



**Menza v Galgalo & 4 others (Environment & Land Case 183 of 2018)
[2024] KEELC 33 (KLR) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 33 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 183 OF 2018
MAO ODENY, J
JANUARY 18, 2024**

BETWEEN

JULIA AROME MENZA PLAINTIFF

AND

JIMMY SHAKALA GALGALO 1ST DEFENDANT

WARDAT ABDULLA MOHAMED 2ND DEFENDANT

LOO MALE LOO 3RD DEFENDANT

THE LAND REGISTRAR KILIFI 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. By Plaintiff dated 24th August, 2018 the Plaintiff herein sued the Defendants' seeking the following orders:
 - a. A permanent injunction restraining the 1st, 2nd and 3rd Defendants by themselves and/or their agents, servants, representatives, or any other person claiming under them from laying any claim of ownership, trespassing, encroaching and or interfering in any way with the Plaintiff's land.
 - b. A declaration that the sale of the Parcel of Land by the 1st Defendant to the 2nd and 3rd Defendants is null and void and the same to be revoked/cancelled and an order directing the 2nd and 3rd Defendants to surrender the Title document issued in their names to the 4th Defendant for cancellation.
 - c. An order compelling the 2nd and 3rd Defendants to demolish any temporary or permanent structures erected, put up and/or constructed on the Plaintiff's said Parcel of land known as



Kilifi/Takaye/Musoloni/717 within Kilifi County and give vacant possession of the Parcel of Land to the Plaintiff.

- d. Costs and incidentals to the suit.
- e. Any other or further relief that the court shall deem fit and just to grant.

Plaintiff's Case

2. PW1 Julia Arome Menza adopted her Witness Statement dated 24th August, 2018 and stated that she is the owner of the suit land Kilifi/Takaye/Musoloni/717 and the 1st Defendant was her ex - husband whom she divorced in 1998.
3. PW1 stated that in 1990, the 1st Defendant asked for her Identity Card to be allocated a plot which plot was later sold by the 1st Defendant to the 2nd and 3rd Defendant who have been cultivating the same.
4. PW1 produced the documents in the list of documents dated 24th August, 2018 and stated that the suit land was 7 acres but she sold 2 acres to Anthony Safari and remained with 5 acres.
5. Upon cross-examination, by Mr. S M. Kimani, PW1 told the court that she sold 2 acres to Anthony Safari and that they did not go to the Land Control Board. She also stated that she has not sold any land to anybody else apart from Antony Safari.
6. It was PW1's further evidence that they agreed with her ex-husband to sell part of the land to pay school fees for their child and that she was not aware that Francis Charo had an interest in the suit plot.
7. PW1 confirmed that she did not carry out a search of the suit property and stated that she took the title deed for cancellation when they were selling the land to Anthony Safari.
8. Upon re-examination, PW1 stated that the 1st Defendant had the title to the suit land when she sold the land to Anthony Safari whom she neither had a sale agreement with nor a Land Control Board consent.
9. PW2 No 99386 PC Duncan Mutie based at the Directorate of Criminal Investigations in Kilifi North stated that he was in Kilifi South when he was summoned to explain if he is the officer who filed the Exhibit Memo form.
10. It was PW2's testimony that in 2018, he met the Plaintiff who complained to him that there are people who had sold her land. He further stated that PW1 came with an application from the Land Control Board and a transfer of land to the 2nd Defendant. He stated that she adopted the signature and he took the specimen signatures and marked them as B1 and B2 and A1 and A2.
11. It was PW2's evidence that he transferred the documents to the Directorate of Criminal Investigations headquarters department to a forensic examiner which was received on 23rd November, 2018. He stated that he later received the report from the document examiner.
12. PW2 stated that he was to ascertain that the same person signed the signature and it was his opinion that the signatures were made by different authors. He stated that the complainant did not sign the transfer and the consent from the Land Control Board.
13. Upon cross-examination by Mr. S M. Kimani, PW2 stated that the client came to the office to make a complaint and came with a document from the Land Control Board and a transfer form. He stated that he got the documents from the lands office.
14. PW3 Chief Inspector of Police Iranda Masiko No 235238, a forensic document examiner for 9 years' experience attached to Directorate of Criminal Investigations forensic document examination section



