



**Chonga v Janji & 4 others (Environment and Land Case 12 of 2017)
[2026] KEELC 2445 (KLR) (28 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2445 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 12 OF 2017**

FM NJOROGE, J

APRIL 28, 2026

BETWEEN

JUSTIN MWANGO CHONGA PLAINTIFF

AND

MWAROME MUNGA JANJI & 4 OTHERS & 4 OTHERS DEFENDANT

JUDGMENT

Pleadings

Plaint

1. The plaintiff's grievance in this suit is that the 1st to 4th defendants engaged in fraud and colluded with government officials, cited as the land registration and the land adjudication officials respectively, to have the land known as Chonyi/Bedzombo Kitsoeni/689 registered in their name. He is seeking nullification of their registration as proprietors. The particulars of fraud and illegality are set out at paragraph 12 of the plaint. The plaintiff is seeking the following orders in his suit:
 - a. A declaration that the plaintiff is the lawful beneficial owner of the suit property situated Kilifi and identified as title number Chonyi/Bedzombo Kitsoeni/689;
 - b. An order directing the District Land Registrar to rectify the land register by deleting and cancelling the registration of the defendants severally as the proprietors and restoring the property in the plaintiff's name;
 - c. Any other relief deemed just and expedient and costs of this suit.

1st -4th The Defendants' Defence & Counterclaim Dated 15th January 2024

2. The 1st to 4th defendants filed a Defence and Counterclaim dated 15th January 2024 denying the plaintiff's claim and calling the plaintiff a trespasser on the suit land. They claimed to legally hold title



to the suit land and averred that the plaintiff has never occupied the land. They refer to the suit land as their ancestral land subject to overriding interests such as customary trust. They claim that the suit land was ancestral land held in trust and passed down through generations by way of inheritance and which has been owned by their family since the 1800s. They said that Mwalune Karisa Goryo is a stranger to them; that he does not belong to their family or lineage and that he had no good title to pass on to the plaintiff. They challenge the consideration of Kenya Sh. 18,000/- as at 1982 to be too low and impossible in respect of such prime land as the suit land. They aver that if they plaintiff indeed purchased the suit land, then he never conducted any due diligence to ascertain the history and the real owners of the same. They aver that their title deed was issued on 18th April 2008 and that they have continuously occupied and cultivated the entire land without any interference. They aver that the first defendant successfully lodged on behalf of their family objection proceedings against some third parties who had been wrongfully allocated the suit land. They were awarded the suit land in those proceedings and that paved the way for the first to 4th defendants' registration as proprietors thereof.

3. In the counterclaim, they reiterate the matters set out in their defence, deny the allegations of sale to the plaintiff and also fault the agreement by which the sale is said to have been conducted as unsigned and unwitnessed by any of their kin. They seek the following orders in the counterclaim:
 - a. A permanent injunction be issued against the plaintiff restraining him or his agents from accessing, damaging or interfering with the property title number Chonyi/Bedzombo Kitsoeni/689 in any manner;
 - b. A declaration that the 1st, 2nd, 3rd, and 4th defendant herein are the lawful beneficial owners of the suit property situate at kilifi and identified as title number Chonyi/Bedzombo Kitsoeni/689;
 - c. General damages for trespass and causing the 1st, 2nd, 3rd, and 4th defendants anxiety and mental torture in ability to protect and preserve their property;
 - d. Interests on (c) above at the prevailing commercial rates of interest until full payments are made;
 - e. The costs of the counterclaim plus interest at the rate and for the period of time determined by this court;
 - f. Such further or other relief as maybe appropriate in the circumstances.

5th Defendant's Defence

4. The 5th defendant filed defence on 20th February 2019. He denied the claim and stated that no fraud or other wrongdoing has been established as against him. He denied being aware of, or party to, any fraud as set out in paragraph 12 of the plaint.

Reply To Defence and Defence to Counterclaim

5. This pleading was filed by the plaintiff in the main suit on 29th February 2024 in which he reiterated the matters in the plaint. He averred that he has been in possession of the land since 1982 until recently when the defendants interfered with his possession. He denied that the land was ancestral to the defendants and asserted that they have another homestead where they live away from the suit land; that the defendants are the grandsons of the seller; that the son to the seller has not objected to the plaintiff's claim; that the defendants, on the basis of their relatively young age, lack the ability to know the correct facts. He maintained that their title was fraudulently obtained. In the defence to the counterclaim, he maintains that the defendants' ignorance of their ancestors should not afford them an excuse to deny



his claim. That at the time of the transaction that gave him the land, the defendants were young and not privy to the disposal of the land by their grandparent. That the plaintiff allowed them to till the land at one time, only for them to refuse to vacate and also to procure an illegal title to the same in their names. He reiterated that the defendants have their land parcels elsewhere and challenges their locus and asked the court to dismiss the counterclaim.

