



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 150 OF 2017**

**IN THE MATTER OF: LAND DISPUTES ACT (REPEALED)**

**AND**

**IN THE MATTER OF: REGISTERED LAND ACT (REPEALED)**

**AND**

**IN THE MATTER OF LAND ACT**

**AND**

**IN THE MATTER OF ADVERSE POSSESSION**

**MOHAMED FARID JALIL.....1<sup>ST</sup> APPLICANT**

**ABDUL JALIL YAFAL.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE REGISTRAR OF LAND KILIFI COUNTY....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL OF KENYA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By an Originating Summons brought pursuant to Order 37 Rules 3, 7 and 8 of the Civil Procedure Rules, the two Applicants herein pray for orders:-

***1. That a declaration be and is hereby made that title number Kilifi/Jimba/374 and any resultant titles and Plots pursuant to its sub-division exist in Regional Index Map number 15 and not Regional Index Map number 14.***

***2. That a declaration be and is hereby made that legal ownership of the land comprised in original title number Kilifi/Jimba/374 vests in the applicants by virtue of purchase.***

***3. That a declaration be and is hereby made that legal ownership of all resultant titles and plots pursuant to sub-division of the land in the original title number Kilifi/Jimba/374 vests in the applicants herein by virtue of purchase.***

***4. That in the alternative and without prejudice to orders 2 and 3 above a declaration be and is hereby made that the applicants are the legal owners of the entire original title number Kilifi/Jimba 374 by virtue of adverse possession.***

***5. That the 1<sup>st</sup> Respondent and any other responsible institution of the government be and is hereby ordered to vacate any restriction or embargoes filed against the original title number Kilifi/Jimba/374 or any of the resultant titles and plots pursuant to the said title's sub-division, and registration of the resultant titles and plots be now made in the sole name of the second applicant.***

**6. That the costs of this application be provided for.**

2. The said application is supported by an affidavit sworn by the 1<sup>st</sup> Applicant Mohamed Farid Jalil and is based on the following grounds:-

**i) That in the year 2001, the Applicant bought the said parcel of land number Kilifi/Jimba/374 measuring 1.7 Hectares from squatters who had been offered the same by the Squatters Settlement Fund Trustees.**

**ii) The original parcel was sub-divided into three plots which were given the numbers 992, 993 and 374 with the last plot retaining the original number contrary to the normal practice;**

**iii) The Applicants bought Kilifi/Jimba/993 from the Sitting Squatters and Kilifi/Jimba/374(which comprised the land remaining after creation of 992 and 993) thus acquiring ownership of the whole of the original titles Kilifi/Jimba/374, and it was so decided by the land Disputes Tribunal and later decreed accordingly by the Malindi Principal Magistrate's Court.**

**iv) It later emerged that government had registered an embargo over most titles in the affected adjudication area. The Applicants have so far managed to lift the embargo placed against Kilifi/Jimba/992 and have since registered it in the name of the 2<sup>nd</sup> Applicant.**

**v) The Applicants took physical possession of the entire original parcel of land which they have partially developed and have remained in uninterrupted possession thereof since 2001; and**

**vi) The Applicants therefore claim a legal right to ownership of the entire parcel of land pursuant to purchase and/or in the alternative to the claim of ownership through adverse possession.**

3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are however opposed to the grant of the Orders sought. By Grounds of Opposition filed herein on 20<sup>th</sup> July 2017, the two oppose the grant of the Orders on the following grounds:-

**1. That the application lacks merit, or is otherwise an abuse of the process of this Honourable Court.**

**2. That the Order sought against the 1<sup>st</sup> Respondent is not available since the creation of the Registry Index Map is within the sole mandate of the Director of Survey who has not been named as a party to the Application.**

**3. That there is no demonstration in any manner whatsoever by fact or evidence that the Applicants utilised the recourse provided by law for legal ownership of the original title Kilifi/Jimba/374 to vest in them by virtue of purchase.**

**4. That the acquisition of interest in land by virtue of purchase involves an elaborate procedure laid down in law and the Applicants ought to have followed due process conclusively in a timely and proper manner.**

