



REPUBLIC OF KENYA



**Charo & 3 others v Ramadhan & 4 others (Civil Suit 211 of 2015)
[2024] KEELC 189 (KLR) (23 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL SUIT 211 OF 2015
MAO ODENY, J
JANUARY 23, 2024**

BETWEEN

**BAHATI CHARO 1ST PLAINTIFF
ANDERSON JAMUHURI 2ND PLAINTIFF
DANCAN KARISA 3RD PLAINTIFF
SHILLINGI MWINYI 4TH PLAINTIFF**

AND

**KARISA AMIN RAMADHAN 1ST DEFENDANT
HEIDE MARIE GAPNER 2ND DEFENDANT
DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 3RD
DEFENDANT
LANDS REGISTRAR KILIFI COUNTY 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

JUDGMENT

1. By an amended plaint dated 18th September, 2020 the Plaintiffs' sued the Defendants seeking the following orders;
 1. A declaration that the 1st and 2nd Defendants fraudulently acquired the subject title document or are holding the title document for the subject land Kilifi/Mavueni 'B' Settlement Scheme/1188 in trust for the Plaintiffs who are therefore entitled to the title document and an order directed to the 4th Defendant, Land Registrar at Kilifi Land registry to amend and rectify the title records by registering the Plaintiffs as the registered owners of the Land known as Kilifi/Mavueni 'B' Settlement Scheme/1188.



2. Costs of the suit.
3. Interest thereon at court rates
4. Any further or other relief the court may grant.

Plaintiff's Case

2. PW1 Bahati Charo adopted his Witness Statement dated 16th and 19th November, 2015 as well as his list of documents dated 16th November, 2015 and 25th January, 2022 and stated that he was allocated the suit land and issued with a title deed.
3. It was PW1's testimony that he is in occupation of the suit land and later found out that the title deed issued to him was not for the land he was residing on and further that the Defendant had the title deed for the suit land.
4. Upon cross-examination by Mr. Obaga, PW1 told the court that he has built structures and planted trees on the suit land and that they had attempted to resolve the matter whereby the Land Adjudication Officer visited the suit land but it bore no fruits.
5. On cross examination by Mr. Munga for the 3rd, 4th and 5th Defendants, PW1 admitted that the titles were issued through settlement and not adjudication and that he had not been issued with a letter of offer. He added that they had complained to the Land Adjudication Officer and engaged the services of a private surveyor.
6. Upon re-examination, PW1 stated that they have a problem with the titles, as they do not reflect the true occupation on the ground.
7. PW2 Walter Okoth Ombogo a private surveyor in Kilifi testified that he surveyed parcels no. 1188, 1203, 1206, 1207 amongst others on RIM Mavueni 3B GL Settlement Scheme. He testified that the people living on the land were identified and adjudication done but not according to how they were residing on the land. It was his testimony that a person might be holding a title deed and residing on a different parcel of land.
8. It was PW2's testimony that from their investigations they observed that some of the genuine squatters on the ground were not the beneficiaries and that some squatters in physical occupation of some land parcels without documents and were issued with title deeds of other parcels that they did not occupy.
9. PW2 further stated that the 1st and 2nd Defendants are beneficial owners of parcel No. 1188 according to the search but they are in physical occupation of parcel Nos. 1206 and 1207 registered in the name of Samuel Kibo and Martha Lewa.
10. On cross examination by Mr. Obaga, PW2 confirmed that the Defendants were not present when the survey was done and that he did not need to involve the Land Adjudication Officer since the issues were affecting the settlement scheme.
11. On cross-examination by Mr. Munga, he stated that they were not to do a joint report with a government surveyor and that the solution was to do a ground verification exercise as the problem affects the whole area. Further that the conclusion could not have changed whether the survey was done with a county surveyor or if the Defendant was present.
12. PW3, Douglas Mwatsuma Nyambu adopted his Witness Statement dated 19th March, 2021 and testified that he is a retired chief of Majajani sub location from 1982 to 2014 and that he knew the Defendant as a resident of the area, that the Settlement Scheme was established in 2005 but the titles



were issued in 2013. He further confirmed that he was not aware whether the Defendants picked their titles from the land's office or not.