- stated that he was aware of the forensic document in the supplementary list of documents dated 1st December, 2021.
15. PW3 also stated that on 23rd November, 2018, the Directorate of Criminal Investigations Forensic Lab received an Exhibit memo form from PC Duncan Mutie of Criminal Investigation Department Kilifi and the memo was accompanied by the following:
 1. A1- Transfer of land for Title No Kilifi/Takaye/Musoloni/764,
 2. A2- Application for consent of Land Control Board for the same parcel. He stated that two being the question documents and
 3. B1 and B2- The specimen signatures of the Plaintiff.
 16. Upon examination of the documents, PW3 stated that he found that different authors made the signatures. PW3 further stated that he investigated the characteristics, which included fixation of the pen movement, ink spread, baseline alignment and terminal strokes, relative position of characters, pen speed, curves, loops, pen patterns and concluded that the signature did not belong to the Plaintiff.
 17. Upon cross examination, by Mr. Mkala, he stated that he relied on the documents and the specimen signatures, further that it is not indicated when the specimen signatures were taken but that one document was allegedly signed on 3rd March, 2014.
 18. Upon cross-examination by Mr. S M Kimani, PW3 confirmed that he was the author of the forensic report and at the bottom of the memorandum, form reflects the date of receipt of the documents. He stated that it was recorded in their office and there is a signature but his name is not indicated. He confirmed that the allotment letter is not part of the report as it was not submitted for examination.
 19. PW3 stated that the transfer form and application for consent form does not mention Plot No Takaye/Musoloni/717 and that a person's signature changes with time and there are other factors that can affect it.
 20. He confirmed that the transfer is dated 3rd March, 2014 and four years have passed since the memorandum was submitted to their office further that the time lapse is accounted for in the report specifically at the second page on methodology which according to PW3 was applied.

Defendants'case

21. DW1 Jimmy Galgalo adopted his statement and testified that he knows the Plaintiff who is his ex-wife but cannot remember when they separated. He also confirmed that he knows the 3rd Defendant.
22. DW1 stated that the Plaintiff is aware that the land was sold to the 3rd Defendant and Anthony Safari where the 3rd Defendant bought one acre and Anthony Safari bought 3 acres.
23. It was DW1's evidence that they had agreed with the Plaintiff to sell part of the suit land for purposes of paying school fees for their children, which they did. He stated that he was staying at Kivulini where adjudication had been done which was far from the suit plot.
24. DW1 told the court that he used to rear livestock and was allocated Plot No.714 during the adjudication and confirmed that he did the sub-divisions in 1996 and produced the mutation forms and the consents as DEX No 1.
25. DW1 further stated that Francis Katana claimed part of the land and they agreed that he be regarded as the owner. It was his evidence that the Adjudication committee could not allocate him the land as he had already been allocated another parcel of land.



26. DW1 also testified that Francis Katana had to get his portion of the land during adjudication of 3 acres and had authorization to sell his portion of which they went to the Land Control Board together with PW1.
27. Upon cross-examination by Mr. Mkala, DW1 testified that PW1 was part of the transactions and signed all the documents including attending the Land Control Board.
28. On cross- Examination by Mr. Omwancha, DW1 stated that the Plaintiff is his ex-wife and they had issues and subsequently separated. Further that the Plaintiff did carry the title deed when she left.
29. DW1 stated that he could not remember how many acres he sold to Antony Safari and he had the title in the name of the Plaintiff. He further stated that the authorization document was not forwarded to the lands office.
30. DW2 was Loo Male Loo (the 3rd Defendant) adopted his Witness Statement and stated that he knew the Plaintiff and the 1st Defendant as husband and wife and produced a list of documents together with the supplementary list of documents.
31. It was DW2's testimony that Francis Charo sold to him 3 acres and showed him an authorization letter signed by the Plaintiff and the 1st Defendant. He stated that they entered into an agreement and took possession of the land in 2010, fenced, built houses and planted coconut trees.
32. DW2 further testified that the Plaintiff came to the suit land and told him to vacate but he insisted that he had bought Plot No 765 and he paid stamp duty of Ksh 20,440/= and they went to the Land Control Board in 2014 where their approval was granted. He stated that the Land Office indicated that the purchase price was Ksh 500,000/= although he bought it for Ksh 200,000/=. It was his evidence that he has the original title deed for Kilifi/ Takaye/Musoloni/765 dated 11th March, 2014 and has water and electricity on the property and that the plot is valued over ten million Kenya shillings.
33. Upon cross examination by Mr. Mkala, DW2 confirmed that he bought plot No 765 and not Plot No 717 as the same had been subdivided. On further cross examination by Mr. Omwancha, DW2 stated that it is Francis Katana Charo who sold the land and the adjudication was for the sale of Takaye/ Musoloni/717. He confirmed that he did not carry out a search, bought the land for Ksh 200,000 and the agreement was for sale of Kilifi/Takaye/Musoloni/717. He confirmed that he bought plot No 765 and it does not appear in the agreement.
34. DW3 Francis Katana Charo adopted his Witness Statement and testified that he stays in Kijiwetanga Takaye- Musoloni Scheme and that he knows both the Plaintiff, 1st Defendant and 3rd Defendant.
35. DW3 stated that during adjudication the land was registered in the name of the Plaintiff and that on 22nd February, 2010, he was given an authorization letter to get his 3 acres and the same was signed by the Plaintiff and the 1st Defendant and it was the 1st Defendant who brought the letter and was not present when the letter was signed.
36. It was DW3's evidence that he sold 1acre to the 3rd Defendant and that the Plaintiff was aware of the sale but did not go to the Land Control Board with the Plaintiff. That the Plaintiff went to the Land Control Board with the 1st Defendant together with the 3rd Defendant who took possession of the suit land.
37. DW4 Pamela Lisasa a Registrar of Titles based in Kilifi County stated that she neither has the records of Plot No 717 with her as it was subdivided nor the records of the resultant parcels. She confirmed that it was divided into 4 portions; 763, 764 765 and 766.