Evidence

Plaintiff's Evidence

6. The plaintiff testified on 17th October 2024. His evidence is that he purchased the suit land in 1982 from Mwalune Karisa Goryo for Kshs 18,000/-. He involved the Assistant Chief one John Kandoro and 2 village elders Nenje Chisambo and William Mutana Mwalunga, who witnessed the sale agreement and affixed their thumbprints on it. He was given possession of the suit land and commenced farming immediately thereafter. He did not follow up on the title deed. Upon retirement, he went to the lands office and found that the defendants had been registered as the owners of the land. He went to the lands office for the second time to examine the process of the acquisition. A letter dated 11th January 2017 was written by his advocate informing the defendants that the land was his and they nevertheless failed to surrender the land, so he came to court. He consulted the Chief who wrote the defendants a letter, but they never presented themselves at the Chief's office. He asserted that the title was illegally obtained and that it had no corresponding green card at the land registry; that neither he nor Mwalune from whom he had purchased the land was informed or involved in the acquisition of the title deed which was obtained when he was away at work.
7. According to him, the area hosting the suit land had two clans: the Chibo Clan and the Goryo Clan. He never saw the defendants at the execution of the agreement, and they must have been of tender age. He stated that he was in possession of the suit land and he has not permitted any other person to farm on the land. He does not agree with the proceedings in Objection Number 246 referred to by the defendants. He did not know whether the Land Dispute Tribunal decision was adopted by the court but he was not involved in those proceedings. Mwalune who sold him the land is from the Goryo Clan. The defendants could not have been involved because they came from the Chibo Clan. According to him, the defendants have not been farming on the land. The present case had proceeded to conclusion without their presence despite the fact that they had been served and they knew of it and filed a memorandum of appearance. When he got judgment in this case and went to the lands office, he was informed that there was no green card for the land. The matter was advertised in the Kenya Gazette and the defendants' title was cancelled and he was issued with a green card and a title; that at the time of the agreement exhibited by the defendants dated 11th November 1989 purportedly for plot number 689, the plaintiff was already on the land and he never knew of that agreement then. Nevertheless, he faulted the agreement as not stating the land which was being sold. Neither was he involved in the lease agreement entered into by the defendants dated 4th June 2009, or the lease agreement dated 6th March 2017. The latter agreement did not have a plot number. Also, he was not involved in the agreement dated 30th October 2017 which also does not reflect any plot number.
8. Upon cross-examination by Ms. Malinda, he stated that all his witnesses are deceased; that one Harold Deche Kai named in the agreement as a co-purchaser is not named in the title issued in his name, and he is deceased and none of his family members are involved in the present case. He further stated that the land is in Mongotini/Rongo Baya. Mwalune's father was deceased by the time the plaintiff bought the land. He defended the purchase price of Kshs 18,000/- stating that it was a lot of money back then in 1982; that he was away at work during adjudication, but he came back and followed up the issue in 2017. He was not involved in the objection proceedings at the adjudication stage. He has farmed on the



land since 1982. He has farmed on 5 acres out of the 26 acres. There are other persons who farm on the rest of the land. He was not aware of purchase of the land from the defendants by one Dava Chigiri, who is now deceased but whose family is on the land. He knows one Tunje Suleiman who is mentioned in the agreement of 14th January 2009 who farms on 2 acres of the land. He does not know Nyale Kiti Mwachiru who is mentioned in the agreement of 6th March 2017. Neither does he know the Mwamuye Chishenga named in the in the agreement of 30th October 2017. He is familiar with the Zaka clan. He does not know the Kai family or the Chibanza family. The only member of the Chibanza family that he knows lives on plot number 720. Plot number 1099 is occupied by Dixon Mtana (PW3).

9. According to the witness, though people farm on the land nobody lives on it. Karisa Goryo was buried on the land. The plaintiff did not know Goryo, the father of Mwalune, but he knew the son Mwalune. Mwalune had been living in the area but he later relocated from the area. Karisa Goryo lived in the area in the late 1970s. The plaintiff did not find their mother, brothers or cousins in the area. The Goryos relocated after selling their land. He admitted that the land adjudication process gave people land where their clans were living; that there is no relationship between the Goryos and the Chibanzas. According to him, the defendant brought goons in May 2024 to evict him.
10. Upon re-examination by Mr Magiya, he insisted that the defendants had been served with process. He stated that by the time he purchased the suit land, adjudication had not been done and he was not involved in the drawing of the map. While buying the land, he walked around it with the Chief and elders. He paid for it in 3 installments. No one disturbed his possession until 2024 when some people came and prevented him from farming maize thereon. He does not know those people. Some clan members from Mwalune's side signed the agreement: Mwangemi Munga and Goda Dzombo. Harun Kai has not opposed his claim in the suit.
11. PW2, Dr Matthias Anderson Ezekiel Kai, resident at Tezo, a medical doctor, testified on the same date as the plaintiff and adopted his written witness statements dated 18th December 2018 and 28th February 2024. His evidence is that he knows the plaintiff; that the plaintiff purchased the suit land in 1982 from Mwalune Karisa Goryo and has been farming it since. PW2 was born in Mwangatini Area in the 1950s; he was aware that the plaintiff had taken up the land and he helped the plaintiff purchase the land. According to him, Mangololo and Mwangatini are two different areas. He knows the plaintiff's neighbors. To the East is Mr. Bejembe Mtana. When PW2 and PW1 came to the area, each clan occupied its own land within the locality. The Chibo Clan lived in a place separated by 2 km from the Goryo Clan area. According to him the defendants do not have any relationship with the suit land, and they have their own land in the Chibo area. Karisa Goryo was buried on the suit land near a mango tree and a hut. The land is only used for farming. The defendants' agreements concern land in Mangororo area and not in Mwangatini.
12. Upon cross-examination by Ms. Malinda, he stated that the land is around 20 to 22 acres. PW2 bought his land for Kshs 34,000/- at an auction. Mwaluna Karisa Goryo was buried at Maweni in the 1980s when he died. PW2 believes that he was buried there purely for convenience. Karisa Goryo family are of the Dzaka clan. PW2 knew Karisa Goryo in person. He was a farmer. His family lived in Chonyi. All the persons farming on the suit land, including the plaintiff, live elsewhere. The plaintiff grows maize on about 20 acres. The Chigiri family does not farm on the suit land. The father of Haroun Kai is called Ezekiel Kai and is brother to the plaintiff's mother. They lived together. The plaintiff is younger than Haroun. PW2 produced money and purchased a portion of land for Haroun from Mwalune's son, which was located next to the suit land. The Chigiri family farms on the land, having bought some of it from Karisa Goryo. The Chibanza clan lives to the North. To the East of the land is plot number 1099 and number 720. Plot number 1099 belongs to Mtana. Plot number 720 belongs to Mbigo's family. Kai and Andrea are from the Zaka clan.



