

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ELC LC NO. E059 OF 2024**

**RISHARD HELA MKUVA.....**  
**.....PLAINTIFF**

**VERSUS**

**KATANA BAYA.....1<sup>ST</sup>**

**DEFENDANT**

**RAMADHAN KAINGU.....2<sup>ND</sup>**

**DEFENDANT**

**REMMY MWANZO MWANDZOMARI.....3<sup>RD</sup>**

**DEFENDANT**

**INSPECTOR GENERAL OF POLICE.....4<sup>TH</sup>**

**DEFENDANT**

**MINISTRY OF LANDS.....5<sup>TH</sup>**

**DEFENDANT**

**HON. ATTORNEY GENERAL.....6<sup>TH</sup>**

**DEFENDANT**

**NATIONAL LAND COMMISSION.....7<sup>TH</sup>**

**DEFENDANT**

**JUDGMENT**

**A. Plaintiff's claim**

1. By a plaint dated 28.06.2024 the plaintiff sued the defendants seeking the following reliefs;

- a. A declaration that the Plaintiff is entitled and is the legal owner of the Suit Property known as Plot No. Mombasa/Majaoni/909
- b. A mandatory Injunction that (sic) the 1<sup>st</sup> to 3<sup>rd</sup> Defendants by themselves, their agents or servants do not enter and or demolish and/or erect and thereafter vacate with immediate effect the Property forthwith known as Plot No. MOMBASA/Majaoni Scheme/909.
- c. The 4<sup>th</sup> Defendant through the Officer in Charge Kiembeni Police Station be ordered supervise the eviction and demolition of all the illegal structures and protect the Plaintiff stay on the Suit Property known as Plot No. Mombasa/Majaoni/909 even after the eviction.
- d. A permanent Injunction restraining the 1<sup>st</sup> to 3<sup>rd</sup> Defendants whether by themselves, their servants, agents or otherwise howsoever from remaining on the Plaintiff's Suit Property, encroaching and/or trespassing and/or taking possession moving into occupy, developing and constructing any, structures whatsoever on the Suit Property known as Plot No. Mombasa/Majaoni Scheme/909
- e. In default to carry out the above eviction and demolition on Plot No. Mombasa/Majaoni Scheme/909 the 5<sup>th</sup> and 7<sup>th</sup> Defendants be ordered to compensate the Plaintiff the value of his land as per the current market value as per valuation report.
- f. Costs of the suit and interest thereon at Court rates.
- g. Further and/or any other relief that this Honourable Court shall deem fit and appropriate

2. The plaintiff pleaded that at all material times he was the registered proprietor of plot No. Mombasa/Majaoni Scheme/909 (*the suit property*). He pleaded that the 1<sup>st</sup> and 3<sup>rd</sup> defendants had in or about the year 2020 or 2021 trespassed into the suit property, cultivated it, and illegally constructed some structures thereon without his consent. It was his case that by reason of the said actions he had been denied of the use and enjoyment of his property and thereby suffered loss.
3. The plaintiff sought an order for the 4<sup>th</sup> defendant to supervise the eviction of the 1<sup>st</sup> – 3<sup>rd</sup> defendants by virtue of his official capacity. In the alternative, the plaintiff wanted the 7<sup>th</sup> defendant to be compelled to acquire the land on behalf of the government of Kenya and compensate him to the tune of Kshs.50 million.

**B. 1<sup>st</sup> and 3<sup>rd</sup> defendants' response**

4. The 1<sup>st</sup> – 3<sup>rd</sup> defendants filed a defence and counter-claim dated 20.06.2025. They pleaded that the plaintiff had acquired title to the suit property fraudulently. It was their defence that the suit property initially belonged to the 3<sup>rd</sup> defendant's grandmother Uchi Charo (*the deceased*) who sold only a portion of 50 by 100 feet thereof to the plaintiff and retained the remainder.

