



Washe & another v Kaduka & 13 others (Environment and Land Case E155 of 2015) [2026] KEELC 2107 (KLR) (23 March 2026) (Judgment)

Neutral citation: [2026] KEELC 2107 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E155 OF 2015
FM NJOROGE, J
MARCH 23, 2026**

BETWEEN

JAPHETH KALAMA WASHE & ANOTHER PLAINTIFF

AND

CHRISPUS DECHE KADUKA & 13 OTHERS DEFENDANT

JUDGMENT

1. The plaintiff's claim is contained in a plaint dated 14th September 2015. It is that the plaintiffs are the beneficial owners of the unsurveyed and unregistered land situated at Mukwambani Chonyi within Kilifi County which has from time immemorial been occupied and all belonged to the larger Mwatela clan, which is their clan. However, on or about 8th February 2015, the defendant illegally, wrongfully and without any justifiable cause uprooted the plaintiff crops and planted layers on the suit land and cultivated the land without the plaintiff's permission thus occasioning nuisance and denying the plaintiff full use of the land and the unable to carry out any cultivation or development there on. All attempts at persuading the defendants vacate a suit property have been in vain as the present suit.
2. The plaintiffs seek a declaration that the unsurveyed land belongs to the plaintiffs and their family and an injunction to restrain the defendants from interfering in any manner with the suit land. They also sought an order of eviction against the defendants and their agents from the suit land and costs of the suit.

Defence

3. The defendants responded to the plaintiffs' suit by way of a defence dated 17th October 2015. In that pleading, they denied the plaintiffs' claim and stated that they own the suit land. They pleaded that the plaintiffs have never cultivated the suit land; that the defendants never uprooted the plaintiffs crops as alleged; and that the plaintiffs farm on an adjacent plot. Demands to vacate were admitted but also responded to with the answer that the plaintiffs have no right whatsoever in the suit property; it was



also pleaded that the issues in the present case were the subject of Chonyi Land Civil Case Number 5 Of 2000 which has since been transferred to the Environment and Land Court in Mombasa and baptized Mombasa ELC 21 Of 2013, hence the matter is sub-judice. The defendants also disclosed that the plaintiffs had filed Kilifi Magistrate Civil Case Number 61 Of 2015 over the same subject matter and withdrawn the same on 8th April 2015, and have not paid the costs thereof.

Evidence

Plaintiffs' evidence

4. PW1, Japheth Kalama Washe testified on 25th October 2023 and adopted his witness statement dated 14th September 2015. His evidence is that the suit land measures approximately 30 acres. He referred to the land as the "plaintiff's inheritance".
5. In terms of history of the land, he stated that his grandfather, whose name he gave as Chinyezi, was in possession of the suit land and allowed one person by the name Ngombo Tangaizi to farm on a portion measuring 1.5 acres on condition that Ngombo was to leave when he got his own portion elsewhere. However, upon the plaintiffs' grandfather's death, Ngombo was left on the land. Ngombo gave the land to Musikiti Tsuma in pledge. Tsuma is the defendant's uncle.
6. The plaintiff's father went back to Chonyi from Mombasa and wanted to farm but the land was pledged to Tsuma. Musikiti Tsuma declined to deal with the plaintiff's father and referred him to Ngombo. As Ngombo was by then already deceased, the plaintiff's father sued Mazuri Ngombo who was Musikiti Ngombo's son and was awarded the land. Before award, the court walked around the land and found that it was 30 acres. He conceded that his father had 3 brothers who were so entitled to a portion of the land after the award to his father.
7. In 1999, Musikiti Tsuma's children invaded the suit land. By then, the plaintiff was married with 3 children. As at the time of his testimony, he was 62 years having been born in 1962.
8. His father had sued 14 people who had invaded 7 acres at the Mombasa Magistrate court but no judgment was made. It was found that the elders who did the case were not gazetted as Land Disputes Tribunal members.
9. After that, the case resumed the Tribunal and the defendant said that the issue was a boundary dispute. 5 elders sat over the dispute. The tribunal barred the present plaintiffs' counsel, one Mr. Tindika, from attending the proceedings.
10. According to the witness, what was before the Tribunal was not a boundary dispute, but a claim for 7 acres that had been taken away from the plaintiff's land by the defendant. It was stated that the defendants have nothing on the suit land and the plaintiffs' trees are growing thereon.
11. According to the witness, the dispute ended in 1977 but later on, the defendants returned to the suit land. The defendants were arrested and charged at Shanzu Court.
12. Upon re-examination by Mr Jengo, he stated that the plaintiffs occupied 23 acres of the land.
13. PW2 Patrick Mono Mbura testified on 4th February 2025 and adopted his witness statement dated 14th September 2015. His evidence resembled that of PW1 save that he added that Ngombo married her daughter to his grandfather.
14. Upon cross-examination by Mr Jengo, he insisted that the dispute has only been in respect of 7 acres. He admitted that the Tribunal awarded the defendant the land but insisted that the first plaintiff's father Japheth Washe, appealed against the award. He admitted that according to the sketch on page 24



