



REPUBLIC OF KENYA



KENYA LAW
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**Karema v Ndundi & 3 others (Environment and Land Case
171 of 2018) [2025] KEELC 5934 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 171 OF 2018**

**EK MAKORI, J
JULY 24, 2025**

BETWEEN

JOHNSON MULEWA KAREMA PLAINTIFF

AND

KIRAU T NDUNDI 1ST DEFENDANT

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 2ND
DEFENDANT**

COUNTY LAND REGISTRAR KILIFI 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. The Plaintiff, through an amended plaint dated April 26, 2019, sued the Defendants seeking:
 - a. A declaration that the 1st Defendant is mistakenly registered as the owner of a piece of land identified as No. Malindi/Shaurimoyo/482, and that this registration has no legal effect.
 - b. An order directing the Land Registrar, Kilifi, to cancel all entries and registration of title in the names of the 1st Defendant herein and rectify the register by inserting the names of the Plaintiff in place of the 1st Defendant.
 - c. Cost and interest of the suit.
2. The 2nd, 3rd, and 4th defendants filed a statement of defense dated October 1, 2018, denying the allegations against them.
3. The 1st Defendant did not file a Memorandum of Appearance or defend the suit. The matter proceeded to a full hearing. The Plaintiff, Johnson Mulewa Karema, testified and called one witness. He relied on his witness statement dated September 4, 2024, and a list of documents labeled Plaintiff



Exhibits 1 through 9. He averred that the land parcel Shaurimoyo Settlement Scheme, Plot No. 482, was wrongly registered in the name of the 1st Defendant by the 2nd Defendant. He stated that he has been living on the suit property as a squatter for a long time, having been born in 1967. He explained that he discovered in 2007 that the suit land had been registered in the name of the first defendant, Kirau Ndau. He further stated that, having lived on the property in question, he has made improvements there. A ground report conducted on February 4, 2015, indicates that he is settled on the suit property; therefore, the register should be corrected by removing the 1st Defendant's name and replacing it with his own.

4. His evidence was supported by the testimony of Karama Kiponda, who testified as PW2. He adopted his witness statements dated April 30, 2019. He states that he is a neighbor of the Plaintiff, and since time immemorial, the Plaintiff has been occupying that piece of land, and that it should be regularized in his favor.
5. The 2nd, 3rd, and 4th defendants did not present any evidence.
6. After both the Plaintiff's and the Defendant's cases concluded, the court instructed the parties to submit written arguments. However, neither party complied.
7. Arising from the material placed before me, the testimony of the Plaintiff and his sole witness, the issues that I frame for the decision of this Court are whether the register should be rectified to reflect the name of the Plaintiff instead of the 1st Defendant, and who should bear the cost of this litigation.
8. What emerges from the Plaintiff's testimony is that the Plaintiff claims to have acquired the suit property by prescription rather than through allotment via the Settlement Fund Trustee Programme. However, a review of the pleadings and testimony reveals that this land was allocated to the 1st Defendant under the SFT Scheme.
9. Part IX of the *Land Act*, which addresses settlement programs, forms the legal basis for this judgment. Section 134 empowers the National Government to implement settlement programs to provide land access for shelter and livelihood. These programs include providing land for squatters and those affected by causes leading to movement and displacement. Under this Part, the National Land Commission is responsible for reserving public land for settlement programs. Where no public land is available, the board of trustees must purchase or acquire land for the settlement scheme. After planning and surveying, the schemes are to be allocated to households in accordance with our national values, principles enshrined in *the Constitution*, land policy principles, and the requirements of natural justice.
10. The SFT Programme, as a corporate entity responsible for purchasing, holding, managing, and disposing of both movable and immovable property, was authorized to enter into necessary or expedient contracts. The Agriculture Act was repealed by the *Agriculture and Food Authority Act*, which took effect on January 17, 2014. Section 135 of the *Land Act* creates the Land Settlement Fund, which shares some similarities with the SFT as it existed under the Agriculture Act. The Land Settlement Fund Board of Trustees is responsible for providing land access to squatters. Under this scheme, the government allocates its land or acquires private land to offer to settlers, subject to the condition that they must pay a specified amount of money before the title is transferred to them.
11. In *Kamau Mbogo v Settlement Funds Trustees* [2019] eKLR, Oundo J. described the status of land under the SFT regime as follows:

“The Settlement Fund Trustees, which is a body of trustees established pursuant to the provisions of Section 167 of the Agriculture Act, Cap 318, is mandated to settle 'settlers'



on either unalienated government land or land purchased from private owners by the Settlement Fund Trustees.”

12. The Court of Appeal in the case of Eliud Nyongesa Lusenaka and Another v Nathan Wekesa Omacha, [1994] eKLR, held as follows:

“The short answer to that proposition is that land owned by the SFT is not land owned by the government. Under section 167(1) of the Agriculture Act, the SFT is a corporate body with perpetual succession that can acquire and own property in its own right and can sue and be sued. The interest of the Settlement Fund Trustees (SFT) is that of a chargee over the parcel of land it owns.”

13. Moreover, the Court of Appeal in the case of Boniface Oredo v Wabumba Mukile, Civil Appeal No. 170 of 1989 (unreported), stated the following:

“The interest of the Settlement Fund Trustees is really that of a chargee. “It lends money for development to persons to whom it has allocated land, and the repayment of such money is secured by a charge upon the property.”

14. The Plaintiff’s claim is based on adverse possession. This legal principle allows a person to claim ownership of land if they have used it openly and continuously for a certain period, in Kenya, being 12 years. However, evidence shows that the land was part of the SFT Program, a government initiative to provide land to squatters, and was properly offered to the 1st Defendants, who paid the SFT funds in full and received the title.

15. Plaintiff has not demonstrated that he paid any money to the SFT Programme to be eligible for the land in question.

16. That is why his claim fails with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 24TH DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Bawazir for the Plaintiffs

Mr. Nyioike for the 2nd 3rd and 4th Defendants

Happy: Court Assistant

