



**Shehe v Lewa & 4 others (Environment and Land Case 149 of 2016)
[2026] KEELC 1519 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 149 OF 2016**

**YM ANGIMA, J
MARCH 12, 2026**

BETWEEN

PILI ATHMAN SHEHE PLAINTIFF

AND

AYUB CHAI LEWA 1ST DEFENDANT

OMAR KACHOGO 2ND DEFENDANT

DISTRICT LAND & ADJUDICATION OFFICER 3RD DEFENDANT

CHIEF LAND REGISTRAR, MOMBASA 4TH DEFENDANT

HON. ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

A. Plaintiff's claim

1. By a plaint dated 03.06.2016 the plaintiff sued the defendants seeking the following reliefs;
 - a. A declaration that she is the registered owner of Plot Mombasa/Ziwa La Ngombe Scheme/329.
 - b. A permanent injunction against the Defendants herein restraining them from interfering and/or dealing with the Plot Mombasa/Ziwa La Ngombe Scheme/329 and against the 3rd and 4th Respondent from issuing any other title to the 1st and 2nd Defendants and/or any other persons acting under them.
 - c. An order revoking any other title issued to the 1st and 2nd Defendants herein and/or any person acting under them 1st and 2nd Defendants herein.
 - d. Costs of this suit.



- e. Any other relevant relief this Honourable Court may deem fit to grant.
2. The plaintiff pleaded that at all material times she was the registered proprietor of parcel No. Mombasa/Ziwa La Ngombe Scheme/329 (the suit property) following an allocation by the District Adjudication and Settlement office and that she was issued with a title deed dated 18.08.2013.
3. It was the plaintiff's case that thereafter she received a letter dated 26.11.2013 from the Land registrar asking her to surrender her title deed. It was her case that she followed up the matter with the settlement officer of the scheme whereby the scheme committee resolved that she should keep the suit property.
4. The plaintiff's claim against the 1st and 2nd defendants was that they had wrongfully entered the suit property and built some structures thereon. It was also pleaded that they were in the process of disposing off the property in a bid to defeat the plaintiff's claim.

B. 1st defendant's response

5. The 1st defendant filed a statement of defence dated 22.09.2016 denying liability for the plaintiff's claim. He pleaded that he together with the 2nd defendant were jointly allocated the suit property by the settlement officer. They pleaded that the purported allocation of the same property to the plaintiff was fraudulent, unlawful and void ab initio.
6. The 1st defendant pleaded that the plaintiff's title was recalled and cancelled whereupon the 1st and 2nd defendants were issued with a title deed for the suit property. The 1st defendant thus asserted ownership of the suit property and prayed for dismissal of the plaintiff's suit.

C. 2nd defendant's response

7. There is no indication on record of the 2nd defendant having filed a defence to the action. The material on record shows that the 2nd defendant died a long time ago in consequence whereof the plaintiff abandoned the claim against him.

D. 3rd, 4th and 5th defendants' response

8. The record shows that the Attorney General filed a defence dated 07.06.2017 on behalf of the 3rd, 4th and 5th defendants. The defence consisted of mere denials of all the matters pleaded in the plaint and put the plaintiff to strict proof thereof.

E. Plaintiff's rejoinder

9. The plaintiff filed a reply dated 14.07.2017 to the 1st defendant's defence and another one of even date in reply to the Attorney General's defence.
10. The plaintiff simply joined issue with the defendants upon their defences. She denied all the contents of their respective defences and reiterated the contents of her plaint.

F. Trial of the action

11. At the trial hereof, the plaintiff testified on her own behalf as the sole witness. She adopted the contents of her witness statement as her evidence in chief and produced her supporting documents as exhibits. Her evidence simply mirrored the contents of the plaint.



12. The 1st defendant did not testify at the trial but the land adjudication and settlement officer – Mombasa testified on behalf of the 3rd, 4th and 5th defendants. The settlement officer adopted the contents of her statement dated 25.08.2025 as her evidence in chief and produced the defence documents as exhibits.

G. Directions on submissions

13. Upon conclusion of the trial, the parties were granted timelines within which to file and exchange their respective written submissions. The record shows that the plaintiff filed submissions dated 10.12.2025 whereas the Attorney General's submissions were dated 19.11.2025.

H. Issues for determination

14. The court has noted that the parties did not file an agreed statement of issues for determination. As such, the court shall frame the issues for determination as provided for under Order 15 Rule 2 of the Civil Procedure Rules. Under the said rule, the court may frame issues from any of the following;
- a. The allegations made in the pleadings or in answers to interrogatories.
 - b. The allegations made on oath by or on behalf of the parties.
 - c. The contents of documents produced by the parties.
15. The court has perused the pleadings, the evidence and documents in this matter. The court is of the view that the following are the main issues which arise for determination herein;
- a. Who is the legitimate owner of the suit property.
 - b. Whether the plaintiff has proved her claim against the defendants.
 - c. Whether the plaintiff is entitled to the reliefs sought in the suit.
 - d. Who shall bear the costs of the suit.