of his bundle, the 7 acres is occupied by Kaduka Tsuma. He stated that Kaduka is from the Mwaremere clan.

15. He stated that the invasion of the land by the defendants occurred on 8th of February 2015. He stated that on 24th September 2021, the Land Adjudication Officer came and gave the Mwaremere clan a number for the suit property; that he knows the boundary; that plot issued with plot number 514 is occupied by the Mwarumba clan while parcel issued with plot number 513 is occupied by the Mwaremere Clan. He also admitted that they do farm on the land which is indicated as Mwatela Clan land on page 24. According to him the letter they did on 5th February 2015 concerned invasion of a small portion but the greater portion of the land was invaded on 8th August 2015. He stated that after the determination of the dispute the plaintiffs farmed on the land until their parents died and during that time the defendants had never invaded the land.

Defendants' Evidence

16. DW1, Chrispus Deche Kaduka, the first defendant testified on 4th February 2025 and adopted his witness statements dated 16th October 2015 and 8th November 2021 and 17th October 2025 which he had consolidated into one statement dated 30th June 2023 as his evidence-in-chief. His evidence is that there was a case before the Land Adjudication Office between Japheth Kalama Washe and the defendants. DW1 obeyed the summons issued dated 28th February 2022 by the Adjudication Office and when Japheth Kalama Washe failed to attend, his case was dismissed. He maintained that the disputed parcel appearing on the sketch at page 24 of the bundle was given to Kaduka and the adjacent land was given to the Mwarumba clan. The defendants do not claim the land assigned to the Mwatela clan on the sketch. He maintained that the lands that they were given belonged to their grandfathers; that the dispute went to the tribunal at Mombasa and plot numbers 513 and 514 were ruled to belong to the Mwarumba and Mwaremere clans. He denied that the defendants have chased the plaintiffs away from the portion assigned to Mwatela clan on the sketch. According to his evidence, he was born in 1958 in Kizingo in Chonyi.
17. Upon cross-examination by Ms. Apiyo, he maintained that his grandfather, whose name was Musikiti Tsuma, owned the suit land and the same was inherited by Tsuma Musikiti who was his uncle. His uncle left the land to his father Kaduka Tsuma who died about 5 years before the date of his testimony, he maintained that in the three cases filed earlier, the land had been awarded to his father.
18. He maintained that the complainants combined the Mwarumba clan land and the Mwaremere clan land and took it which is about 54 acres in total; that the defendant's land borders the Mwarumba clan on the one side and Washe Mono on the other. According to him his clan's plot number is 513 and the Mwarumba clan plot number is number 514 and each occupies their own parcel.
19. Upon re-examination by Mr Jengo, he reiterated that Kaduka Tsuma is his uncle and that his family does not claim the Mwatela land which is indicated on the sketch.
20. DW2, Mbura Kiti Pepo, testified on the same date as DW1 and adopted his witness statement dated 25th November 2021. His evidence is that he is 73 and he was born on his family's land. His family is the Mwakomora family. His family's and the Mwatela clan land are on the upper side of the Mwaremere's land. To the right of his family's land it borders the Mwatela clan land. The Mwatelas are using their land. The lands have been used just the way they are now, and the dispute raging now have come only lately. According to DW2, the Mwatelas have no right to claim the plot owned by the Mwaremeres; that it is the Mwatelas who are on the wrong.