13. PW3, Dickson Mtana a retired Parastatal officer, testified on 10th February 2025 and adopted his witness statement dated 28th February 2024 as his evidence-in-chief. His evidence is that the plaintiff is his neighbor to the East and he has known him for over 30 years; that the plaintiff bought the suit land in the 1980s while PW3 was still on his land; that the son of the one who sold the land to the plaintiff is called Stephen Mbigo who owns plot number 720.
14. Upon cross-examination by Ms Malinda, he stated that he purchased his plot number 1099 in the 1980s from a Mr Kamba, the father to Stephen Dingo, for Kshs 150,000/=. It was 6 acres. The plaintiff then came to the area slightly later than PW3. PW3 admitted that he is related to the plaintiff.
15. After the evidence of PW3, the plaintiff's case was marked as closed.
16. DW1, George Munga Njanji, testified orally and adopted his witness statement dated 11th January 2024 as his evidence-in-chief. His evidence is that he was born on Plot Number 689 which measures 10.18 acres. The plot is registered in the names of 4 people, including himself. He produced a copy of the title and a copy of the official search. His father is also father to Munga Njanji. The father of the rest of the owners of the land is called Chibo Janji. The title to the land was issued to the 1st - 4th defendants as registered owners on 18th April 2008. According to him, the land is family land which his father and his uncle inherited from Chibo Mumbu Chibo (DW1's grandfather). According to him, the defendants farm maize on the suit land, and his grandfather used to farm on it also when he was alive. His father too, used to farm on it. According to him also, the defendants have leased some of the land to some people. He clarified that under the kind of "rehani" lease arrangement they have entered into, the lessees give money to the plaintiffs and farm on the land until the money is refunded to the them and they surrender the land back to the owners. DW1 has a lady going by the name Teresia as his rehani customer vide an agreement dated 11th November 1989, 4th June 2009, 14th January 2009, 6th March 2017 and 30th October 2017. He stated that Dava Chigiri came to the suit land long ago; that it is the defendants who sold Dava Chigiri some land. However, before that sale to Chigiri, somebody by the name Robert Kambi Mwalune had at one point claimed to be keeping the land for Dava Chigiri. Mwalune was said to have sold the land to the plaintiff, Justin Mwangi, in 1982. After Mwalune had purportedly sold the land to the plaintiff, Robert returned and purported to sell the land to Dava Chigiri. The defendants informed Dava Chigiri that Robert Kambi Mwalune is not the owner and they entered into an agreement dated 4th June 2009 whereby Dava Chigiri paid Kenya shillings 120,000/= to the defendants; the local Chief endorsed that agreement. DW1 admitted that Mwalune Karisa Goryo used to be in the area and that after he sold 3 acres out of the defendant's land (plot no 689) to the plaintiff, he left and went to Malindi, and Robert his son came on to the land and transacted with Chigiri. DW1 admitted that his family had other land elsewhere and that Mwalune had lived on the suit land. However, DW1 came to have his name in the title because in 1989 during demarcation Chibo Mumbu Chibo and others were involved in registration, they gave the plot a number, 689. Plot number 689 was registered in the name of Pekeshe Gorora Kiti, Kai Andrea, one Deche and Chibo Mundu, all originating from the Zakaa clan. The defendants lodged objection proceedings with the land adjudication authorities. The respondents in those objection proceedings conceded to the case and left the land and the defendants were registered against the parcel. DW1 produced DExh4, an agreement between Robert Mwalune and Dava Chigiri made in 1989.
17. DW1's further evidence was that by an agreement dated 14/1/2009 (DExh6), he entered into a lease agreement with one Tunje Suleimani who is on the land to date. Salim Chibo leased some land to one Nyale Kiti who is still on the land to date vide DExh8. DW1 also leased some land to Rofas Mwamuye vide an agreement dated 30/10/2017, (DExh8) and he is still on the land to date.



18. When shown DExh 1, and agreement dated 17/10/1982, DW1 stated that he knew Joseph Gogo, but he knew none of the other persons named in the agreement. He stated that Mwalune Karisa Goryo did not come from the defendant's clan.
19. Under cross-examination by Mr. Magiya, DW1 stated that he was born in 1974 and Munga Njanji was his father; that Munga had inherited the suit land from Chibo Mundu Chibo who was his father. The suit land is in an area called Mangororo and it had no houses on it. Mwangatini is about 2.5 km from Mangololo. He denied having any blood relationship with Mwalune Karisa Goryo who was reputed to be a mobile witch. According to DW1, he and his parents were on the suit land in 1974. He asserted that he was born on the suit land; that Chibo Mundu Chibo is an elder uncle of his; that when DW1 was about 20 years old, his father died. DW1 never saw Mzee Mwalune. He admitted that they never filed for any succession to their father's estate but they have a title to the land which they claim to have inherited from their father. When shown DExh 9A, he pointed out plot number 689 thereon as where his uncle was born. The alleged witchdoctor going by the name of Mwalune, whom he heard of when he was an adult, was not living on that land. He admitted that their plot borders plot number 1099. He stated that he has never seen the plaintiff. He admitted that he has never built on the land. He also stated that his father built on it and then moved on to some other place. He admitted that the land is used only for farming. He admitted that ALL the people who farm on the land live elsewhere. He admitted that the award that gave them the land was never taken to court and the matter ended at the lands office. He stated that in 1982 when the plaintiff claims he bought the land, DW1 was only 7 years old. He asserted that he and his brothers used to visit the land when he was a child.
20. He denied that there is anybody by the name of Karisa Goryo in his family.
21. On cross-examination by Ms Ekiru, DW1 stated that the plaintiff was not involved in the objection proceedings. He stated that he and his brothers do not live on the suit land; that plot no 689 is at Mangororo and that Mwangatini is about 2 kilometres past Mangororo; that Bedzombo Kitsoeni was earlier known as Mangororo.
22. Upon re-examination by Ms. Malinda, he stated that Mwangotini Rongo Baya is about half a kilometre from plot number 689 in the east; that their plot borders plot number 1099 and 720. He admitted that Mbigo's land is number 720 which is to the East; that to the West and to the North are settled some clan members from DW1's Zakaa clan. He confirmed that he and his brothers did not take out a grant of representation and added that as at the time of demarcation, the land issued in the name Chibo Mundu Chibo; that demarcation took place in 2005 and the title of issued in 2008. He asserted that before the filing of the present suit the defendants had been on the land with no disturbance.
23. DW2, Salim Chibo Mundo, testified orally and adopted his witness statement dated 11th January 2024. He stated that he was born at Kitsoeni. He stated that plot number 689 is family land which initially belonged to Chibo Mundu Chibo of the Dzakaa Clan. He stated that his family conducts subsistence farming on the suit land and that they have a title deed to it. He stated that when they discovered that the land had been registered in the names of his father and 4 other people at demarcation, they lodged objection proceedings under the name of the 1st defendant. The 4 other persons were from another clan or clans. He was above 18 during the objection proceedings. The plaintiff was not involved in the objection proceedings. Vide DExh7 he leased a portion of the suit land to one Nyale. His brothers also leased out portions of the land in the same manner. According to him, Tunje Suleiman is still on the land. He does not have any blood relations with Mwalune Karisa Goryo. According to him, the Chonyi lands were clan lands and clan elders had to point out land to someone and inform him so if he was to own it. He claimed that they came to know of Mwalune Karisa Goryo when Justin Mwango Chonga, the plaintiff, came along. He stated that Mwalune Karisa Mwalune Goryo was buried at Galana. He