H. Analysis and determination

a. Who is the legitimate owner of the suit property

16. The court has considered the evidence and submissions on record. Although the 1st defendant laid claim to the suit property on account of alleged allocation by the settlement officer, the material on record shows that the plaintiff was the one who was allocated the suit property and that a title deed dated 18.08.2013 was issued to her.
17. The material on record shows that upon a complaint by the 1st defendant, a site visit was conducted and it was found that the 1st and 2nd defendants were in occupation the ground. One of them operated a pool table whereas the other had a food kiosk. As a result, a recommendation was made that the allocation to the plaintiff be recalled so that the suit property could be re-allocated to the 1st and 2nd defendants.
18. However, since the plaintiff had already been issued with a title deed neither the settlement officer nor the land registrar could legally cancel the plaintiff's title and re-allocate the suit property. The record shows that the land registrar wrote a letter dated 26.11.2013 calling upon the plaintiff to surrender her title deed urgently. There is no indication on record whether the plaintiff ever obliged.
19. When the settlement officer testified at the trial she confirmed that all allocation records including the accountability list showed that the plaintiff was the one allocated the suit property and that efforts to



recall the title were not successful. As such, the 1st defendant's claim upon the suit property is premised upon a mere recommendation which has never been implemented. Accordingly, the court has no hesitation in finding that the plaintiff is the legitimate owner of the suit property.

b) Whether the plaintiff has proved her claim against the defendants

20. The court has already found that the plaintiff is the legitimate owner of the suit property. As such, she is entitled to immediate possession and quiet enjoyment of all the rights which come with such ownership unless and until her title is lawfully impeached. There is no counter-claim against the plaintiff in the instant suit and there is no evidence to demonstrate that she obtained registration of the suit property through fraud, misrepresentation, or other illegal means. There is no demonstration that she obtained the property through a corrupt scheme. The material on record simply shows that the settlement officer allocated the suit property to the plaintiff without conducting due diligence on who was on the ground. That is merely evidence of negligence on the part of the allocating authorities and not evidence of fraud, corruption or illegality on the part of the plaintiff.
21. In his submissions the Attorney General urged the court to rectify the land register under Section 80 of the *Land Registration Act*. The said section stipulates as follows;
 1. Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
 2. The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.
22. The court is unable to accede to the Attorney General's invitation for two reasons. First, there was no counter-claim for rectification of title by any of the defendants. Second, there was no evidence of any fraud, mistake, or omission in the plaintiff's acquisition of the title to the suit property. The evidence of DW1 should that all the documents in the settlement office including the accountability list showed that it was the plaintiff who was allocated the suit property. In that case, it could not be said that the title did was issued to her on account of a mistake, fraud, or omission.

c) Whether the plaintiff is entitled to the reliefs sought in the suit

23. The court has found that the plaintiff is the legitimate owner of the suit property. The court has also found that the plaintiff has proved her claim against the 1st, 3rd, 4th and 5th defendants to the required standard. It would, therefore, follow that the plaintiff is entitled to the reliefs sought in the suit to the extend shown in the judgment.
24. Among the reliefs sought by the plaintiff is an order for cancellation of any other title documents issued to the 1st and 2nd defendants. There is no evidence on record to show that the any title documents were issued to the 1st and 2nd defendants. The evidence of DW1 at the trial was to the effect that the recommendation to re-allocate the suit property was not executed because they took the view that only a court of law could cancel the plaintiff's title. In the premises, the court is not inclined to issue a cancellation order.



d) Who shall bear costs of the suit

25. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court is of the view that neither the plaintiff nor the 1st defendant were responsible for the current state of affairs. The dispute was precipitated by the failure of the settlement officer to undertake due diligence before undertaking allocation. In the premises, the court is of the view that each party to the suit should bear his own costs.

I. Conclusion and disposal orders

26. The upshot of the foregoing is that the court finds and holds that the plaintiff has proved her claim against the defendants on a balance of probabilities. Accordingly, judgment is hereby entered for the plaintiff against the 1st, 3rd, 4th and 5th defendants in the following terms;

- a. A declaration is hereby made that the plaintiff is the legitimate registered owner of parcel No. Mombasa/Ziwa la Ng'ombe/329.
- b. The 1st defendant shall hand vacant possession of the suit property to the plaintiff within 60 days from the date hereof in default of which he shall be forcibly evicted at his cost.
- c. Upon vacating or eviction the 1st defendant shall forever be restrained by an order of permanent injunction from interfering or dealing with the suit property.
- d. Each party shall bear his own costs of the suit.

It is so decided.

JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 12TH DAY OF MARCH, 2026.

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Y. M. ANGIMA

JUDGE

In the presence of:

Court assistant- Gillian

Mrs. Kyalo for the plaintiff

No appearance for the 1st defendant

No appearance for the 2nd defendant

Ms. Saru for the AG for 3rd to 5th defendants