21. Upon cross-examination by Mr Apiyo, he stated that he and Kaduka were involved during demarcation and his plot number is 508.
22. DW3, Muye Beyongo Lugo, testified on 6th May 2025 and adopted his witness statement dated 29th November 2021 as his evidence-and-chief. His evidence is that he is from the Mwakombe clan. He knows the plaintiffs to be from the Mwatela clan. He knows them only by sight. The defendants are from the Mwaremere clan and the Mwarumba clan. The Mwakombe clan land is separated from the defendants' land by a river. The Mwatela clan land is further away near the road. According to him, the disputed land belongs to the defendants. According to him, every clan got their own plot number after demarcation. The plaintiffs are the ones encroaching on the defendant land. They have farmed on the suit land.
23. Upon cross examination by Ms Omollo, he reiterated that each clan has farmed on its own land from a long time ago when the land was called "mahendo" in the 1960s, before the land was demarcated into several plots; that the defendants farmed on the disputed land which was about 50 acres during demarcation. He cannot remember the plot number of his family's land. He acknowledged that before the current court case, there existed a dispute out there. There are no structures on the disputed land as at present. Some children of Chrispus Kaduka are buried on the disputed land and he does not recall seeing the plaintiffs farming on the land. He does not recall any arrest of the defendants by the police.
24. On re-examination by Mr. Jengo, he stated that the case proceeded before the elders till the same came to the court, and the defendants had successfully presented their case before the elders. He reiterated that it is the Mwaremeres and the Mwarumba clans who have been using the land to date.

Submissions.

25. The plaintiff filed submissions dated 19th May 2025. The defendant filed submissions dated 30th May 2025. I have read and considered those submissions in the preparation of this judgment.

Analysis and determination.

26. It is clear that the parcel of land that the plaintiffs claim measures 23 acres. The plaintiffs assert that their claim to the land is ancestral and that Washe Mono, their father, successfully litigated the matter in Kaloleni Civil Case Number 17 of 1976 and the court affirmed his right over 30 acres of land. The cases that later arose involving the defendants related to 7 acres of land which the defendants are alleged to have constantly invaded. According to the defendants the Land Disputes Tribunal awarded only 7 acres to Kaduka Tsuma and the plaintiffs acquiesced in that award in good faith, only for the defendants to invade the remaining 23 acres afterwards; that there is no evidence of the defendants having occupied the 23 acres before February 2015.
27. On their part, the defendants claim to have used the suit land since the 1960s.
28. It is the plaintiffs' claim that the 1976 Kaloleni Court judgment and the plaintiffs' occupation and use of the land from time immemorial grants them beneficial and equitable interest in the land.
29. The plaintiff's further claim is that during the land adjudication exercise carried out during the pendency of this case in March 2021, the plaintiffs presented the 1976 Kaloleni judgment and their claim to the land was acknowledged, and they were listed against the suit land which confirmed their long-standing possession of the suit land. However, on 24th September 2021 and while this matter was still pending, a surveyor known as a Mr. Ngugi allocated the same land to the defendants who are of the Mwarumba clan. The plaintiff's submission is that the irregular adjudication must be disregarded and their claim upheld.