38. DW4 informed that court that once property has been subdivided, the mother title is surrendered hence it does not exist. She stated that on 11th March, 2014, a transfer was effected to the 3rd Defendant and a title deed issued and the records show that the 3rd Defendant is still the owner of the suit land. She stated that the documents and the transfer dated 3rd March, 2014 were signed by the Plaintiff and the purchaser being the 3rd Defendant and that from the records, the transaction met the legal requirements.

Plaintiff's Submissions

39. Counsel filed submissions and identified the following issues for determination
- a. Whether the Plaintiff has a legitimate claim over the suit property and ought to be declared the legal owner of the same in the circumstances of the case?
 - b. Whether the 1st Defendant had authority to sell and/or in any manner deal with the suit property without consent of the Plaintiff?
 - c. Whether the Plaintiff's claim against the Defendants collectively and severally is lawful, substantiated and/or meritorious?
40. Counsel submitted that it is undisputed that the Plaintiff was registered and issued with a Title deed over the suit property as the sole proprietor. Counsel further submitted that the 1st Defendant's claimed that the Plaintiff was registered as owner of the suit property in trust for their family, albeit the trust was not noted on the register and it is on that premises that the 1st Defendant contends that he had a right to sell the suit property to the 2nd and 3rd Defendant without knowledge and/or consent of the Plaintiff registered owner.
41. Mr. Omwancha also submitted that at the time of allocation and registration of the suit property in the Plaintiff's favour, there was no undertaking whatsoever on creation of a trust therefore the 1st Defendant cannot claim to have any interest over the suit property yet he was among the Committee members responsible for the allocation of the suit to the Plaintiff. Further that at the time the plot was allocated to the Plaintiff, the 1st Defendant was already the allottee of Kilifi/Musoloni/714 situated on the same Settlement Scheme as a sole owner.
42. Counsel relied on the cases of *Serah Mweru Muhu v Commissioner of Lands & 2 others* [2014] eKLR, *Margaret Njeri Wachira v Eliud Waweru Njenga* [2018] eKLR and submitted that the Plaintiff has a legitimate claim over the suit property and should be declared the owner.
43. Mr. Omwancha relied on the case of *Elijah Makeri NyangwaTM v Stephen Mungai Njuguna & another* [2013] eKLR submitted that the effect of the irregular sale was that, the 2nd and 3rd Defendants did not acquire proper title over the suit property. Counsel further relied on Section 26 of the [Land Registration Act](#) which provides that a registered proprietor enjoys the statutory protection of title as long as he/she can show that the title was acquired procedurally.
44. Counsel also cited the case of *Francis Mutito Mwangi vs MM* [2016] eKLR. and submitted that there is no evidence that an illegality was committed during the allocation and subsequent registration of title in the plaintiff's favour and urged the court to grant the prayers as per the plaint.



