



**Mwabeja Clan Welfare Registered Trustees v Jira & 5 others (Environment & Land Case E93 of 2021) [2025] KEELC 17 (KLR) (16 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 17 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E93 OF 2021  
FM NJOROGE, J  
JANUARY 16, 2025**

**BETWEEN**

**MWABEJA CLAN WELFARE REGISTERED TRUSTEES ..... PLAINTIFF**

**AND**

**SANJAY SAMJI JIRA ..... 1<sup>ST</sup> DEFENDANT**

**KENNEDY KIPYEGO KOSGEI ..... 2<sup>ND</sup> DEFENDANT**

**GEORGE NDUNGU MAINA ..... 3<sup>RD</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 4<sup>TH</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 5<sup>TH</sup> DEFENDANT**

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

**JUDGMENT**

**Pleadings**

1. In a plaint dated 10th November 2021 the plaintiff sought the following prayers:
  - a. A declaration that LR No 32362 and FR 471/22 which the 1<sup>st</sup> and 2<sup>nd</sup> and 3<sup>rd</sup> defendants are shown as owners was prepared illegally and by fraudulent misrepresentation, the same is therefore a nullity and ought to be recalled by court and revoked;
  - b. An order to issue directing the 4<sup>th</sup> and 5<sup>th</sup> defendants to amend the register accordingly and revert the land to the plaintiffs;
  - c. Damages at market rates;
  - d. A permanent injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants from in any way either directly or indirectly dealing with gthe portion of land referred to as lr no 32362 on file reference fr



471/22 and the 4<sup>th</sup> and 5<sup>th</sup> defendants do inhibit the register against all other illegal activities except the plaintiffs and any other lawful entries;

- e. Costs of the suit and interest on (c) and (e) (sic) from date of judgment;
  - f. Any other order the honourable court may deem fit and just to grant to meet the ends of justice in the matter.
2. The plaintiff's case is as follows: the plaintiffs are the beneficial owners of land by virtue of an award by the Kaloleni Land Disputes Tribunal adopted in Mombasa CMCC No 1 OF 2012; when they hired a surveyor to ascertain the acreage and ascertain boundaries thereto, a resultant map prepared on 3/8/2012 revealed the land was 2008 acres. They sought that the Director of Surveys prepares a deed plan to enable issuance of title. It was then they found that land measuring 1000 acres fronting the Mombasa –Nairobi highway had been alienated by unknown individuals they had never dealt with. Also, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are shown on the maps as the owners of LR no 32362 and F/R 471/22 measuring approximately 17.1039 ha. (approx. 44 acres) yet they had also never dealt with them. The plaintiffs aver that the title to the suit land was obtained by way of fraud, illegal, unprocedurally or through a corrupt scheme, and that government offices knowingly acted on forged documents in the process, and so the title issued violates the law and *the constitution*.

#### **Defence of the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants dated 7/4/22.**

3. The 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants filed defence on 8/4/2022 denying the claim. They denied the alleged fraud on the part of the 4<sup>th</sup> and 5<sup>th</sup> defendants.

#### **2<sup>nd</sup> defendant's defence dated 22/7/2022.**

4. The 2<sup>nd</sup> defendant denied the plaintiff's claim of fraud and misrepresentation. He denied the allegation that the plaintiff owns 2008 acres. He stated that the plaintiff and 2 other clans were given only 1000 acres which are yet to be demarcated as per the court ruling. He averred that his title was rightfully acquired through the Tsangwa family.

#### **The suit came up for hearing on 22/2/23 and 16/1/2024.**

5. PW1 Julius Nyamawi testified for the plaintiff. He stated that he is member of the Mwabeja Clan Welfare Trust as well as the treasurer thereof. He adopted his witness statement dated 2/11/22 as his evidence-in-chief in the case. He stated that the suit land belonged to the clan's forefathers and was inherited through generations whereby the clan leaders hold the land on behalf of the clan. He admitted that during the leadership of one of such leaders called mwakalela wewa, he invited friendly strangers onto the land who began disposing of land to other strangers. Disputes arose. It was then that they moved to the Kaloleni Land Disputes Tribunal and an award was made in their favour. The decree that arose from that award upon its adoption was challenged unsuccessfully in Mombasa JR NO 89 of 2012. Another case, ELC 243 Of 2014 Malindi was filed and through a consent recorded therein, the plaintiff clan got its land. Later on it was discovered that there were people who had titles in respect of the suit land. He denied that the 2<sup>nd</sup> defendant purchased the suit land. He stated that the land subject matter of the present suit is different from the land that the Tsangwa Clan owns.
6. Upon cross-examination by Mr Shimaka he stated that he resides on the suit land as do many families and that the plaintiff has officials. He never gave evidence at the tribunal.
7. Upon being cross-examined by Mr Mkalla he stated that the tribunal was not shown the boundaries of the suit land.



8. However, upon re-examination by Mr Ondabu he stated that there are trees that mark the boundaries; that they do not have any dispute with the whose land borders theirs; that he does not know the defendants and he could not report them to the police as they do not reside on the land.
9. Noelline Akeyo, Deputy Registrar Mombasa Law Courts testified on 16/1/24 as PW2 and produced the original file for Mombasa JR NO 89 of 2012 as P. Exh 8.
10. PW3, Thomas Mokaya, Senior Court Administrator testified on 16/1/24 and produced the original file for MSA CMCCNO 1 OF 2012.
11. At that juncture the plaintiff's case was marked as closed. The defendants did not call any evidence and their cases were marked as closed and parties ordered to file submissions.
12. I have only seen submissions for the plaintiff dated 6/5/2024. I have considered those submissions while preparing this judgment.

**Determination.**

13. Having considered the pleadings filed and the evidence on the record, this court finds that the issues for determination are as follows:
  - a. Whether LR No 32362 is part of land that is owned by the plaintiff;
  - b. What orders should issue.
14. The plaintiff's case is that part of their land was carved out and that the title to the portion so carved out was baptized Title No LR No 32362 and it is alleged that the same was illegally, fraudulently and unprocedurally procured by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
15. The only evidence relied on in this case was that of PW1 Julius Nyamawi, PW2 and PW3 being only formal witnesses who never went into the details of the files that they Looking at the evidence of PW1, (who does not also qualify as an expert witness in any case) he has not addressed any maps or plans to show that the parcel of land referred to as Title No LR No 32362 falls within the boundaries of the land awarded the plaintiff by the Land Disputes Tribunal. That is the evidence that would have aided the plaintiff's case. Besides, PW1 admitted that the actual boundaries of the land that was awarded to the plaintiff were not identified by the land disputes tribunal. That is a serious omission since without those boundaries having been firmly established and evidence of their existence being adduced in this case this court does not have any basis of reaching the conclusion that any named portion of land, leave alone Title No LR No 32362, was carved therefrom.
16. The upshot of the foregoing is that the plaintiff has not established its claim on a balance of probabilities and its suit herein is hereby dismissed with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI.**