30. On the other hand, the defendant's position is that the land is located in an adjudication area and has been surveyed and given plot numbers, that is 513 and 514 respectively; that the land subject matter having been declared an adjudication area, and the adjudication having been concluded and the plots assigned numbers, the court lacks jurisdiction to entertain the present suit until the land adjudication register for the area has become final; that there is no consent of the Land Adjudication Officer allowing the present suit and the same contravenes the provisions of Section 30 and Section 81 of the [Land Adjudication Act](#) Chapter 284 and [Land Consolidation Act](#) Chapter 283 respectively. However, I find that though the defendants counsel has cited a plethora of case law on the same, the issue of whether or not consent of the land adjudication officer had been issued is an issue that was dealt with in the ruling delivered by this court on 25th January 2023 and therefore the court will not address the issue for it being res judicata.
31. The defendants, referring to paragraph 6 and 7 of the plaint, aver that the contents thereof admit that the defendants are in occupation of the suit land while the evidence of the 1st plaintiff places the date of occupation or invasion by the defendants to be 8th February 2015. They blames the plaintiffs for not producing a Police OB report or a letter from the Provincial Administration to prove that claim; that the evidence of the plaintiffs contradicts evidence in an affidavit in the proceedings produced as PExh5 which claims that the defendant took possession on 24th January 1999; that this evidence was contradicted by the defendants who stated that they have always had reuse of the land in question; that the family of DW1 had even buried children on the parcel of land over the years. Counsel for the defendants was of the view that the defence witnesses are elderly people with a clear history of the person of land in issue. However, that statement is cast into doubt considering that DW3 was not even aware of the police arrests of the defendants whom he was testifying in favour of.
32. The defendant's counsel cited Chonyi Division Kilifi District Land Civil Case Number 5 of 2000, Case Number 17 of 1976, Kilifi SRM Land Dispute Case Number 11 Of 2000, ELC Appeal 217 Of 2002, and Kilifi PMCC Number 61 Of 2015 and submitted that the preponderance of evidence shows that as at the time the present case was lodged, it is the defendants who were in possession. Counsel submitted that Section 116 of the [Evidence Act](#) created a presumption of ownership for the person in possession.
33. The plaintiff's case is that their father was called Washe Mono. Washe Mono sued Mazrui Kombo in land Civil Case Number 17 Of 1976 Kaloleni over a piece of land in Mkwambani in Kilifi District at Chonyi. The claim was that the land was his by inheritance. He described himself as from the Mwatela clan. In that case, he stated that the defendant's father sold the land to one Musikiti Tsuma without Mwatela clan consent. It is clear as day in this court record that judgment in that case was entered in Washe Mono's favour, and that a subsequent application by the defendant in that case to set aside the said judgment was declined by the court.
34. Among the plaintiffs' exhibit in the present case also is a Charge Sheet dated 7th April 1977. In the said charge sheet, it was stated that the defendant Musikiti Tsuma, Ziro Musikiti, Mwasambo Musikiti and Mwalolo Musikiti, without the consent of the owner and without reasonable excuse entered into the shamba of Washe Mono and started cultivating thereon, thus committing the offense of trespass to private land punishable under Section 3(1) Cap 294.
35. There is also an affidavit dated 28th April 1999 sworn by Washe Mono in a case of the year 1999 at Mombasa in which he states that he has at all material times been the owner and entitled to possession of the property measuring 7 acres at Mukwambani village, Mwarakaya location, Chonyi division Kilifi District which the defendant invaded on 24th January 1999 and later on plowed with a tractor, thus destroying his crops and occasioning him loss and damage; he also clearly stated that the same land is



that which was the subject of the Kaloleni District Magistrates' land Civil Suit Number 17 Of 1976 between himself and Mazrui Ngombo.

