by officials from the Ministry of Lands who confirmed that she was in occupation of the suit property together with her extended family.
  - d. The land initially belonged to her mother and after the demise of her late mother, she had remained in occupation of the property until now.
  - e. She carried out farming and ran small businesses thereon.
  - f. She learnt through an official search dated 31<sup>st</sup> July 2023 that the Respondent herein made an entry into the Green card of the suit property as the owner through a sale in the year 2009.
  - g. She stated that her occupation and use of the suit property had been for over 12 years, that the occupation was adverse, uninterrupted, notorious, peaceful and open without any interference as he had never been served with any notice to vacate the land or an eviction. Further that her late mother never sold the land to any person let alone the Respondent.
  - h. The occupation was thus adverse to the interest of the registered owner who was the Respondent.
  - i. Therefore, she had acquired ownership of the suit property by way of adverse possession and the Respondent's rights over the same were thus extinguished.



- j. In order to safeguard his interests over the suit property, the court ought to restrain the Respondent by way of a permanent injunction. He sought that the suit be allowed.

### **III. Hearing and Evidence**

7. On 6<sup>th</sup> February 2025, the Plaintiff called her first witness PW - 1 who testified in Court as follows:

#### **A. Examination in Chief of PW - 1 by Mr. Makowade Advocate.**

8. PW – 1 was sworn and testified in Kiswahili language. She identified herself as Mwanaiha Ali Mazuri. She was a citizen of Kenya and a holder of the Kenyan National Identity card bearing all the details as noted by Court. She stated that she worked as a cook in a hotel and lived at a place called Kona Ya Musa Maweni in Ukunda at the County of Kwale. She had the authority of the other beneficiaries of the Estate of the Deceased.
9. That she was before court claiming all that suit property known as Kwale/Diani Settlement Scheme/76 which had been taken away by the Respondent Margaret Njeri Wanguhu as per an official search conducted on 31<sup>st</sup> July 2023.
10. The witness told court that she had been in occupation of the land from the time she was born. That her late mother was called Mariam Juma Mwamuka was the initial owner of the land and used to cultivate on the land. That they had planted mangoes, coconuts, cassava and maize plantation. That she died intestate on 11<sup>th</sup> August 2023 and was buried in the family cemetery which was in the land. That she was in occupation of the suit property together with her siblings Hamisi Divoi born in 1962; and Ali Mwajuma Mazuri born in 1960. After the death of their mother they applied for Grand Letters of Administration and which were issued on 26<sup>th</sup> August, 2023 to Mwaisha Ali Mazuri. She is the appointed legal Administratrix of the Estate of the Deceased. That they have further constructed a permanent house with 8 rooms. They had filed a ground report to support this position.
11. She further testified that the land measures 5 Acres. That they have been in occupation of the same from the year 1978 to date continuously without interruption. This was close to 47 years down the line.
12. According to the witness, they never got any permission from the registered owner to be in occupation of the suit property. That the Respondent had never met the registered owner and thus the land belonged to them. She produced a certified copy of the title deed and the official search dated 31<sup>st</sup> July, 2023 for the suit land. It was conducted by their mother just before her death.
13. The court was urged to grant the title to the suit property.

#### **B. Examination in Chief of PW - 2 by Mr. Makowade Advocate.**

14. PW – 2 was sworn and testified in English language. He identified himself as Njenga Wainaina. He was a Land Surveyor. He stated his registration details as noted by Court. He also stated that he was the director of a surveying company trading in the names and style of “South Print Tech Limited”. That he had prepared a report dated 2<sup>nd</sup> November 2024 over the suit property herein Diani/Kwale Settlement Scheme/76 measuring 1.9Ha. That the exercise was to confirm the ground status. The land exists. It deviated at Kona ya Musa Maweni area in Ukunda of the County of Kwale.
15. It was his evidence that he had moved round the suit property identified boundary lines but with no beacons. That he had gotten a sheet for the settlement and that they were people present there who assisted him in the survey exercise. The geographical coordinates were formed. He used the co - ordinates and followed the CI – C2. We got full co operation by the people there. There were mango



trees and sisals which the local people used as boundary features. That the parcel was picked with GNS and GPS Map645. The methodology used was IPC beacons. That the land had permanent houses and the land was occupied by an 80-year-old lady. There were three other people who lived on the land. However, we noted the land is fully occupied. The same had several mango trees grown on it.