5. The defendants further pleaded that although the agreed purchase price was Kshs. 52,000/= the plaintiff had only paid a deposit of Kshs.10,000/= and defaulted on the payment of the balance hence no valid transfer of the property was undertaken. They denied being trespassers on the suit property and pleaded that they were rightfully in possession with the knowledge of the deceased when she was alive.
6. By their counter-claim, the defendants pleaded that they were rightfully in occupation of the suit property and had established their respective homesteads thereon by reason of having **inherited** the same from the deceased. They pleaded that the plaintiff was entitled to a portion of 100 by 50 feet only subject to payment of the balance of the purchase price. It was their case that the plaintiff had in collusion with unknown persons at the Ministry of Lands obtained registration of the entire suit property through fraud and misrepresentation.
7. As a result, the 1<sup>st</sup> - 3<sup>rd</sup> defendants sought the following reliefs in their counter-claim;
  - a. *A declaration that the Plaintiff holds the title to the suit property in trust for the family of Uchi Charo and/or obtained it fraudulently.*

- b. Cancellation and revocation of the Plaintiff's title to the suit property.*
- c. An order for rectification of the register to restore the suit property to the name of the original allottee (or her legal heirs).*
- d. A permanent injunction restraining the Plaintiff, his agents or servants from entering, interfering with/alienating or disposing of the suit property.*
- e. General damages for fraudulent acquisition of land and harassment.*
- f. Costs of the suit and the counterclaim.*
- g. Any other or further relief that this Honourable Court may deem just and fit to grant.*

**C. 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants' defence**

8. The Attorney General entered appearance and filed a defence on behalf of the 4<sup>th</sup> - 6<sup>th</sup> defendants. He filed a defence dated 19.09.2025 in which he admitted that the plaintiff was the rightful allottee of the suit property according to official government records. It was pleaded that it was the plaintiff's duty to protect his property through legal means and that the police service could only intervene to provide security upon being served with a court order to that effect.

9. The Attorney General contended that compulsory acquisition cannot be forced upon the government as sought by the plaintiff. It was his case that the dispute at hand was a purely civil dispute among private citizens hence the national government should not be dragged into the dispute. It was also pleaded that there was no demonstrable public interest in the desired compulsory acquisition of the suit property and that the plaintiff's claim in that regard was in contravention of **Section 107** of the **Land Act**. As a consequence, the Attorney General prayed for dismissal of the plaintiff's suit with costs.

**D. 7<sup>th</sup> Defendant's response**

10. There is no indication on record that the 7<sup>th</sup> defendant ever filed any defence to the action.

**E. Trial of the action**

11. At the trial hereof, the plaintiff testified on his own behalf as the sole witness. He adopted the contents of his witness statements dated 28.06.2024 and 09.09.2025 as his evidence and produced the documents in his trial bundle as exhibits.

12. The 1<sup>st</sup> - 3<sup>rd</sup> defendants called 4 witnesses at the trial and closed their case. Their evidence essentially mirrored what they had pleaded in their defence and counter-claim. The

Attorney General called the land registrar – Mombasa to testify on behalf of the 4<sup>th</sup> – 6<sup>th</sup> defendants. The land registrar confirmed the contents of the official government records which showed that the plaintiff was the owner of the suit property.

**F. Directions on submissions**

13. Upon conclusion of the hearing the parties were given timelines within which to file and exchange their respective submissions. The record shows that the plaintiff's submissions were filed on 16.12.2025 whereas the 1<sup>st</sup>- 3<sup>rd</sup> defendants filed theirs on 23.01.2026. On his part, the Attorney General filed his submissions on 17.02.2026.

**G. Issues for determination**

14. The court has noted that the parties did not file an agreed statement of issues for determination. However, they filed separate issues. In the event, the court shall frame the issues as stipulated under **Order 15 Rule 2 of the Civil Procedure Code**. Under the said rule the court may frame issues from any of the following;

*a. The allegations made in the pleadings or in answers to interrogatories.*

*b. The allegations made on oath by or on behalf of the parties.*

*c. The contents of documents produced by the parties*

15. The court has perused the pleadings, evidence and documents in this matter. The court is of the view that the following are the key issues which arise for determination herein;

*a. Whether the plaintiff purchased the entire suit property or only a portion of 100 by 50 feet.*

*b. Whether the plaintiff obtained title to the suit property through fraud or misrepresentation.*