Defendants' case

13. DW1 John Wachira Karanja, a Land Adjudication and Settlement Officer in Kilifi testified that the suit property was because of a settlement scheme and that the people were allocated the land in 2012.
14. It was DW1's testimony that the suit property was allocated to the 1st and 2nd Defendants and they were issued with a letter of offer dated 5th July, 2012. He further stated that the 1st and 2nd Defendants accepted the offer and made a payment of Kshs. 51,000 vide a receipt dated 17th October, 2012 which he produced as exhibits in court.
15. DW1 stated that a discharge of charge and transfer documents were processed but they are still in their office. He also stated that they are not opposed to the verification as they are only awaiting funding so that the exercise can be conducted.
16. Upon cross examination by Mr. Obaga, he confirmed that he was not aware of plot No. 1203 and that there was no complaint lodged as the process was transparent.
17. On cross examination by Mr. Nyongesa for the Plaintiff, DW1 confirmed that before a title is issued there has to be a Committee of the locals in the leadership of the area, comprised of the Chief, D.O D C and that the selection Committee is chaired by the D.C.
18. He stated that the Committee ensured that the beneficiaries are settled but not necessarily where they are already in occupation of. He confirmed that he did not have a list of the beneficiaries and the plot allocated to each person. Further that when one is allocated the land, he/she is expected to develop it.
19. DW1 confirmed that he did not have the 2nd Defendant's ID and that he was not aware that the Plaintiff occupying the suit property.
20. DW2, Ramadhan Karisa testified that he has a title deed to the suit land having been a squatter on the suit land and was later issued with a letter of offer which he accepted and paid for it.
21. It was DW2's testimony that the suit land is divided by a road which has been invaded by the Plaintiffs who have a title deed for a different property. It was his evidence that he has since developed the suit property with a permanent building, a borehole and has been cultivating. He stated that the suit property belongs to him and that there was no objection during the adjudication process and boundary verification.
22. Upon cross examination by Mr. Nyongesa, DW2 confirmed that they own the suit property together with the 2nd Defendant his wife who is a German by nationality. He added that his mother currently lives in the suit property and that he stays on plot No. 621 which is adjacent to the suit property.
23. On cross-examination by Mr. Mkala for the 3rd Defendant, DW2 stated that the offer letter and title deed issued to him have never been cancelled.

Plaintiff's Submissions

24. Mr. Nyongesa, counsel for the Plaintiffs identified the following issues for determination:
 - a. Who is the owner of plot Kilifi/Mavueni 'B' Settlement Scheme/1188.
 - b. What orders should issue.



25. On the first issue, counsel submitted that the Defendant was not in occupation at the time when the adjudication process was been conducted and that the same was conducted haphazardly. Counsel further submitted that the settlement scheme was meant to benefit only locals and the fact that a foreigner is registered as the owner indicated that she colluded with the officials of the 3rd Defendant to be listed as a beneficiary.
26. Counsel relied on the cases of [James Peter Kinyungu Mbandi v Ngumbao Goda Dzombo & 71 others](#) [2019] eKLR, [John Murithi Obadiab v Rudia Kina Kuria](#) [2022] eKLR, [Kiplangat Arap Biator v Esther Tala Cheyegon](#) [2016] eKLR and submitted that where there is a common mistake by both parties the court has the powers to give effect to the real intention of the parties.
27. Mr. Nyongesa also relied on Section 80 of the [Land Registration Act](#) and urged the court to exercise its powers to rectify the title in cases of a mistake.

1st and 2nd Defendants' submissions

28. Counsel for the 1st and 2nd Defendants submitted that the 1st and 2nd Defendants are the registered owners of the suit property as the property was allocated to them by the Adjudication Committee in an open and transparent process.
29. He submitted that the 1st and 2nd Defendants paid for the plot and followed the necessary procedures to have the title registered in their name and that to succeed in a claim of fraud the Plaintiff not only needs to plead but also particularize and prove the same.
30. Counsel relied on the cases of [Kuria Kiarie & 2 Others v Sammy Magera](#) [2018] eKLR and [Kinyanjui Kamau v George Kamau](#) [2015] eKLR and submitted that the Adjudication Committee never made any decision in favour of the Plaintiffs and that the Land Registrar was bound by the committee's decision which gave the suit land to the 1st and 2nd Defendants.
31. Counsel Submitted that the title in the names of the 1st and 2nd Defendants are to be taken as *prima facie* evidence that they are the absolute owners of the suit property as provided under Section 26 of the [Land Registration Act](#) and urged the court to dismiss the Plaintiff's claim with costs.

