



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 280 OF 2016**

**SINEMA MASHA KIFALU**

**WELLINGTON KAZUNGU MASHA (Suing as Administrator of the Estate of  
CHARO KAPOMBE DECEASED).....PLAINTIFF**

**VERSUS**

**SOFIA HAMISI OMARI**

**DISTRICT LAND REGISTRAR-KILIFI.....DEFENDANTS**

**JUDGMENT**

1. By their Complaint dated and filed on 19<sup>th</sup> October 2016 Sinema Masha Kifalu and Wellington Kazungu Masha (the Plaintiffs) suing as the Administrators of the Estate of Charo Kapombe (deceased) pray for:-

*a) A declaration that the transfer of the suit land to the 1<sup>st</sup> Defendant was fraudulent and without the consent of the deceased's family and/or to the relatives and hence it should be transferred by the 2<sup>nd</sup> Defendant to the estate of the deceased at the 1<sup>st</sup> Defendant's cost.*

*b) In the alternative the 1<sup>st</sup> Defendants do purchase the suit plot irregularly and unlawfully registered in her name and be compelled to pay for it to the estate of the deceased at the current market price.*

*c) Costs of this suit.*

*d) Interest on (c) also at Court rates.*

*e) Any other relief the Court may deem fit to grant.*

2. Those prayers arise from the Plaintiffs' assertion that at all times material to this suit the deceased Charo Kapombe was the registered owner of all that parcel of land known as Kilifi/Vipingo/211 measuring 2.4 Ha (the suit property). The Plaintiffs accuse Sofia Hamisi Omari (the 1<sup>st</sup> Defendant) of fraudulently, illegally and without any colour of right allocating to herself the land and causing the Land Registrar Kilifi (the 2<sup>nd</sup> Defendant) to register the same in her name.

3. Despite service of summons neither of the two Defendants entered appearance and/or filed a Statement of Defence. Consequently this matter proceeded in the absence of the Defendants.

4. Testifying as the sole witness herein, the 1<sup>st</sup> Plaintiff Sinema Masha Kifalu told the Court that the disputed parcel of land belongs to his brother the late Charo Kapombe who was allocated the same in 1990. He accused the 1<sup>st</sup> Defendant of fraudulently registering the land in her name and thereafter invading the land.

5. I have considered the pleadings as filed, the 1<sup>st</sup> Plaintiff's sole testimony and the evidence placed before the Court. I have equally considered the submissions filed by the Learned Advocates for the Plaintiff.

6. It is the Plaintiffs case that at all times material, the suit property was registered in the name of their brother Charo Kapombe who passed

away on 25<sup>th</sup> November 2006. They accused the 1<sup>st</sup> Defendant of fraudulently, illegally and without any colour of right allocating herself the suit property and thereafter colluding with the 2<sup>nd</sup> Defendant to have the property registered in the 1<sup>st</sup> Defendant's name.

7. At the trial herein, the Plaintiff adopted and fully relied on her statement filed in Court on 1<sup>st</sup> March 2018. The 4-paragraph Statement reads in full as follows:-

***“I am the above mentioned person and a resident of Mavueni/Takaungu.***

***I wish to state that in the disputed piece of land belong to our brother Charo Kapombe and I as among the administrator in his estate, I wish to state the land was allocated to our late brother in the year 1990s. The Respondent fraudulently registered the land in her name which this was a fraud made by the Respondent.***

***The Respondent in the early 2016 started interfering us with the suit property and we are not even boundary with her and started threatening my people, on the month of February 2016 I approached Advocate for a demand letter which was served upon him through Chief's Office Takaungu Location but the Respondent did not stop since approach this Honourable Court to orders against the suit property.***

***That is all I wish to state.***

8. As can be seen from the scant information given and the wording thereof, it was difficult to imagine that the same was prepared with the benefit of legal advise. That statement does not indicate how the Plaintiffs late brother acquired the said property. Indeed at the trial herein nothing was produced before me to demonstrate that the late Charo Kapombe had any interest on the suit property. All that the 1<sup>st</sup> Plaintiff produced in his testimony before me is a Certificate of Grant issued to him to administer the Estate on 28<sup>th</sup> September 2016.

9. From a perusal of the attachments to an application the Plaintiffs made earlier seeking orders of injunction and dated 19<sup>th</sup> October 2016, it is evident from a Certificate of Official search dated 16<sup>th</sup> October 2016 that the 1<sup>st</sup> Defendant was issued with a title deed for the suit property on 28<sup>th</sup> August 2006. Those same attachments indicate that the Plaintiffs' brother the late Charo Kapombe passed away on 25<sup>th</sup> November 2006.

10. While they did not produce any copy of a Sale Agreement before me, the Supporting Affidavit to their injunction application aforesaid alludes to the 1<sup>st</sup> Defendant having purchased the suit property from their brother. At paragraphs 5 and 6 of that Affidavit however, they claim their brother had no capacity to enter into any sale agreement as he was allegedly at the time very sick, bedridden and admitted in hospital. As it were, nothing other than the deceased's Death Certificate is annexed to the Affidavit and there is no evidence of when the Sale Agreement was executed and/or the fact of his being so incapacitated at the time.

11. Indeed the Plaintiffs do not indicate when they came to learn of the Sale Agreement and/or why it took them 10 years to come to Court to dispute the 1<sup>st</sup> Defendant's title.

12. Accordingly and even though the Defendants neither entered appearance nor filed a Statement of Defence, I was not persuaded that the Plaintiffs had any claim to warrant the declarations and orders that they seek herein.

13. Their suit is grossly incompetent and lacking in merit. It is dismissed with no order as to costs

**Dated, signed and delivered at Malindi this 30<sup>th</sup> day of July, 2019.**

**J.O. OLOLA**

**JUDGE**