16. He referred to photographs showing the houses. That he confirmed there were houses that had been demolished and other new ones built. They were over ten (10 years old. He stated that his conclusion was that the land had been occupied for a long time.

### **C. Examination in Chief of PW - 3 by Mr. Makowade Advocate.**

17. PW – 3 was sworn and testified in English language. He was called Suleiman Yusuf Mwadzo. He was the Assistant Chief of Gombato sub – location of Diani Location within the County of Kwale. He resided at Gombato. He had been a Chief for the area from the year 2009 which was close to 14 years. He was born in year 1969 and raised at the same place for over 40 years.
18. He testified that the Plaintiff was known to him as the owner of Kwale/Diani Settlement Scheme/76. It measured 5 acres. He referred to the letter dated 24<sup>th</sup> March 2025 and stated that the deceased was well known to him as he had lived on the land and in the same location with him. That the deceased was further buried on the land. He stated that the property was well known to him and so were its boundaries in form of bougainvillea flowers which were visible.
19. That the land had about 4 permanent houses and that the family of the applicant had started living thereon sometime in the year 1977. He knows of this as it was the year the land demarcation exercise in the area commenced. By then the land was being allocated to the indigenous people. They used the land for grazing of livestock. That throughout the allocation and demarcation process, it the Plaintiff's family who had been on the land. He did not know the Respondent. He had never appeared before him; lodged nor reported any complaint in his office. Ordinarily, it was his office that all the land disputed were lodged. He had handled so many cases of people who had been allocated land illegally or shown the wrong location. Upon attaining title deed they would go to his offices to be shown the exact location of the land but turned out to be a fraudulent scheme.
20. He was surprised to hear that there was someone else who was claiming legal ownership to the suit land. Unless that person purchased the land, it would be difficult to prove how they acquired it being land from demarcation.
21. That in his opinion the children of the deceased were the rightful owners of the suit property. The Plaintiffs case was marked as closed.

### **IV. Submissions**

22. On 8<sup>th</sup> April 2025 the Honourable Court upon the closure of the case by the Plaintiff in the presence of counsel, court gave directions on the disposition of the originating summons dated 6<sup>th</sup> December 2023 by way of written submission. A Judgement date was slated for 28<sup>th</sup> July 2025 by the court.

#### **A. The Written Submissions by the Plaintiff**

23. Through the Law firm of Messers. OG Makowade Advocates, the Plaintiff filed his Written Submissions dated 22<sup>nd</sup> April 2025. Mr. Makowade Advocate started by stating that the submissions were on the Plaintiff's claim as against the Defendant. The Learned Counsel informed Court that the Applicant brought this suit by Originating Summons dated 6th December 2023, seeking a declaration



- that she has acquired title to land parcel Kwale/Diani Settlement Scheme 76 by way of adverse possession, having been in open, exclusive, peaceful, and uninterrupted occupation for over 60 years.
24. That the Applicant sought and obtained leave to serve the Respondent through substituted service via newspapers of national circulation, after which service was properly effected. The Respondent failed to enter appearance or file any response. The matter proceeded ex parte, and the Applicant called three witnesses who testified viva voce before this Honourable Court: - The Applicant herself, the Area Chief and a Government Surveyor.
  25. The Learned Counsel gave factual background of the matter and stated that the Applicant, now over 60 years old, was born and raised on the suit land, where her parents and grandparents lived long before the land was demarcated under the Diani Settlement Scheme. She had continued being in uninterrupted occupation of the land to date. That an occupational survey conducted in 2006 by the Ministry of Lands confirmed that her family has occupied the land since 1961. A ground report dated 5th November 2024 by a Government Surveyor reaffirmed: - The land measured approximately 1.9 hectares (4.7 acres). - There are clearly defined boundaries, both on the ground and in the Survey Map. - Permanent developments exist, including houses and farming. –
  26. It was submitted that the land is fully occupied by the Applicant, with no evidence of any other occupant. Learned counsel further analysed the testimony of the witnesses before court starting with that of the Area Chief, who testified in person, and stated: - He was born and raised in the locality in the early 1960s and has lived there ever since. - He has personally known the Applicant and her family since childhood. - The Applicant’s family has always lived on the suit land. - The Chief has never received any objection, complaint, or dispute concerning the Applicant’s occupation—despite being the primary authority in land disputes in the area.
  27. On the analysis of the legal framework, it was submitted that this claim is anchored under the Limitation of Actions Act (Cap 22): - the provision of Section 7 bars actions to recover land after 12 years. - Section 13 (1) defines adverse possession. - Section 38(1) allows a person to apply to be registered as owner upon satisfying adverse possession requirements. That the Applicant’s case meets the threshold established in: - “Mtana Lewa v Kabindi Ngala Mwangandi [2015] eKLR - Mombasa Teachers Co-operative Savings & Credit Society Limited v Robert Muhambi Katana [2018] eKLR - Kimani Ruchine v Swift Rutherford [1980] KLR 10’. Further that the Applicant has proven: - Actual Possession: Continuous occupation and development since birth. - Open and Notorious Use: Her presence and land use are visible and known in the community. - Exclusive Possession: There is no other claimant or occupant. - Non-Permissive Use: No license or consent from the Respondent. - Continuity: Uninterrupted occupation exceeding 12 years. - Adversity to Title Owner: Respondent was unaware and inactive since alleged registration in year 2009.
  28. It was asserted that the law is clear that mere registration could not defeat an accrued right of adverse possession where the title holder has neither taken possession nor acted on their title for more than 12 years. That the Applicant discovered, through a search dated 31<sup>st</sup> July 2023, that the Respondent was registered in the year 2009. The family had no knowledge of any sale. The Respondent had never occupied or asserted rights over the land, and their entry into the register was fraudulent and without notice to the Applicant.
  29. It was the contention by the Learned Counsel that given the Respondent’s failure to enter appearance and the proven adverse possession, the Applicant respectfully prays for an order directing the Deputy Registrar to execute all necessary documents to effect transfer of title in favour of the Applicant within seven (7) days from the date of judgment.