**5. That the applicants have only annexed a title for a resultant sub-division Kilifi/Jimba/992 and have failed in total to demonstrate the purported ownership of the original title Kilifi/Jimba/374. No title for the suit property has been produced in support of the claims.**

**6. That the Applicants have no evidence to demonstrate or show any restrictions or embargoes filed against Kilifi/Jimba/374 or any of the resultant titles by the Respondents.**

**7. That the individuals who were involved in the transactions and/or subdivision of the original suit property ought to be enjoined in the matter for a conclusive determination on the issue of ownership of the suit property.**

4. I have considered the Application and the response thereto by the Respondents. I have equally considered the submissions filed herein by the Applicants. The Respondents did not file any submissions in support of the Grounds of Opposition filed herein.

5. The Applicants pray for a declaration that they are the owners of all Plots that are as a result of the sub-division of the original parcel of land known as Kilifi/Jimba/374. The Applicants also pray that all the resultant plots be registered in the name of the 2<sup>nd</sup> Applicant after the removal of all restrictions against such registration by the Respondents or any other responsible government institution.

6. The Respondents however object to the same on the basis that the Applicants have not established ownership thereof. In the supporting Affidavit of Mohamed Farid Jalil filed herein on 7<sup>th</sup> July 2017, he offers some insight as to how the Applicants came to acquire the parcels of land in dispute in or around 2001. It is the Applicants' case that parcel No. Kilifi/Jimba/374 measuring 1.7 hectares was sub-divided into three titles namely:-

**a) Kilifi/Jimba/992**

**b) Kilifi/Jimba/993**

**c) Kilifi/Jimba/374**

7. Ordinarily, a new number ought to have been given in the place of the new title Kilifi/Jimba/374 after the sub-division was done. Apparently that was not the case herein. The Applicants have annexed various Sale Agreements to their Affidavits as evidence of the fact that they purchased the various sub-divisions from different squatters who had been allocated the various portions of the original parcel of land.

8. From the record, it is evident that a dispute arose between one Elina Stephen Ngumbao Shena and the Applicants in regard to the ownership of the Plots in question sometime in the year 2005. From the proceedings of the Land Dispute Tribunal as well as those of the Provincial Appeals Tribunal, it is evident that the Applicants were adjudicated as the rightful owners of the suit properties. The decision of the Provincial Appeal Tribunal was indeed adopted as an order of the then Malindi Principal Magistrate's Court Land Case No. 7 of 2004 on 12<sup>th</sup> February 2008.

9. I was not shown anywhere where the said determination has been challenged by way of appeal or Judicial review. That being the case, the decree of the Principal Magistrate's Court stands and I did not therefore think that the Applicants needed to adduce anything else to prove ownership of the subject parcels of land.

10. As it were, the Applicants have also annexed a Copy of the Green Card for the original Parcel of Land known as Kilifi/Jimba/374. The said annexure (marked F3) clearly shows that the sub-divisions of parcel numbers 992 and 993 were made therefrom. It is however clear from the Green Card that the original parcel of land existed in the Registry Index Map No. 15 and not No. 14 as erroneously stated in the later documents.

11. I note that the Respondents object to the prayer to correct the map on the basis that the duty to correct maps does not lie with the Registrar of Lands sued herein as the 1<sup>st</sup> Respondent but with the Survey Division. I am however in agreement with the Applicants' Advocates submissions that they are not seeking a correction of the map but a correction of the information on the title documents which is a preserve of the 1<sup>st</sup> Respondent. In any event, the 2<sup>nd</sup> Respondent herein is the main Legal Adviser to the Government of Kenya and should be able to advise the relevant institutions to effect the necessary changes on the land records.

12. The upshot of all this is that I am persuaded that the Applicants have established that they are deserving of the orders sought herein. In the circumstances, I allow the Originating Summons as prayed.

13. Each party shall bear their own costs.

**Dated, signed and delivered at Malindi this 11<sup>th</sup> day of October, 2018.**

**J.O. OLOLA**

**JUDGE**