- stated that Mwalune had a son, Robert Kambi Mwalune; that Robert tried to sell a portion of the suit land in 1989 vide DExh 4 to Nixon Chigiri. He admitted that the plaintiff uses 4 acres which he claims that he bought in 1982. Chigiri was informed of the alleged fraud by the plaintiff, and he paid Kenya shillings 120,000/= to the defendants on 4th June 2009 in order to keep the land.
24. Upon cross-examination by Ms Ekiru, he stated that after the objection at adjudication stage, only his father's name was left registered against the land while the others were expunged; that he and George Munga Janji are cousins; that he and Lutu are brothers while George and Mwarome are sons to his uncle; that they had all shared the land amongst themselves; that a seller of land has to involve his family; that Mwangemi Munga married a daughter of the brother to Mwaluna Karisa Goryo; that Robert came and sold a portion of 4 acres from the suit land; that Nixon Dava Chigiri acknowledged that the land belong to the defendants and paid to them for the land he had purportedly bought from Robert.
 25. Upon cross-examination by Mr Magiya, DW2 stated that he was born in 1978 and that in 1982 he was therefore only 4 years old. He admitted that the things he spoke about were those that were told to him, and he could not tell the truth or falsehood thereof. He admitted that he is from the Chibo Mundu Chibo family; he asserted that there was nobody by the name Mwaluna Goryo who owned land in the area; that Mwaluna and Kambi never farmed on the land; that Chigiri, to whom they sold land in 2009, died and his brother took over the land. He denied that they received the land from Mwaluna Karisa Goryo. He did not know that Chigiri died in 2008. He did not know the plaintiff until they were summoned by the Chief to his office. They lived on plot number 689. Goryo came from Galana and he was buried in Galana. They were not issued with any allotment letter but they obtained a title nevertheless.
 26. Upon re-examination by Ms. Malinda, he admitted that Dava Chigiri is not named in the agreement dated 4th June 2009. He stated that the plaintiff knew of the objection proceedings. He also stated that Robert is still alive.
 27. DW3, Stephen Mbigu Chikodza, testified orally and adopted his witness statement dated 11th January 2024. His evidence is that he lives at Chonyi, away from where he farms but he has known the suit land since 1989. His plot is number 720 and it shares a boundary with plot number 689. He was registered in 1989. He was born in 1957. He got his land during demarcation. He and others were still farming on the lands before demarcation. The land used to belong to their forefathers. His grandfather was named Gogo. At demarcation Chibo Mundu Chibo was on the land. DW3 did not know of Mwaluna Karisa Goryo. DW3 still conducts farming on plot number 720 and the Chibo family still farms on theirs. The Zaka clan is occupying lands in the same area.
 28. Under cross-examination by Ms Ekiru, he stated that he does not know DExh 9A; that the Chibos have been on the land for as long as he can remember. However, he admitted that he could not know if anyone had ever purchased the land. He did not know of Karisa Mwaluna Goryo.
 29. Upon cross-examination by Mr. Magiya, he maintained that he farms on plot number 720 and that he has never seen the plaintiff; that if there was any land sold out of plot number 689 to the plaintiff, he did not know about it.
 30. Upon re-examination by Ms. Malinda, he stated that plot number 1099 is owned by one Dixon who came to the area in the year 2003, and that he got that portion by way of "rehani".
 31. At the close of the evidence of DW3, the case of the 1st to 4th defendants was marked as closed whereupon Ms Ekiru indicated to court that she would not be calling any witness and parties were ordered to file submissions in the case.



Written submissions of the parties.

32. The plaintiff filed submissions dated 10th November 2025 while the 1st to 4th defendants filed their submissions dated 19/11/25. This court has carefully read those submissions during the preparation of the present judgment.

Plaintiff's submissions.