30. In conclusion, it was held that the Applicant had demonstrated through oral evidence, statutory law, and jurisprudence that she qualified to be declared the lawful owner of the suit property by way of adverse possession. The Honourable Court was urged to allow the originating summons as prayed.

## V. Analysis and Determination

31. I have carefully read and considered all the filed pleadings herein, the evidence adduced by the witnesses summoned by the Plaintiff, the written submissions, the myriad of cases cited herein by parties, the relevant provisions of the Constitution of Kenya, 2010 and statutes.
32. This Honourable Court will still examine the facts of the case and in order to arrive at an informed, just, equitable and reasonable decision, the Honourable Court has three [3] issues for its determination. These are: -
- a. Whether the Plaintiff had acquired the title by way of adverse possession as required by Law?
  - b. Whether the parties herein are entitled to the reliefs sought herein
  - c. Who will bear the Costs of originating summons?

### Issue No. a). Whether the Plaintiff had acquired the title by way of adverse possession as required by Law

33. It is noted that the Defendant did not participate in the suit despite service being effected on her. However, the Applicant does not escape the burden and standard of proof which they have to satisfy and discharge in accordance with the law in order for his claim to succeed. This Court has a duty to interrogate and evaluate uncontroverted evidence in order to determine whether the applicant is entitled to the prayers sought.
34. The provision of Section 107 (1) of the Evidence Act, Cap. provides thus:-
- “Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
- While the provision of Section 108 provides:-
- “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”
35. And section 109 provides:-
- “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 for by law that the proof of that fact shall lie on any particular person.”
36. This legal position has been extrapolated in several court decisions. For instance, the Court of Appeal in the case of: “Daniel Toroitich Arap Moi v Mwangi Stephen Mureithi (2014) eKLR”, held as hereunder:-
- “It is a firmly settled procedure that even where a defendant has not denied the claim by filing of 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 a rebuttal by the other side.

37. The doctrine of a claim for land under adverse possession in Kenya is embodied in Sections 7, 13, 17 and 38 of the *Limitation of Actions Act*, (Cap 22) in these terms:

Section 7:- “An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it is first accrued to some person through whom he claims, to that person”.

38. Section 13 of the *Act* is in these terms:

“(1) A right of action to recover land does not accrue unless the land is in possession of some person in whose favour the period of limitation can run (which possession is in this Act referred to as adverse possession)”

39. Section 17 of the said *Act* stipulates that upon the expiry of the period (12 years) prescribed by the Act for a person to bring an action to recover land, the title of that person to the land stands extinguished.