36. A letter from Tindika and Company Advocates dated 3rd June 2000 which addressed to the District Commissioner Kilifi informs this court that when Mr. Tindika went to represent Washe Mono in Land Case Number 5 of 2000 before the Land Disputes Tribunal, the Tribunal refused to allow him to do so, and also mishandled Washe Mono's presentation in the proceedings by undue interference by restricting his time, and directing on the kind of evidence he should give in the case. The letter demanded fair conduct of the Tribunal proceedings by recalling of the plaintiff therein, Washe Mono, to tender all the evidence which was deliberately refused by the elders and that his advocate be allowed to participate in the proceedings; that alternatively the panel of elders sitting in the case be disbanded and a new one be reconstituted. By a copy of that letter, the advocate informed the Chairman of the Chonyi Land Disputes Tribunal that he could not attend the sitting schedule for 5th June 2000 as he had another matter in the High Court, to wit, HCCC No 234 OF 2000.
37. Another letter from the same advocates, dated 25th January 2001, complained to the Provincial Commissioner, Coast Province of the same things contained in the letter dated 3rd June 2000.
38. By a handwritten letter dated 6th June of 2000, Japheth Washe sought to be made a plaintiff instead of a witness in the Case Number 5 Of 2000 before the Chonyi Land Disputes Tribunal. The reasons for that application were that Washe Mono had become exceedingly weak and of poor memory and was illiterate. It would appear that the Tribunal acceded to his request because there is a notice of hearing of the same case, dated 18th June 2001, addressed to him stating that the case would be heard on 30th July 2001 at Banda Ra Salama.
39. In its decision in the case, dated 11th April 2001, the Tribunal held that a different parcel that was awarded to Washe Mono in the 1976 case, and Washe Mono should not have evicted Kaduka's people from the parcel of land in dispute before the Tribunal.
40. The famous sketch to which witnesses from both sides in this case were referred to by counsel and especially for the defendant is at page 24 of the Plaintiff's bundle of documents. It happens to be a sketch that was drawn by the Tribunal upon a viewing and inspection during the conduct of the case before it in Case Number 5 Of 2000. In that sketch, the parcel of land is clearly distinct and some portion of it does seem to border the land occupied by the Mwatela clan. The sketch indicates that the said land parcel is occupied by Kaduka Tsuma.
41. The Tribunal award was adopted on 6th of June 2002 in Land Dispute Number 11 Of 2002 before P.M. Mutani, SRM and the plaintiffs herein were given 30 days leave to file any objection. Further to that leave, there is an application to file an appeal against the decision of the Land Dispute Tribunal dated 1st July 2002. It sets out the grounds upon which the appeal was intended to be filed and they are decipherable as set out verbatim below:
 - a. In the proceedings, the panel of elders made much alterations on both questions and answers asked to all witnesses of both parties;
 - b. The elders changed the statement of the defendant and also excluded my best evidence and exhibits that I produced during the seating (sic) of this case;
 - c. They also twisted my statement and finally made wrong information in their proceedings;
 - d. Again, on defence case, the elders put much intentions on wrong and impossible information stated by the defendant;