Defendants' submissions

45. Counsel for the 1st and 3rd Defendants listed the following issues for determination:
- a. Is the registration of the suit land (Kilifi/Takaye/Musoloni/717) in the name of the plaintiff tainted as to render the action to recover the portions sold to the 2nd and 3rd Defendants unenforceable at law?
 - b. Alternatively, were the sale and subsequent transfer of plot Kilifi/Takaye/Musoloni/765 to Loo Male Loo valid and in accordance with the requirements of the law, or it was invalid and illegal and therefore for cancellation and setting aside?
 - c. What should be the order as to costs?
46. Mr. S M Kimani submitted that the title Kilifi/Takaye Musoloni/717 is as the tainted as the Plaintiff pleaded that the 1st Defendant as a member of plot allocation committee in Takaye Musoloni Squatter Settlement Scheme allocated her the suit plot. That if indeed she was registered as owner of the suit land on the basis that neither her husband nor DW3 could be registered as they each already held another allocation in the same scheme, the title to the suit land registered in the Plaintiff's name was a fraud committed or induced by the two members of the plot allocation committee, on the government and the public of Takaye Musoloni Scheme.
47. Counsel submitted that surprisingly, the Plaintiff has not sued Anthony Safari or Francis Katana, yet they dealt with the suit land, and Anthony Safari acquired title to four of the seven acres excised from the suit land and that instead she sued the purchasers.
48. Counsel relied on the cases of *Holman v Johnson* [1775] 1 Cowp and *Somaiya and Co..Ltd V GovindjiPopatlal* [1957] EA 30, 34 and submitted that the net effect of these facts is that the impugned sale of portions of the suit land sought to be nullified and recovered is tainted with fraud.
49. Mr. S M Kimani submitted that the 3rd Defendant's produced evidence of the certified minutes of the Land Control Board meeting which approved and sanctioned not only the sale of his plot, but also that of portion Kilifi/Takaye/Musoloni/766 sold by the Plaintiff to Mr. Anthony Safari. He further submitted that evidence of the County Land Registrar is also clear that the mutation creating plot numbers 763, 764, 765 and 766 was done and registered at the instance of Julia Arome Menza, title deeds were issued in her name and that the transfer of portion 765 to Loo Male Loo was done by Julia Arome Menza and not by Francis Katana Charo.
50. Counsel also stated that the Plaintiff sought leave to challenge the documents through a document examiner the authenticity of the letter of authorization given to Francis Katana Charo but a the Plaintiff submitted a report on other documents and never tendered the letter of authority for examination of the signature. That the only plausible explanation why she avoided to forward the document for examination at any time, before or after the order of 13th October, 2021 was that it would have been averse to her claim.
51. Mr. S M Kimani submitted that it is not credible that the Plaintiff attended the Land Control Board meeting where both applications for consent for sale of portions 765 (to Loo Male Loo) and 766 (to Anthony Safari) were sanctioned, but she did not give her consent to the sale to the 3rd Defendant- Loo Male Loo.



52. Counsel further submitted that if the court were for any reason to nullify the sale of Kilifi/Takaye/Musoloni/765 to the 3rd Defendant, the 3rd Defendant is entitled to full compensation as valued by Bismark Valuers Limited, allowing for inflation, wear and tear. Counsel also submitted that he would in this unlikely eventuality invite the court to award him a fair award of compensatory and restorative damages for transferring his assets to a new site. He also prays for ample time to relocate.
53. Counsel submitted that there should be no order as to costs for or against the 2nd, 4th and 5th Defendants as the 2nd Defendant did not participate in these proceedings while the 4th and 5th Defendants were discharging a public duty and there is no title or register to rectify with the dismissal of the Plaintiff's suit.
54. Counsel for the 4th and 5th Defendants filed their submissions on 23rd October, 2023 and adopted the submissions of the 1st 3rd Defendants and submitted that the Plaintiff has no valid cause of action against the 4th and 5th Defendants as parcel No. land Kilifi/Takaye/Musoloni/717 ceased to exist upon subdivision with the consent of the Plaintiff.
55. Further that proper procedures were followed by the 4th Defendant in effecting the changes in the title which the Plaintiff seek this court to reverse. Counsel submitted that what is in contention is whether the signature appended in the various documents presented for transfer of the suit property to the 2nd and 3rd Defendants was done by the Plaintiff.
56. Mr. Mkala submitted that the 4th Defendant only receives documents for registration and is not charged with ensuring the appended signatures in the various documents belong to specified people. Further that the 4th Defendant's work is to examine documents presented to them and not investigating the same and relied on the case of Mary Ruguru Njoroge v John Samuel Gachuma Mbugua & 4 others [2014] eKLR.