3rd to 5th Defendants' submissions

32. Mr. Munga counsel for the 3rd to 5th Defendants identified the following issues for determination;
 - a. Whether the 1st and 2nd Defendants title was fraudulently issued.
 - b. What reliefs can the court grant.
33. On the first issue, counsel submitted that the Plaintiffs failed to discharge the standard of proof required for the alleged fraud against the 3rd to 5th Defendants and relied on the case of [Kimantbi Kilonzo v Susan Wangari Kiiru & Another](#) [2019] eKLR.
34. On the final issue counsel submitted that from PW2 and DW1's evidence, it is clear that the allocation process of the land was marred with problems which at this stage would require a verification exercise to cure the anomaly.
35. Mr. Munga urged the court to order a ground survey to be done to include verification of the RIM to ensure all parcels conform with their location and acreages on the ground.



Analysis and Determination

36. The issues for determination are whether the 1st and 2nd Defendants fraudulently acquired the suit property, whether they are holding the suit property in trust for the Plaintiffs and whether Kilifi Land Registrar should be ordered to amend and rectify the record by registering the Plaintiffs as owners of Kilifi/Mavueni ‘B’ settlement Scheme.
37. It is not in dispute that the suit property is Kilifi/Mavueni ‘B’ Settlement Scheme/1188 is registered in the names of the 1st and 2nd Defendants. It is also not in dispute that the Plaintiff is the one in occupation of the suit plot and that the 1st and 2nd Defendants are in possession of the title but not in occupation of the suit land.
38. PW2 a Surveyor who did a ground report told the court that there were squatters who were issued with title deeds of parcels which they were not in physical occupation of and gave an example of the Plaintiff who was in occupation of Plot No. 1188 on the ground but was issued with a title deed to plot No. 1203.
39. Likewise that the 1st and 2nd Defendants were registered as owners of Plot No 1188 but on the ground they were in occupation of Plot Nos 1206 and 1207. This evidence was corroborated by DW1 the Land Adjudication Officer Kilifi who testified that the 1st and 2nd Defendants were issued with title to the suit property even though they were not in occupation of the same.
40. DW1 also told the court that they are not opposed to the verification exercise and that the Director Land Adjudication is awaiting funding to carry out the exercise. PW2 a Land Surveyor who did a ground report of the area told the court that the only solution is to do a ground verification exercise as the problem affects the whole area. It was admitted that there was a problem with Mavueni Settlement Scheme which needs to be rectified.
41. The issue of fraud in allocation of the suit parcels of land does not arise as it has been established and confirmed by the Land Adjudication Officer and the Surveyor. There would be no blame on any party for fraud as it has been admitted that errors occurred during the adjudication
42. Both parties agree that a verification exercise on the ground to ensure conformity of the land parcels with their location is necessary. It would be in the interest of justice that the said verification is done to solve the issues at hand. It should be noted that even the Defendants are holding a title, which they are not in occupation of likewise to the Plaintiff.
43. The Land Registrar under the [Land Registration Act](#), has wide powers, some quasijudicial and can rely on any other relevant document and existing records in order to resolve any dispute between landowners as was held in the case of [Estate Sonrisa Ltd & another v Samuel Kamau Macharia & 2 others](#) [2020] eKLR. The court observed that:

“Because a title deed is only *prima facie* evidence of the matters shown therein, the Registrar’s investigations, of necessity must encompass all entries in the register, rely on any other relevant document and existing records, conduct proceedings in accordance with section 14(1) and cause a survey to be carried out and determine the dispute.”
44. I have considered the pleadings, the evidence on record together with the submission by counsel and the relevant judicial authorities. I find that the order that is suitable in the circumstances is to order the Land Registrar together with Land Adjudication Officer, and the relevant Survey office to carry out a verification exercise to rectify the anomalies in Kilifi/Mavueni / 1188, 1203, 1206 and 1207 Settlement



Scheme. Upon rectification, register the relevant titles in the names of the correct beneficiaries as per Section 80 of the *Land Registration Act*. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 23RD DAY OF JANUARY 2024.

M. A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