- e. The use of prepared wrong statements which they obtained from their alterations;
 - f. The elders changed the statement of Kaduka from that one he made
 - g. On their proceedings, the elders added more questions and answers to my witnesses which were not asked during the seating of this case;
 - h. In this case, the defendant did not stick on one specific reason which could explain very well to why he and the 12 others invaded our land half of it and subdivided it into 12 portions on 24th January 1999;
 - i. The tribunal did not make any investigation on defence case before judging this case;
 - j. The tribunal was very much aware that this matter has been determined in the court long time ago and cannot be rivived (sic) after a period of 25 years but they proceeded only for their benefits;
 - k. Mr Kaduka the defendant had only one witness in this case since the second witness has no shamba which is in common boundary with Mr Washe Mono the father of the plaintiff in this case;
 - l. The elders did not want to know the details of the 1976 land case of the same land I would like to know from Mr Kaduka how he knew the judgment before the.....of the court.
42. The appeal was received and acknowledged on 9th July 2002 and registered at the Provincial Land Dispute Appeals Committee as (Appeal) Case Number 217 Of 2002. Parties were summoned on 4th June 2004 to attend the hearing of the appeal on 8th June 2004. Apparently, the appeal was not finalized before the Appeals Committee and the appeal case file was transferred to the Environment and Land Court Mombasa vide a letter dated 2nd September 2013 and given the case number Mombasa ELC No 21 of 2013.
43. For brevity, the rest of the documents in the plaintiff's bundle are testimony to the following facts:
- i. The plaintiffs complained to the District Commissioner, Kilifi who wrote to the District Officer, Chonyi, on 23rd June 2010 raising the issue of complaints by the plaintiffs regarding the defendants' acts of evicting the plaintiffs from the suit land while the appeal before the Appeals Committee was still pending;
 - ii. The plaintiffs wrote to the District Office at Chonyi a letter dated 5th January 2012 complaining of his unavailability whenever the visited his office to report their complaints regarding the defendants;
 - iii. The Assistant Chief, Kizingo Sublocation, Kaloleni, wrote a letter dated 5th February 2015 to the OCS Kilifi Police Station regarding the invasion of the plaintiff's land by the defendants and indicating that the status quo order was in favour of the plaintiffs;
 - iv. The OCS Kilifi Police Station wrote to the in charge of the AP post Chonyi division on 9th February 2015 stating that the complaint has been brought to the Kilifi Police Station and that it had been found necessary to summon the accused and warn them against interference with the land as per the status quo for order made in the proceedings in court;
 - v. The Kilifi Police Station on 20th March 2015 wrote the in-charge AP Post Chonyi asking him to assist in arresting Chrispus Deche Kaduka, the first defendant, for threatening to kill as per a report made wide OB Number 22/18/3/2015;



- vi. The Ward Field Extension Officer Mwarakaya Ward prepared a crop assessment and valuation for compensation, report for Japheth Kalama Washe the plaintiff dated 27th June 2015 indicating that cassava worth Kshs 93,600/= had been destroyed 14th February 2015. The total area of crop destroyed was 2 acres; that cassava stands were found scattered haphazardly on the farm and some were thrown in a nearby bush, that weeding for currently planted maize was going on the land;
 - vii. On 8th August 2016, the Chief Mwarakaya Location wrote to Chrispus Deche Kaduka and others and Japheth Washe and others summoning them to the Assistant County Commissioner's office Chonyi;
 - viii. On 9th August 2016, Jengo Associates Advocate wrote to the Chief Mwarakaya Location on behalf of Chrispus Deche Kaduka and others warning him against interfering with matters that were pending in court;
 - ix. On 1st November 2016, in Criminal Case Number 132 Of 2016 Republic Versus Kolewa Musikiti, Changa Kasim, and Ziro Musikiti, the court ordered that the matter be referred to the area Chief Mwarakaya Location for alternative dispute resolution and or reconciliation, and that the area chief be directed to file in court his report on or before 29th November 2016 when the case would be mentioned for further orders.
44. Save for the documents relating to consent of the Land Adjudication Officer to file suit, the defendants' documents feature the Land Disputes Tribunal proceedings in Civil Case Number 5 Of 2000 and the Notice of Establishment of Chengoni Mtomkuu Adjudication Section, Kilifi County, dated 11th November 2015, the decree in Case Number 17 Of 1976, and a decision by the Chief, Mwarakaya Location, Kilifi District, dated 28th September 1998 in favour of Kaduka Tsuma. (Notably, the Chief, Mwarakaya Location, Kilifi District, was not called to give evidence and produce the same and he was not therefore cross-examined on that decision which renders it a document with very little probative value before this court.) The proceedings in Civil Suit Number 1937 Of 1999 Washe Mono versus Kaduka Tsuma And 12 Others, a letter dated 28th September 2021 by Chrispus Deche Kaduka appealing over Plot Number 567 and a receipt for payment therefor.
45. Having perused the entire record in the present case, I find that there is a case that decided the dispute between the plaintiff's predecessors and the defendants' predecessors regarding the suit land that case is Case Number 17 Of 1976. The magistrate stated as follows in those proceedings:
- “The case had been set down for viewing today but the defendant failed to turn up at the shamba. The court took a sketch plan and set it down for hearing at 2 p.m. today. The defendant is also again absent. The court took formal proof of the evidence of the plaintiff. I enter judgment for the plaintiff as prayed with costs 510/-.”
46. Judgment was executed against the defendant's predecessors and the land repossessed by Washe Mono, the plaintiff in that case. This court has keenly perused the present court record and come to the conclusion that the land that the plaintiff in that case repossessed can only be the land that the defendants in the present case later found him in and dispossessed him, leading to a litany of both civil and criminal complaints. This court is also convinced that it is the land that the Tribunal dealt with; that it is thus the land is marked as “disputed” on the sketch drawn by the Tribunal during its proceedings. It is the land that the plaintiffs have claimed to have been evicted from by the defendants in the present case. Having in mind that Case Number 17 Of 1976 ran its full course and an application for review was declined by the magistrate and no appeal was filed against that order declining review,



