

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC CASE NUMBER EO55 OF 2025

RUDEINY SHARIFF ABDUREHMAN.....
PLAINTIFF

VERSUS

KHITAMI SAID ALI..... 1ST
DEFENDANT

MWANAHAMISI MOHAMED WAYU..... 2ND
DEFENDANT

FATUKI NGALA.....3RD
DEFENDANT

RULING

1. The plaintiff brought the present suit by way of an Amended Plaint dated 21st May 2025. He sought the following orders:

- a. *A declaration that the plaintiff is the rightful and lawful owner of the entire parcel of land;*
- b. *An order of permanent injunction restraining the defendants, their agents, servants or employees or anyone claiming through them from entering, selling, subdividing, remaining and or dealing with the suit premises in any manner whatsoever;*
- c. *An order compelling the first defendant to cease any claims or interference and to produce all documents in their possession relating to the suit property;*
- d. *An order directing the removal of the mark "X" on the suit property and the resumption of the registration process in the plaintiff's name;*
- e. *A Declaration that the sale agreements entered into by the first defendants with the second and third defendants are null and void;*
- f. *An order declaring that the parcel numbers or titles issued to the 2nd and/or 3rd defendants arising from the suit property are unlawful and directing the 4th defendant to revoke or disregard them;*
- g. *An order restraining the 4th defendant from issuing any title deeds parcel numbers and beacon placement or other instruments in respect of the following parcel IDs pending the hearing and determination of the suit.....(spent)*
- h. *Costs of this suit.*

2. The plaintiff claims that he is the purchaser of a parcel of land situate at Makokoni Area Kipezini in Kipini town measuring 120 m by 60 m from the first defendant. He purchased the suit land on 12th November 2018 for a consideration of **Kenya Shillings 20,000/=** and the sale was formalized through a written agreement signed by both parties in the presence of witnesses and the Area Assistant Chief.
3. He also took possession and has remained in continuous possession ever since. During the County Government exercise to assist residents in securing title deeds, the plaintiff submitted the parcel for survey and was issued with an enumerations certificate with the password **ID NUMBER KPN/350/C**. The first defendant under the pretext that he had only sold half of a plot to the plaintiff has now purported to sell a portion of the suit land to the second and the third defendant which sales were also endorsed by the Area Assistant Chief despite his full knowledge of the plaintiff's prior ownership and occupation. Subsequently the plaintiff's parcel was marked with an X after the Minister of Lands Tana River County issued a directive halting registration of parcels involved in disputes. The plaintiff avers that the acts of the defendants amount to breach of contract, fraud, trespass and unlawful interference with his proprietary interest.
4. The defendants were served with summons and plaint but they never filed appearance or defence. They were not present at the

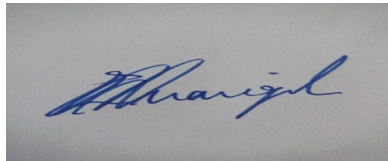
hearing and the hearing took place *ex parte* on **22/1/2026** when the plaintiff alone testified in his case and it was marked as closed.

5. The plaintiff's evidence matched the contents of his plaint as set out herein above. He produced in evidence, the agreement vide which he purchased the suit land and the certificate that he was issued by the persons that conducted the survey over the suit land.
6. Though the land is unregistered, the plaintiff has established that there occurred a survey as a prelude to the formalization of occupation and issuance of title to occupants of Makokoni Area, Kipezini, in Kipini. He has established that the survey exercise found him in occupation of the suit land and that he was issued with a reference number for the plot that he was in occupation of. In this court's view, he would not have been issued with that number had he not been found to be in occupation. He has thus established that by the agreement that he produced as **DExh 1**, he was sold the whole of the suit land by the 1st defendant and the 1st defendant lacked any capacity to sell any portion thereof to the 2nd and 3rd defendants. The plaintiff has already indicated that the 3rd defendant has conceded that the suit land is his and he has vacated the portion that was purportedly hived off and sold to him by the 1st defendant. The 3rd defendant also did not appear in court to contest the plaintiff's claims
7. In the opinion of this court, the plaintiff has proved his claim on a balance of probabilities and I enter judgment in his favour against the defendants and I order as follows:

- a. A declaration is hereby issued declaring that the plaintiff is the rightful occupant of the entire person of land described upon survey as Parcel ID KPN/315/C;
- b. An order of permanent injunction restraining the defendants their agents, servants or employees or anyone claiming through them from entering, selling, subdividing, remaining and or dealing with the suit premises in any manner whatsoever;
- c. The first defendant shall cease all his claims, interference or dealings in respect of the suit property;
- d. The mark "X" placed on the records in respect of the suit property shall be removed henceforth and the title registration process in the name of the plaintiff shall resume and continue;
- e. A Declaration is hereby made declaring that any sale agreements entered into between the first defendant and the second defendant and third defendant in the relation to the suit property are null and void;
- f. A Declaration is hereby made declaring that any parcel numbers or titles issued to the second and third defendants arising from the suit property are unlawful and null and void and are hereby cancelled;
- g. The costs of this suit shall be borne by the 1st and 2nd defendants only jointly and severally.

Dated, signed and delivered at Malindi on this 30th day of April, 2026.

**MWANGI
JUDGE, ELC,**

A rectangular box containing a handwritten signature in blue ink, which appears to be 'Mwangi'.

**NJOROGE,
MALINDI.**