33. Counsel for the plaintiff challenged the capacity of the defendants as grandchildren whereas their own parents would have been their ideal persons to challenge the plaintiff's claim to the suit land; that the Chibo and the Goryo clans are different and each has its own land and the defendants should restrict themselves to their land which is located elsewhere; that the defendants also failed to call any person from the local administration and their claim is therefore questionable, bearing in mind that elders and local leaders play a role in matters related to community land. He highlighted that the letter of understanding dated 17th October 1982 was clearly witnessed by the Assistant Chief one John Kandoro amongst others who have since passed on; that some of the people who tilled the land when the plaintiff was away as a civil servant were grandchildren of the original beneficial seller and he was therefore not worried about losing the land. During adjudication the defendants in collusion with government officials ignored the plaintiff's right to the property and clandestinely obtained registration of the land in their names without his consent. He stated that the process of acquisition of the first-fourth defendants' title has not been demonstrated and therefore it is an irregular title.
34. He relied on the evidence of PW2 as confirming that Karisa Goryo had beneficial interest in the suit land and that the Mwalune's son, Robert but failed to do so for pecuniary problems.
35. Counsel pointed out the tender age of the defendants, and the claim that they were not born in Mwangatini, as disqualifying them from laying any claim for ownership over the suit land. He stated that they belong to the Kwa Chibo area where the Chibo clan has its land. He also relied on the evidence of his witnesses that Karisa Goryo was buried in Mwangatini.
36. Counsel also relied on the evidence that PW3 is the plaintiff's neighbour who recognizes the plaintiff as the owner of the suit land.
37. Counsel also faulted the evidence of DW1 regarding inheritance through two generations as being speculative; that there was no evidence to substantiate the claim that DW1 was born on the suit land.
38. It was submitted that the leasing of the land to third parties was fraudulent and illegal; that the land adjudication proceedings were a sham and whose end was predetermined as no notice of attendance was demonstrated to have been issued to affected persons including the plaintiff; that in any event no such proceedings were ever taken to the magistrate's court for adoption in order to form a valid decree and so they could not confer title upon the defendants.
39. DExh 4 was faulted for:
- a. stating that the suit land is at Msunduzini.
 - b. failing to specify acreage;
40. However, DExh4 was also credited as beneficial to the plaintiff's case since it demonstrated that it recognized Robert Mwalune as having been in the area.
41. DExh 5 was faulted as not credible for giving its date of execution as 4/6/2009 yet one of the parties (Dava Chigiri) was said to have died on 6/7/2008.



42. DExh 6 and 7 were both faulted for failing to specify the location of the land leased and being ambiguous.
43. DExh 8 was faulted for failing to specify the suit land as the parcel being dealt with.
44. Counsel submitted that there was a contradiction between the evidence that the defendants had never seen the seller (Mwalune) and his son (Robert) in the area yet the 4th defendant admitted that he refunded Kshs 22,000/= to Robert; that DW4 also confirmed that Karisa Goryo was a witch doctor who relocated from Malindi to Chonyi.
45. DW3's evidence was faulted for referring to Dickson Mwachunga as a squatter yet it was DW3's father who sold him the land he is occupying (plot no 1099) which fact is reflected in the sketch map the defendants themselves produced as DExh 9(a). it was urged that the reason why the defendants' fathers, Chibo and Janji failed to oppose the sale to the plaintiff by Mwalune was that they recognized that the land was not theirs but Mwalune's.
46. Counsel cited section 26 (1) of the *land registration act* and the case of Munyu Maina v Hiram Gathiha Maina Civil Appeal No 239 Of 2009 and stated that when a party's land title is called into question, he has an obligation to demonstrate the root thereof. That in the absence of how the defendants acquired the suit land the only inference is that the same was acquired fraudulently; that in the circumstances the court has power under Section 80(1) to order rectification of the register. It was submitted that on the other hand, the case of Elmbukara Limited vs Alice Waithira Kimani & 2 others- NBI ELC Civil Suit No 38 of 2012 was relied on. The plaintiff urged that the defendants had failed to demonstrate that the plaintiff acquired the suit land illegally.

The Defendant's Submissions.

47. It was submitted by counsel for the defendant but the plaintiff failed to produce a credible sale agreement to support his claim. The agreement produced is drawn by unknown persons and signed by all who are conveniently diseased with exemption of the plaintiff. That the same is not witnessed by indie king of family members of the alleged seller Mwalune Karisa Goryo or even by PW2 who claimed to have been present and to have contributed money for the purchase of the land.
48. It was also submitted that PW2 did not raise an issue during the demarcation and adjudication processes and therefore his evidence is not credible especially as he stands to benefit from the suit land; that the sale agreement was also known witnessed by any of the defendant's kin yet it was their ancestral land; that the land in the agreement is Mwangatini Longobaya which is totally different from the actual location of the suit property in Chonyi/Kitsoeni/ Bedzombo or Mangororo Ngamai; that the sale agreement fails to specify the location and precise of the parcel of land purchased.
49. The difference in the values paid for land purchased in the same locality were also pointed out; that PW1 alleged to have purchased 10.21 hectares of land for Kenya Shillings 18,000/= in 1980 while PW2 stated that he purchased only 6 acres for Kenya Shillings 160,000/= in an auction. Counsel submitted that in 1982 land measuring 10.21 hectares could not have been worth Kenya Shillings 18,000/=; that PW1 has never been in actual possession and occupation of the land; that day plaintiff does not dispute the lease and sale of portions of the suit land.
50. The defendants admitted having nullified the agreement dated 11th and November 1989 between Robert Kambi Mwalune Karisa Goryo Vs Nixon D. Chigiri.
51. Defendant counsel submitted that the defendants have produced DExh2 being the objection Proceedings Number 246 Of 2005, at which the plaintiff failed to appear, was still amongst the listed