40. On the other hand, Section 38 of the *Act* allows a claimant to apply to Court for orders of adverse possession and provides that:

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

41. In terms of the “*Prescription Act* 68 of 1969 of South Africa, a person shall by prescription become the owner of a thing which he has possessed openly and as if he were the owner thereof for an uninterrupted period of thirty years or for a period which together with any periods for which such thing was so possessed by his predecessors in title, constitutes an uninterrupted period of thirty years. If an acquirer had received either express or tacit consent it follows that the acquirer did not act as if he or she was entitled to exercise the servitudinal right.

42. In Kenya, the principle of adverse possession has been discussed in various cases but were more elaborately set out in the case of “*Wambugu v Njuguna* [1983] KLR 172, where the Court held that:

“In order to acquire by the statute of limitations title to land which has a known owner, that owner must have lost his right to the land either by being dispossessed of it or by having discontinued his possession of it. Dispossession of the proprietor that defeats his title are acts which are inconsistent with his enjoyment of the soil for the purpose of which he intended to use it.”

And that:

“The proper way of assessing proof of adverse possession would then be whether or not the title holder has been dispossessed or has discontinued his possession for the statutory period and not whether or not the claimant has proved that he has been in possession of the requisite number of years.”



43. The elements of adverse possession were further summarized in the case of “*Kasuve v Mwaani Investments Ltd & 4 Others* [2004] 1KLR 184” as follows:

“.....and in order to be entitled to land by adverse possession, the claimant must prove that he has been in exclusive possession of the land openly and as of right and without interruption for a period of 12 years either after dispossession of the owner or by the discontinuation of possession by the owner on his own volition, *Wanja v Sakwa No.2* [1984] KLR 284. A title by adverse possession can be acquired under the *Limitation of Actions Act* for part of the land...”

44. Therefore, for a claim of adverse possession, the manner of entry and possession are crucial See the case of “*Gabriel Mbui v Mukindia Maranya* [1993] eKLR”; where the Court held:-

“Throughout the decided cases, the recurrent theme is that possession to be adverse must be actual, open, notorious, regular, continuously uninterrupted, hostile, exclusive occupancy held with a cherished animus possidendi under a claim of right held in good faith, without any form of permission from a knowing rightful owner entitled to immediate possession, for the statutory period. Out of these cases, the typical formulation of the classical requirements for adverse possession to be claimed, has been, that in order to acquire title to land without buying or paying for it in the traditional sense, or through some other legal disposition such as by inheritance or trust, there must be proved or established the elements of actual possession or occupancy of the land that is, (b) hostile to the current owner with a right to immediate possession, (c) which is visible, open, notorious, and exclusive, (d) exercised continuously and uninterrupted for a statutorily defined number of years, (e) maintain under some colour of right as against everyone else, (f) with an evinced unmistakable animus possidendi, (g) held in good faith, without fraud.

45. The Honourable Court holds that this legal expose is adequate on the legal principles to be considered for granting of the doctrine of Land Adverse possession. Now, the Court will turn to the application of these principles to the instant case.

#### **Issue No. b). Whether the parties herein are entitled to the reliefs sought herein**

46. Under this sub – heading, the Honourable Court will endeavour to apply the above elaborate principles to this case herein. It is the Applicant’s case that she has been in occupation of the suit property from the time that she was born. That the land initially belonged to her late mother Mariam Juma Mwamuke. That as a family they had farmed on the land since time immemorial as evidenced by the many coconut and mango trees together with the residential houses built thereon. she stated that other than herself, the land was occupied by her siblings Hamisi Divoi and Ali Mwajuma Mwazuri together with their families.

47. Has the occupation been continuous and open? According to PW3 the area chief, the Applicant’s family had been in occupation of the suit property since the year 1978. The same was part of his evidence before court and was further stated in the letter dated 24<sup>th</sup> March 2025 addressed to the ELC Court Kwale. According to Suleiman Yusuf Mwadzoyo the Assistant Chief Gombato Location, the Plaintiff who is a daughter to the late Mariam Juma Mwamuke has been in occupation of the suit property together with the rest of her family members. The aspect of continuous occupation of the applicant herein with her family has thus in my view been sufficiently demonstrated. The witness also stated that the Respondent was not known to him and that he had no knowledge of any dispute over the suit parcel. Ordinarily, all such dispute would be initiated from his offices where the complaints