*c. Whether the plaintiff has proved his claim against the 1<sup>st</sup>-3<sup>rd</sup> defendants.*

*d. Whether the plaintiff has made out a case for compulsory acquisition of the suit property.*

*e. Whether 1<sup>st</sup>-3<sup>rd</sup> defendants have proved their counter-claim against the plaintiff.*

*f. Whether the plaintiff is entitled to the reliefs sought in the suit.*

*g. Whether the 1<sup>st</sup>-3<sup>rd</sup> defendants are entitled to the reliefs sought in the counter-claim.*

*h. Who shall bear costs of the action.*

#### **H. Analysis and determination**

**a) Whether the plaintiff purchased the entire suit property or only a portion of 100 by 50 feet**

16. The court has considered the material and evidence on record. The plaintiff's evidence was that he purchased the entire suit property measuring approximately 1.0032 ha from the deceased for a sum of kshs. 52,000 in the year 2000. In that regard, he relied upon a copy of a sale agreement dated 16.02.2000 between him and the deceased. The agreement showed that it was for the sale of a 'shamba' located at Majaoni village in Utange for a sum of Kshs 52,000/=. It shows that the 3rd defendant signed the agreement as a witness for the deceased and the agreement was signed and stamped by the area. There was no indication that the deceased ever reported any such dispute to the area chief or other government administration officials during her lifetime, even though she involved the area chief during the sale.
17. The 1<sup>st</sup>- 3<sup>rd</sup> defendants on their part contended that the plaintiff had only purchased a small portion of 100 by 50 feet from the deceased and that he paid the sum of Kshs. 10,000/= as initial deposit thereby leaving an outstanding balance of Kshs. 44,000/=. The defendants were, however, unable to produce any agreement or other documents substantiating the alleged sale of a plot measuring 100 by 50 feet.

18. The 1<sup>st</sup> -3<sup>rd</sup> defendants conceded that they were aware of the land adjudication process pursuant to which the plaintiff acquired registration of the entire suit property. There was no evidence tendered to show that they contested the plaintiff's registration on the ground that he was entitled to 100 by 50 feet instead of the entire suit property. There was no evidence of any objection having been lodged with the land adjudication officer under **Section 26** of the **Land Adjudication Act** or any appeal to the Minister under **Section 29** of the same Act.
19. There were no letters or other correspondence by either the deceased or the 1<sup>st</sup> - 3<sup>rd</sup> defendants raising the issue of the size of the property sold. The material on record shows that the deceased lived for another 14 years after the sale of the suit property until she died in 2014. There was no indication that she disputed the sale or the size of the property sold. There was no indication that she ever reported any such dispute to the area chief or other government administration officials during her lifetime.
20. On the basis of the material on record, the court is unable to believe the 1<sup>st</sup>-3<sup>rd</sup> defendants' evidence that the plaintiff had bought only a small portion of the suit property. All the material

on record, including the conduct of the concerned parties, is only consistent with an absolute sale of the suit property. The defendants' claim of a partial sale appears to have arisen first in 2020 when a criminal case of forcible detainer was commenced against some of them and in the constitutional petition which the 3<sup>rd</sup> defendant filed in the same year.

21. The court is also unable to believe the defendants when they contend that the plaintiff did not pay the balance of the purchase price in the sum of Kshs. 44,000/=. There is no evidence on record to show that for the 14 years the deceased lived after the sale that she ever demanded payment of the alleged balance. On the contrary, the Post Bank account record tendered in evidence by the 1<sup>st</sup>- 3<sup>rd</sup> defendants clearly showed that some of the amounts appearing in the acknowledgment notes were actually deposited into the account of the deceased including the final payment of Kshs. 33,000 made on 31.07.2002.