- owners as at 2005; that the plaintiff never featured in those proceedings and that there has never been an appeal against those proceedings and the award.
52. Counsel submitted that PW1 is not accounted for his whereabouts during the land adjudication and demarcation and issuance of title processes which were publicly advertised; that since the local people know each other, he could have been alerted by any of them if at all he genuinely owned the suit land, yet he now claims to have no prior knowledge of all the land processes.
 53. It was urged that since PW3 purchased parcel number 1099 from the family of DW3 then DW3 has a better history and knowledge of the land and kinship and PW3 who only purchased the land. DW3's evidence was that Dzakaa Clan occupy all the neighboring parcels of land and the Chibo family is the beneficiary of the suit land.
 54. Citing Sections 107, 109 and 112 the defendants' counsels submitted that the plaintiff has failed to discharge the burden of proof on all limbs of his claim; that the contention that Mwalune Karisa Goryo had customary trust to the land is a question of fact requiring proof by the person alleging, and that courts will not imply the existence of a customary trust.
 55. The defendants relied on Section 24(a) and 26 of the [Land Registration Act](#) and Samuel Kamau Macharia and Another Versus Kenya Commercial Bank Limited and Two Others 2012 eKLR and Alfred Ochiengo Onyango Versus Attorney General and Another 2019 eKLR for the proposition that title conferred through registration is absolute and should only be charged where there is clear evidence of fraud misrepresentation or illegal acquisition.
 56. The Defendant's counsel also relied on Section 28 of the [Land Registration Act](#) and Isaac Kieba Minanga versus Isaiah M'Lintari & another 2018 eKLR and argued that customary trust is a recognized legal principal in cases where land is passed down through generational inheritance within communities; that the elements in a customary trust are as follows: the land must have been historically owned by the claimant's lineage or family, meaning it should have been passed down through generations as part of traditional inheritance; that he should prove that he was entitled to the land under customary law practices; demonstrate that he had a recognized right to possess or use the land according to communal traditions; that he must have acquired title subject to the customary claims or rights of others stop the time of registration, and finally, that he must show continued occupation or possession consistent with their stated trust proving that his presence on the land has not been interrupted and aligns with a customary arrangement under which he claims ownership. The defendant argue that the plaintiff has failed to prove existence of customary trust with the seller Mwalune Karisa Goryo; that the defendants have on the other hand proven on a balance of probability the existence of a customary trust; that the defendants have been in actual occupation and possession of the suit property and are therefore protected under Sections 28 and 30(g) of the Registered Lands Act.

Analysis And Determination.

57. In this case, all the parties seem to physically know, and claim, the same land on the ground which is the suit land. There is no question of mixed-up numbering or such that would make the court doubt that any of the parties may have been entitled to any other land. The apparent preliminary issue of whether the documentary evidence of the parties points to "Mwangatini" or "Msunduzini" or any other place to be the place where the suit land is located are irrelevant and bound, if followed, likely to mislead this court on a wild goose chase, and the court will pay no heed to such an issue.
58. The plaintiff claims to have purchased the suit land from Mwalune Karisa Goryo (Mwalune) who allegedly inherited the land from his father Karisa Goryo (Goryo) while the defendants claim that



Goryo was merely a “mobile” witchdoctor who had no interest in the land and that therefore his son Mwalune had no interest to sell to the plaintiff.

59. The defendants are cousins who assert that the land is ancestral land which was owned by their two fathers who were brothers, having been passed on to them from their father, the defendant’s grandfather. The plaintiff counters that claim by stating that the claim of inheritance is speculative, and that the defendants, being grandchildren, lack locus standi to claim the land, having been of tender age at the time the alleged transaction that gave him the land was entered into with Mwalune.
60. The issues that arise for determination in the present case are as follows:
 - a. Whether the defendants have locus standi;
 - b. Whether the suit land was the defendants’ ancestral land;
 - c. Whether the plaintiff purchased the suit land from Mwalune Karisa Goryo;
 - d. Whether the title in the plaintiff’s name should be upheld.

Whether the defendants have locus standi;

61. Denial of a hearing is a serious issue. Denial of a hearing on the ground of locus standi is even more serious as it may shut out a person from being heard. Such denial should be premised on very strong evidence that the claimant lacks such locus in view of the provisions of Article 50 of the constitution which grants all persons right to have their legal disputes resolved in an impartial manner.
62. The plaintiff claims that the defendants are merely grandchildren of the persons claimed to have previously owned the land. He challenged the capacity of the defendants as grandchildren whereas their own parents would have been their ideal persons to challenge the plaintiff’s claim to the suit land. A point was made to the effect that they do not have a grant of representation. However, the said objection can be easily disposed of as follows: before this court gave judgment in his favour in this matter, the defendants held title to the land and it is in the capacity of title holders that they are being sued. All claims of fraud and misrepresentation, without which the present suit would not stand, arise from the fact of registration of the defendants as proprietors of the suit land. The defendants not being the originators of the main suit herein and having been sued were expected to file a defence and, if necessary, a counterclaim. That is what they did. Their defence is that the legally were registered as proprietors. Whatever the background to the registration, the provisions of section 25(1) of the Land Registration Act provide that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever with the exceptions stated in that section. Section 26 of the Act provides the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedural or through a corrupt scheme. It is the rights that were conferred upon the defendants by registration, regardless of the background of such registration, that entitled them to respond to the suit and file their own counterclaim. There would be no other opportunity for the defendants to agitate their counterclaim save the present suit



and if they left it out their right would be extinguished forever under the doctrine of res judicata. This court is thus of the view that the defendants have locus standi.