- were lodged. No such complaint had been referred to him by the Respondent or any other person whatsoever.
48. On the aspect of whether the open and continuous occupation of the suit property has been interrupted. I have perused the green card presented before court by the Applicant. The same indicates that the suit property was register in the name of the settlement fund trustee on 10<sup>th</sup> March 1992, later it was registered in the name of one Meshhullam Waweru Wanguhu on 6<sup>th</sup> October 1992 and a title deed issued.
  49. The Respondents name was registered as owner of the suit parcel on 15<sup>th</sup> July 2009. There has been no indication that the occupation and use was at any given point interrupted by any party and specifically the Respondent. It is trite that the filing of a suit asserting rights over land stops time from running in adverse possession. No evidence has been tendered before court suggesting in any way that the Applicants occupation of the suit property was ever contested by the Respondent in court. The mandatory provisions of Order 37 Rule 7 of the Civil Procedure Rules requires that an application for adverse possession be accompanied with a title deed extract. Does the failure to producing the title deed invalidate the adverse possession claim? My understanding of the law here is the legislature on availing the certified copy of the title was intended on establishing the exact status of the land.
  50. The Applicant has relied on the green card for the suit property as listed in the list of documents dated 6<sup>th</sup> December 2023. It is noteworthy that the land was initially registered under the repealed Registered Land Act which is now governed by The Land Act, 2012.
  51. In my opinion the green card forms cogent evidence as to the current status on ownership of the land. The same having not be challenged, I find it that the ownership of the suit property has been established as being in the name of the Respondent. It was the evidence of the Applicant that the Respondent has never been in use and occupation of the suit property. That she is unknown to them. This was evidenced by the evidence of PW - 2 who stated that he had found the applicant in occupation and use of the suit property for subsistence farming.
  52. My attention has been drawn to the survey report dated 9<sup>th</sup> June 2023 and marked and produced as “MAM - 4” by Japheth Kamwara the land surveyor from the Division of Land Adjudication and Settlement office (DLASO) whose contents were the land was occupied and the same had both cash crops and maize and cashew. Further that the coconut and mango trees had been grown years back and there were structures erected thereon.
  53. From this evidence it is confirmed that the Applicant’s occupation of the suit property has been to the exclusion of all others including the true owner out of possession of that land. For these reasons, herein, the Applicant’s claim for adverse possession succeeds as prayed.

**Issue No. b). Who will bear the costs of the originating summons?**

54. It is now trite law that the issue of costs is at the discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to means:

“ the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.
55. Although the Applicant has successfully been in a position to establish its case, but taking that the Respondent neither entered appearance nor defend this claim, there shall no orders as to costs.



## **VI. Conclusion and Disposition**

56. In the end, having caused such an in-depth analysis to the framed issues herein, the Honourable Court finds that the Plaintiff has established her case against the Defendant herein.

57. Before making my final orders, I note that on 8<sup>th</sup> April 2025 before closure of the Plaintiff's case, Counsel on record orally sought for orders to have amendment of the pleadings to include the prayer that should the Plaintiff be successful their pleadings to read;

“The land registrar directed to have the land registered in the name of the Plaintiff”

58. The Honourable Court is of the view that the Applicant should formally move Court seeking for the above execution relief. Thus, in the meantime, the Honourable Court proceeds to make the following specific orders: -

- a. That Judgement be and is hereby entered in favour of the Applicants herein in accordance with the filed Originating Summons dated 6<sup>th</sup> December 2023.
- b. That the Applicant herein be declared the rightful registered and absolute owner of the suit properties Kwale/Diani Settlement Scheme/76.
- c. That an order is hereby issued to the registrar of Land Kwale to cancel the title having been extinguished and strike out the name of the Respondent from the register and subsequently enter the names of the Applicant as the sole proprietor of the suit property Kwale/Diani Settlement Scheme/76.
- d. That a permanent injunction do issue restraining the Respondent whether by himself, his servants, representatives, agents and/or assigns howsoever from dealing with, entering in, obstructing any activities on, interfering with the Applicant's agents and or representatives subdividing, demolishing any structures on selling, alienating, occupying and/or in any other was interfering with the suit property
- e. That there shall be no orders as to costs.

It is ordered accordingly.

**JUDGEMENT DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS,  
SIGNED AND DATED AT KWALE THIS 28<sup>TH</sup> DAY OF JULY 2025**

.....

**HON. MR. JUSTICE L.L NAIKUNI,**

**ENVIRONMENT & LAND COURT AT KWALE**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Kowade Advocate for Plaintiff/Applicant.
- c. No appearance for the Defendant/Respondent.