***b) Whether the plaintiff obtained title to the suit property through fraud or misrepresentation***

22. The court has considered the evidence and submissions on record on this issue. The 1<sup>st</sup> to 3<sup>rd</sup> defendants enumerated the

following particulars of alleged fraud and misrepresentation against the plaintiff in their counter-claim;

- a. Causing the issuance of a letter of allotment in his own name without any supporting documentation or consent from the original allottee.*
- b. Misrepresenting the extent of the land he purchased from Uchi Charo Chaleo.*
- c. Failing to disclose to the Lands Office that the family of the deceased allottee remained in occupation of the land.*
- d. Forging or procuring fraudulent signatures documentation for the allotment process.*

23. It is evident from the material on record that the defendants attributed the alleged fraud and misrepresentation to the plaintiff because they believed that the plaintiff had purchased only a portion of 100 by 50 feet whereas he ultimately obtained registration of the entire suit property. As indicated before the evidence on record, taken as a whole, points to the sale of the entire property and not a small portion thereof. Moreover, the court finds that there is no credible evidence on record to substantiate any of the particulars of alleged fraud and misrepresentation pleaded by the defendants.

24. The manner of proving allegations of fraud in suit cases was considered in the case of *Vijay Morjaria vs Nansingh M Darbar of Another* [2000] eKLR as follows;

*“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts. See Davy v Garrett (1878) 7 Ch. D 473 at 489...”*

25. The applicable standard of proof was considered in the case of *Evans Otieno Nyakwara vs Cleophas Bwana Ongaro* [2015] eLKR as follows;

*“In this case, it is the Respondent who filed the defence and counterclaim and alleged that the document relied upon by the Plaintiff was a forgery. It was therefore incumbent upon him to prove this fact by marshalling the necessary evidence to support his case. The burden of proof to prove fraud lay upon the Respondent. As regards the standard of proof, I would do no better than quote *Central Bank of Kenya Ltd Vs Trust Bank Ltd and 4 others* Nai Civil Appeal No. 215 of 1996(UR) where the Court of Appeal, in*

considering the standard of proof required where fraud is alleged, stated that;

*“The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary civil case”.*

c) **Whether the plaintiff has proved his claim against the 1<sup>st</sup>- 3<sup>rd</sup> defendants**

26. The court has already found and held that the plaintiff is the legitimate owner of the suit property. The court has also found that the 1<sup>st</sup>-3<sup>rd</sup> defendants have failed to demonstrate that the plaintiff acquired the suit property on account of fraud or misrepresentation. The court is of the view that the plaintiff is entitled to enjoy all the rights of a property owner including immediate possession and enjoyment of the property. The defendants have not demonstrated any lawful justification or excuse for their continued use and occupation of the suit property.

d) **Whether the plaintiff has made out a case for compulsory acquisition of the suit property**

27. It is evident that the plaintiff sought an order compelling the government to compulsorily acquire the suit property and compensate him if the 1<sup>st</sup> - 3<sup>rd</sup> defendants are not evicted therefrom. It was essentially sought as an alternative remedy in case the plaintiff failed to recover possession of the suit property.
28. The court takes the view that the instant dispute is of a purely civil nature amongst a property owner and a few trespassers. It has nothing to do with the National Land Commission or the Inspector General of the National Police Service. The latter can only come into the picture to provide security to court bailiffs who may be called upon to execute a possible decree in favour of the plaintiff.
29. No public interest or public purpose need to acquire the suit property under the **Land Act** was demonstrated by the plaintiff. The court is not aware of any law which would entitle a land owner whose property has been invaded by squatters or trespassers to seek compensation for “compulsory acquisition” from the government. The court is far from satisfied that the

plaintiff is entitled to any form of compensation directly from the National Land Commission in the circumstances.

e) **Whether the 1<sup>st</sup> to 3<sup>rd</sup> defendants have proved their counter-claim against the plaintiff**

30. The 1<sup>st</sup> to 3<sup>rd</sup> defendants' counter-claim was based on two grounds. First, that the plaintiff's title to the suit property was obtained by fraud or misrepresentation. Second, that they were in occupation of the property by virtue of an inheritance from the deceased. As the court found earlier, there was no evidence of any fraud, misrepresentation or any form of illegality in the plaintiff's acquisition of the suit property.
31. Although the 1<sup>st</sup>-3<sup>rd</sup> defendants claimed to have ***inherited*** the suit property from the deceased by virtue of being related to her, there was no credible evidence to demonstrate the alleged inheritance. There was no certificate of confirmation of grant which was tendered in evidence to demonstrate that the suit property was part of the estate of the deceased and that upon distribution the 1<sup>st</sup>-3<sup>rd</sup> defendants were the lawful beneficiaries of the property. On the contrary, the material on record shows that the deceased sold the suit property way back in 2000 and that by the time she died in 2014 she was no longer the owner

thereof. In the premises, the court is not satisfied that the 1<sup>st</sup>-3<sup>rd</sup> defendants have proved their counter-claim.