Whether the suit land was the defendants' ancestral land;

63. He who asserts proves. The defendants' duty in this case was to establish that the suit land belonged to their forefathers. The defendants point to the evidence that the land was even registered in the name of Chibo Mundu Chibo and several other persons some from the Dzakaa clan and some from elsewhere, and that their father Mwarome Munga Janji had to lodge objection proceedings to dislodge the registration of the strangers, which objection was successful.
64. This court has perused the record of proceedings in the said objection. The record of proceedings reads as follows:

“Objector’s Statement duly sworn alleges that the disputed parcel of land was registered to the defendants without his knowledge. All the registered owners have their respective parcels of land except our grandfather by the name of Chibo Mundu Chibo. Hence I request the names of other defendants deleted from the A/R and that our grandfather left. We are the one (sic) utilizing the disputed parcel of land. That is all.”

respondents statement duly sworn states that I Rodgers Mzungu Pekeshe of ID/5XXXXXX6 and on behalf of my late father and (D1) and other defendants do hereby confirm the statement of the plaintiff as true. We don’t know the disputed parcel of land and it is utilized by the plaintiff’s family. Hence we have no objection if our names being deleted from the A/R.

Findings

Both the plaintiff and the defendants’ representatives have agreed that the disputed parcel of land belongs to the plaintiff’s family. The names of the defendants except for Chibo Mundu Chibo were inserted by mistake hence be deleted from the A/R.

Decision

Objection allowed as per the wishes of the defendants’ representative. Right of appeal granted within 60 days from the date of this order. 9/3/2005.”

65. They are dated 9/3/2005 long after the alleged date of purchase of the suit land by the plaintiff. The respondents in that objection curiously and without wasting time conceded to Mwarome Munga Janji’s claim. They stated that the parcel no 689 was being utilized by Mwarome’s family. The resultant consent between the parties was that the suit land belonged to Mwarome’s family. There is however no evidence that Mwarome Munga Janji was claiming the land as ancestral land of chibo Mundu chibo. The objector merely claimed on behalf of his grandfather, pleading that he did not have land while others were having their own parcels elsewhere and succeeded. The grandfather never claimed any ancestral rights against the co-respondents in that objection. Indeed, the objector was a stranger to the entire set of proceedings and it is surprising that he even succeeded in dislodging the other respondents save his grandfather’s. The fact that other persons were registered alongside Chibo Mundu Chibo and the fact that it was not Chibo Mundu Chibo who initiated the objection is quite telling that the objection was not premised on ancestral rights at all. There is no proof of any customary claim therein. I do not find those proceedings to be evidence that the land was ancestral to the defendants.



Whether the plaintiff purchased the suit land from Mwalune Karisa Goryo;

66. The plaintiff's agreement with Mwalune Karisa Goryo is dated 17/10/82. The sale agreement is handwritten. It states that Mwalune Karisa Goryo has sold his land situate at Mwangatini Longobaya to Justin Mwangi Chonga and Harold Deche Kai for Kshs 18,000/=. The agreement was witnessed by Joseph Gogo and Mwangemi Munga, and Goda Dzombo Ndeje Chisambo and William Mutana appear not to have affixed their thumbprint marks in witness to the agreement alongside their names. John Kandoro also signed. In the plaintiff's evidence John Kandoro who is said to be the local Assistant Chief, Kitsoeni sub location, Chonyi W. Location. It is usual to have local administrators witness land sales involving unregistered land. John Kandoro appears to have affixed his signature and official stamp on the agreement. The signature appears quite an erudite piece compared to the thumbprints of the other witnesses.
67. An acknowledgement which is dated 8/5/1983 of receipt of Kshs 2000/= out of the Kshs 8,000/= balance was also produced by the plaintiff. The same has names of William Mutana and Goda Dzombo as witnesses.
68. A second acknowledgment is dated 11/9/1983 for ksh 4000/= by the seller from the buyer. It is signed by William Mutana, Dava Chigiri and Goda Dzombo and Ndeje Chisambo. The signature and names of Harold Kai appear on the said acknowledgment.
69. What is stated to be the last acknowledgment produced by the plaintiff is dated 4/12/1983, for Kshs 1000/=. It is witnessed by Chief John Kandoro Kai, Joseph Gogo, Julius Mwarabu, and Dava Chigiri.
70. Much as the defendants may urge this court that the agreements are invalid, this court can not help but note that they were made long before the date of the objection proceedings relied on by the defendants. None of the defendants' own documentary evidence predates the objection proceedings. However, of great interest is that the defendants also produced an agreement of 11/11/1989 between Nixon D. Chigiri and Mwalune's son, Robert Kambi showing that Robert sold Nixon some land at Musunduzini for Kshs 28,000/=. The witnesses to that agreement were Justin Chilumo Mbwana, Jambo Charo Kai, Dava Chigiri and Tembo Chilango. That agreement also predates the objection proceedings and seems to acknowledge that Robert and his father Mwalune laid their claim to the suit land long before the official land adjudication process under Cap 284 began in the locality. It is important that DW2 conceded in his cross-examination by Mr Magiya that Mwangemi Munga (one of the defendant's kin) married a daughter of the brother to Mwaluna Karisa Goryo and that Robert Mwalune came and sold a portion of 4 acres from the suit land. It is vital that though Dava Chigiri, is said to be now deceased, his family is still on the suit land, for that is a connection that gives credibility to the claim that Mwalune and his son claimed the land long ago. It is important that the agreement between Nixon D. Chigiri and Robert was produced by the defendants themselves. It puts to rest the question whether Mwalune and Kambi had ever been seen in the locality or on the land by the defendants which the defendants had denied. When shown DExh 1, an agreement dated 17/10/1982, DW1 stated that he knew Joseph Gogo, one of the witnesses named in the plaintiff's principal piece of evidence. Notably, in his evidence-in-chief, DW1 also admitted that Mwalune Karisa Goryo used to be in the area and that after he sold 3 acres out of the defendant's land (plot no 689) to the plaintiff, he left and went to Malindi, and Robert his son came on to the land and transacted with Chigiri. DW1 had also admitted that his family had other land elsewhere and that Mwalune had lived on the suit land. Consequently, DW2's claim that the defendants only came to know of Mwalune Karisa Goryo when Justin Mwangi Chonga, the plaintiff, came along with the present suit, is untrue.



