



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 130 OF 2014**

MARY ANN WANJIKU MUNGAI.....PLAINTIFF

-VERSUS-

THE BOARD OF GOVERNORS/DIRECTORS

MIKWAKWANI SECONDARY SCHOOL.....1<sup>ST</sup> DEFENDANT

VICTOR NYAUMA MOMANYI.....2<sup>ND</sup> DEFENDANT

ALI JUMA NGONYA.....3<sup>RD</sup> DEFENDANT

KWALE DISTRICT LAND REGISTRAR.....4<sup>TH</sup> DEFENDANT

**JUDGEMENT**

1. Mary Ann Wanjiku Mungai brought this suit against the named four (4) defendants vide her plaint dated 26<sup>th</sup> May 2014 seeking several prayers inter alia :

**a) A declaration that the property known as Title Number KWALE/DIANI/81 is the property of MARY ANN WANJIKU MUNGAI and its subdivision into Title Numbers KWALE/DIANI SS/2597, KWALE/DIANI SS/2598, KWALE/DIANI SS/2599 and KWALE/DIANI SS/2600 was done without the consent of the plaintiff and is thus null and void.**

**b) Any subdivision that was made on Title No. Kwale/Diani/81 was illegal, unlawfully done and should be revoked.**

**c) A declaration that the opening of new registers for Title Nos. KWALE/DIANI SS/2597, KWALE/DIANI SS/2598, KWALE/DIANI SS/2599 and KWALE/DIANI SS/2600 and all procedural steps leading thereto are null and void.**

**d) The Registers and Titles issued for Title Nos. KWALE/DIANI SS/2597, KWALE/DIANI SS/2598, KWALE/DIANI SS/2599 and KWALE/DIANI SS 2600 be cancelled.**

**e) The District Land Registrar, Kwale does forthwith reinstate the Register for Title Number KWALE/DIANI/81 in the name of the plaintiff.**

**f) An order of eviction be issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants or any of them, their servants, agents and others claiming through them and occupying the land known as Title No. Kwale/Diani/81 and that such Order be effected under the supervision of the Officer Commanding Station Kwale Police Station.**

**g) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, their servants and agents or other claiming through them do forthwith give the plaintiff vacant possession of the property known as Title Number KWALE/DIANI/81 whether under that title or under the new Titles Numbers KWALE/DIANI SS/2597, KWALE/DIANI SS/2598, KWALE/DIANI SS/2599 and KWALE/DIANI SS/2600 or any other titles or interests derived there from.**

2. The summons to enter appearance & plaint was served on the 1<sup>st</sup> – 3<sup>rd</sup> defendant via substituted service. The advertisement was placed in the daily nation newspaper of 2<sup>nd</sup> July 2014 pursuant to an order issued by this Court on 28<sup>th</sup> May 2014. The 1<sup>st</sup> – 3<sup>rd</sup> defendants did not enter appearance within the prescribed time and or at all. The 4<sup>th</sup> defendant was personally served. The plaintiff south leave to enter judgement against the 4<sup>th</sup> defendant vide her application dated 1<sup>st</sup> September 2014 as he also did not enter appearance within the prescribed time or defend this application. The interlocutory judgement was thus entered as against the 1<sup>st</sup> – 3<sup>rd</sup> defendants and against the 4<sup>th</sup> defendant on 22<sup>nd</sup> June 2015. The case has proceeded undefended.

3. Mr Peter Muhoho Mungai testified on behalf of the plaintiff. He is the son of the plaintiff and holds a power of attorney donated to him by the plaintiff. He adopted his witness statement filed in Court on 19<sup>th</sup> November 2015 as his evidence. Mr Mungai testified that land parcel No Kwale/Diani/81 is registered in his mother's name having been allocated the land by the government in 1991. His mother made all the payments required as per the receipts filed in their list of documents. The plaintiff was subsequently issued with a title deed in 1994. He showed the Court the original title deed and produced a copy in evidence.

4. Mr Mungai continued that the plaintiff has never subdivided this land or sold it. In July 2013, they learnt the land had been sub-divided into 4 pieces i.e. Nos 2597, 2598, 2599 & 2600. They did searches on the new numbers but no certificate of official search was given as the land registrar said the subdivisions were founded on forgeries. The four sub-divisions were registered in the names of the 1<sup>st</sup> – 3<sup>rd</sup> defendants. He urged the Court to declare the subdivisions and subsequent registrations null and void and their title be reinstated. He also prayed for costs of the suit. He produced the documents attached to his list as a bundle. The plaintiff then closed her case.

5. The plaintiff's advocate though given time to file his submissions filed none as at 20<sup>th</sup> March 2017 when I was writing this judgement. As I pointed earlier in the preceding paragraphs that the suit is undefended. The facts as presented by the plaintiff have not been controverted. The plaintiff has supported the facts by the documents she filed in Court on 28<sup>th</sup> May 2014. The documents included the following :

**i) Certificate of outright purchase dated 23<sup>rd</sup> September 1991 issued in the name of the plaintiff in respect of plot No 81 Diani.**

**ii) Receipt No 866465 issued on 14.9.1991 issued by the Settlement Fund Trustees.**

**iii) Receipt for payment for title deed and transfer to the department of lands dated 26/1/1994.**

**vi) Copy of title deed for the suit plot issued to the plaintiff on 26<sup>th</sup> January 1994.**

6. These documents support the plaintiff's evidence that she owns the suit parcel. In addition to the documents of ownership produced above, the plaintiff also filed copies of search certificates for Title No

Kwale/Diani SS/2597, Kwale/Diani SS/2598 and Kwale/Diani SS/2600 and correspondences exchanged between the plaintiff's advocate and the Kwale land registry. One of the letters is dated 2<sup>nd</sup> May 2014 from the Director, Land Adjudication and Settlement confirming that plot 81 was given to the plaintiff. The plaintiff further produced a registry Index Map (R.I.M.) showing the new plot numbers on the ground.

7. The plaintiff has therefore satisfied me that indeed she is the owner of the suit property Diani SS/81 which was subdivided into four plots without her consent. The defendants sued did not defend the suit at least to explain to Court the manner of how they acquired their titles. I have no reason to disbelieve the plaintiff's evidence that her plot No 81 was illegally subdivided. Consequently I do grant her the orders seeking that she is declared as the owner of Kwale/Diani SS/81. I also do hereby issue a declaration that the resultant subdivisions being plot Nos 2597 – 2600 are illegal, null and is hereby cancelled. The plaintiff did not however prove any loss to be entitled to prayer for compensation under heading of general damages. In conclusion I enter judgement for the plaintiff in terms of paragraph (a) – (i) of the prayers. I also award her costs of the suit

**Dated and signed this 23<sup>RD</sup> day of March 2017**

**A. OMOLLO**

**JUDGE**

**Delivered at Mombasa this 24<sup>th</sup> day of March 2017 by**

**C. YANO**

**JUDGE**