f) **Whether the plaintiff is entitled do the reliefs sought in the suit**

32. The court has already found that the plaintiff has proved his claim against the 1<sup>st</sup>-3<sup>rd</sup> defendants. However, the court has also found that the plaintiff has no tenable claim against the 4<sup>th</sup>-7<sup>th</sup> defendants. As a result, the court is of the view that the plaintiff is entitled only to the first two reliefs sought as against the 1<sup>st</sup>-3<sup>rd</sup> defendants. The court is not inclined to issue an order for the police service to supervise any eviction since this is a civil matter. However, the plaintiff shall be at liberty to seek the provision of security to the court bailiffs who shall be appointed to execute the decree in case such security becomes necessary.

g) **Whether the 1<sup>st</sup>-3<sup>rd</sup> defendants are entitled to the reliefs sought in the counter-claim**

33. The court has found and held that the 1<sup>st</sup> - 3<sup>rd</sup> defendants have failed to prove their counter-claim against the plaintiff to the

required standard. It would thus follow that they are not entitled to any of the reliefs sought in the counter-claim.

h) **Who shall bear costs of the action**

34. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the *proviso* to **Section 27** of the **Civil Procedure Act (Cap 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a consequence, the plaintiff shall be awarded the costs of the suit and the counter-claim as against the 1<sup>st</sup>-3<sup>rd</sup> defendants only. However, the plaintiff shall bear the costs of his unsuccessful claim against the 4<sup>th</sup>-6<sup>th</sup> defendants. The 7<sup>th</sup> defendant shall not be awarded any costs since it did not file any appearance or defence to the action.

**I. Conclusion and disposal orders**

35. The upshot of the foregoing is that the court finds that the plaintiff has proved his claim against the 1<sup>st</sup>- 3<sup>rd</sup> defendants only. The court also finds that the 1<sup>st</sup>-3<sup>rd</sup> defendants have failed

to prove their counter-claim against the plaintiff. As a consequence, the court makes the following orders for disposal of both the suit and the counter-claim;

**a) Judgment be and is hereby entered for the plaintiff in the following terms:**

**i) A declaration be and is hereby made that the plaintiff is the legal owner of plot no. Mombasa/Majaoni Scheme /909.**

**ii) An eviction order is hereby issued against the 1<sup>st</sup>-3<sup>rd</sup> defendants either by themselves, their agents or servants for their eviction from the suit property and an order for the demolition and removal of their structures thereon.**

**iii) The 1<sup>st</sup>-3<sup>rd</sup> defendants are hereby given a grace period of 60 days to vacate the suit property voluntarily in default of which they shall be forcibly evicted by court bailiffs.**

**iv) The plaintiff's claim against the 4<sup>th</sup>-7<sup>th</sup> defendants is hereby dismissed with costs.**

**b) The 1<sup>st</sup>-3<sup>rd</sup> defendants' counter-claim against the plaintiff is dismissed in its entirety.**

**c) The plaintiff is hereby awarded costs of both the suit and counter-claim against the 1<sup>st</sup>-3<sup>rd</sup> defendants**

It is so decided.

**Ruling dated and signed at Mombasa and delivered** virtually via Microsoft Teams on this **23<sup>rd</sup> day of April, 2026.**

.....

**Y. M. ANGIMA**

In the presence of:

Gillian - Court assistant

Mr. Omwenga for plaintiff

Mr. Bunde for 1<sup>st</sup> - 3<sup>rd</sup> defendants

Mr. Penda for AG for 4<sup>th</sup> -6<sup>th</sup> defendants

**JUDGE**