71. Dickson Mtana Mwachunga resides on Plot No 1099 which borders the suit land. He states in his statement:

“That I know that the plot Kilifi /Bedzombo /Kitsoeni /689 belong (sic) to Justin Mwango Chonga and his family, they have been cultivating the said farm for so many years... I and Stephen Mbigo who is in Plot No 720 south of my plot we are neighbours to Justin Mwango Chonga, it is ironical to believe that Stephen Mbigo does not know his neighbour Justin Mwango Chonga.”

72. Dickson Mtana Mwachunga was PW3. He is a retired Parastatal officer with one of the leading parastatals in Kenya. Stephen Mbigo is DW3. DW3 appears to have beef with the family of Dickson Mtana Mwachunga in that whereas the latter insists that his father purchased the land known as plot no 1099, DW3 claims that it was only leased to Dickson’s family. It appears that there is a dispute brewing between them but that is a dispute for another day. However, this court hardly thinks that DW3, being an inheritor who seems to doubt that his father disposed of land to PW3, is a credible witness because of his apparent bias against purchasers in the area. It is irrelevant then that his plot is number 720 and that it shares a boundary with plot number 689 which is the suit land.

73. When compared to the evidence of the main defence witnesses, PW3’s evidence appears more credible. He is of advanced age compared to DW 2 who was born in 1978 and who was in 1982 only 4 years old and who admitted on cross examination that the matters he testified about were those that were told to him and therefore wholly hearsay, and that he could not tell the truth or falsehood thereof. Noteworthy is the fact that there was not much difference in age between DW1 and DW2 as the former, who admitted that he was born in 1974 is only 4 years older than the latter. At only 7 years old in 1982, it is doubtful that DW1 could comprehend the transactions that were going on regarding land on which his family was not even residing on. The defendants’ only hope for stronger evidence lay in DW3 and I will deal with it in the latter parts of this judgment.

74. I also want to advert to the issue of purchase price raised by the defendant’s counsel. Counsel was of the view that if PW3 purchased his 6 acres from DW3’s father for Kshs 150,000/= in 1980 as he stated, then it must be untrue that the suit land could have been sold to the plaintiff at Kshs 18,000/- in 1982. That argument may seem extremely seductive in casual thinking, but on a greater depth, appears quite shallow for there are many factors, topographical, sentimental, cultural, personal, etc that go into setting and acceptance of consideration. The evidence of PW3 was not expert evidence, and even where it has been given, expert evidence is not always taken as gospel truth, but must be assessed alongside other available evidence before the court makes its conclusion on the issue the expert evidence is meant to prove. I lack any persuasive and credible argument that the dissonance between the evidence of the plaintiff and that of DW3 is of any consequence in the present suit.

75. Finally, taken together with the evidence of Dickson Mtana Mwachunga as analyzed herein above, the contents of the agreement between Robert and Nixon are a very strong indicator that the Goryo family had strong roots in the land long before Chibo Mundu Chibo was, by some stroke of sympathy at his landlessness, granted registration of the suit land alongside other persons and before the defendants became the registered owners.

76. Noteworthy also is that the defendant’s witnesses did not include Nixon D. Chigiri. However, the plaintiff’s advocate by submission (see page 8 of the submissions) brought to this court’s notice a strange twist to the effect that the agreement between Dava Chigiri on the one hand and Mwarome Munga Janji, Lutu Chibo Mundu and George Munga Janji on the other reads that it was executed on 4/6/2009 while the death of Dava Chigiri is said to have occurred before that execution on 6/7/2008.



The advocate for the plaintiff concluded that this is evidence that the defendants were guilty of manufacturing fake evidence for their case. That would have been strong evidence had the advocate for the plaintiff guided this court on where among the produced documents the court could find the certificate of death of Nixon D. Chigiri, but unfortunately, he did not do so and I must dismiss it as mere speculation which I hereby do. However, the foregoing analysis leads this court to believe that Mwalune was in possession of the suit land having inherited it from his father Goryo, and that he sold it to the plaintiff herein for valuable consideration as per the agreements produced.

Whether the title in the plaintiff's name should be upheld.

77. Having found that the defendants have neither established their ancestral claim to the suit land and that the plaintiff purchased the suit land from Mwalune Karisa Goryo, it also becomes clear that the registration of the defendants was borne of misrepresentation by them that they owned the land. The fact that they may have been cultivating the land did not confer on them title to the suit land. They remained trespassers thereon. Relying on that possession and cultivation not only to lease out portions thereof to third parties was not only fraudulent but also illegal and liable to be halted at the instance of the plaintiff as sought in the present suit.
78. This court must therefore defer to the provisions of Sections 25 and 26 of the *Land Registration Act* which state as follows:

“25.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in



the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

79. Fraud and misrepresentation having been established against the defendants, the title in their name can not be upheld while the plaintiff's title to the land must be upheld.
80. The plaintiff's claim therefore has merit and it succeeds and the defendant's counterclaim lacks merit and it hereby fails. Consequently, this court issues the following final orders:
- a. The defendants' counterclaim dated 15th January 2024 is dismissed;
 - b. Prayer nos (1) and (2) of the plaint dated 25th January 2017 are hereby granted as prayed;
 - c. For the avoidance of doubt, if the judgment of this court dated 23/11/2021 had been executed to the end and the register still reflects the plaintiff as the registered proprietor, then that registration shall be retained by the Land Registrar and that retention shall have served the purposes of prayer nos (1) and (2) in the plaint dated 25th January 2017;
 - d. The 5th defendant is absolved from costs since it was not demonstrated that he played any role in the fraud committed by the other defendants;
 - e. The costs of the present suit and counterclaim shall be borne by the 1st -4th defendants jointly and severally.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 28TH DAY OF APRIL, 2026.

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