that judgment the trial magistrate made still stands to date. I have heard the plaintiffs be generous and state that they are only seeking 7 acres of that land; that the 7 acres is occupied by Kaduka Tsuma of the Mwaremere clan as seen on page 24 of the bundle. The court is however not concerned with that generosity for now as the prayers do not evince how that magnanimity is to be dispensed; the court has to deal with the prayers the way they are framed, no amendment having been sought by either party. However, the court is convinced that the plaintiffs know their land quite well. The land was handed to their predecessor, under whom they claim, by way of a judgment after a case was heard to conclusion and the judgment issued in that case, Case Number 17 Of 1976, still stands to date. It is unfortunate that all the other non-court authorities that dealt with the dispute after it cropped up afresh failed to recognize that judgment in Case Number 17 Of 1976 for unknown reasons. If the defendants ever came to be on the land, such return to the land was after the eviction of Mazrui Ngombo, or anybody claiming under him or claiming under his father, from the land. In any event, I have noted that none of the other subsequent cases that came after the 1976 case ever reached a final conclusion before the present judgment. Case number 1937 of 1999 was dismissed but reinstated on 28/2/2002 and no other proceedings have ever been taken in it ever since. The appeal that was lodged before the Provincial Land Disputes Appeals Committee regarding the Land Disputes Tribunal award was not prosecuted, and it was transferred to the ELC upon the repeal of the Land Disputes Tribunal Act 1990, and renamed Mombasa ELC No 21 of 2013; immediately thereafter proceedings seeking to have the respondent, Kaduka Tsuma, now deceased, substituted by his legal representative in that appeal took centre stage and nothing has been heard of it since 27/11/2014, more than 12 years ago. It is clear that the present case is the one to determine the rights of the parties.

47. Owing to what I have stated herein above, it is clear that all the evidence points to the fact that the suit land was in the possession of Washe Mono by virtue of the execution of judgment in Case Number 17 Of 1976. Washe Mono is of the Mwatela Clan. The defendants had no right to be on the suit land, but they have been forcibly invading it and maintaining their possession thereof. It is this court's finding that the suit land belongs to the plaintiffs having descended to them from Washe Mono and by virtue of them being from the Mwatela Clan, and the defendants have been mere trespassers. Consequently, the plaintiffs are entitled to 7 acres from the area marked as disputed land on the sketch produced at page 24 of the plaintiff's bundle in this case.
48. Accordingly, this court enters judgment for the plaintiff against the defendants in this case and allows prayers no (a), (b), (c) and (d) in the plaint dated 14th September 2014.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 23RD DAY OF MARCH 2026.

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