Analysis And Determination

57. The issue for determination is whether the Plaintiff has a legitimate claim over the suit property and ought to be declared the legal owner.
58. The Plaintiff in her Plaint dated 24th August, 2018 which was never amended identified the suit parcel as Kilifi/Takaye/Musoloni/717 measuring 7 acres.
59. It is on record as stated by DW4, the County Land Registrar Kilifi stated that Plot No. Kilifi/Takaye/Musoloni/717 was subdivided into Kilifi/Takaye/Musoloni/763, 764, 765 and 766 and upon the subdivision, the mother title ceased to exist.
60. The 1st Defendant also stated that Plot No. Kilifi/Takaye/Musoloni/717 no longer exists having been subdivided with the consent and acquiescence of the Plaintiff and noting that she admittedly agreed to the sale of at least part of the same land to, inter alia, Antony Safari Kitsao.
61. The allocation of the plot to the Plaintiff was done during the adjudication of which the Plaintiff gave evidence that the ex-husband the 1st Defendant asked for her Identity card for purposes of allocation as the husband was not eligible to be allocated land as he had already been allocated in the same area. This was a way of circumventing the system.
62. The Plaintiff confirmed that that they sold 2 acres of land to one Antony Safari for purposes of paying school fees for their child. The same had no issue and a title deed was issued to the said Antony Safari.
63. The Plaintiff and the 1st Defendant got married and later divorced in 1998 and that is when the issues of the remaining 5 acres arose. The evidence on record indicates that the Plaintiff was the registered owner



- of No. Plot No. Kilifi/Takaye/Musoloni/717 which she testified that the same was cancelled upon subdivision when she sold 2 acres to Antony Safari. The Plaintiff also admitted that she surrendered the mother title to enable subdivision and transfer to the buyer. The Plaintiff did not tell the court what happened after she surrendered the mother title to create the resultant titles, which were issued to the purchasers. In fact the copy of the title that she produced as an exhibit in court was a cancelled copy of the mother title by the Land Registrar. She did not explain why she left the Land office without being told either what would happen to the resultant titles or whether they would be registered in her name.
64. The Malindi Land Control Board Minutes dated 13th February 2014 at the Deputy County Commissioner's office ,Minutes 43 and 44 for sale of Plot Nos Kilifi/Takaye/Musoloni/765 to Loo Male Loo and Kilifi/Takaye/Mosoluni /766 to Antony Safari were approved on the same day. Could the Plaintiff have been at the Land Board, which she admitted to have attended, approved the sale to Antony Safari, and rejected the one for Loo Male Loo. If that was the case then the Land Control Board Members could have indicated that the same was rejected with reasons for none approval. This approval happened in 2014 and this case was filed in 2018, was the Plaintiff not aware of what was happening or is it an afterthought. She admitted that she never carried out a search of the suit property.
65. Even though the Plaintiff subjected the signatures of the application form to a document examiner, the Plaintiff never subjected the authorization form, which allowed the Defendants to transact. The Plaintiff denied signing a transfer consent form. The forensic document examiner's report aimed to establish whether the exhibit marked A (with a red arrow) is of the same handwriting as compared with the exhibit marked B1 and B2. It also sought to establish whether the exhibit marked A2 pointed with a red arrow, is of the same hand writing as compared with Exhibit marked B1 and B2. The report concluded that different authors made the signatures. The report was not conclusive as to who the different authors were and whether the Plaintiff was one of them. The collection of the signatures, the chain of custody and the time lapse within which the documents were analyzed in a period of 4 years was also an issue. The document examiner admitted that signatures change over time and it depends on many other factors. Further that the transfer and application for consent form did not mention Plot No Takaye/Musoloni/717.
66. The court has also noted that the Plaintiff's signature in the verifying affidavit accompanying the plaint, as well as the signature in his witness statement are strikingly similar to the one in the application form. The court is not an expert in signatures but these two documents were not subjected for examination by the Document Examiner.
67. The Plaintiff has denied signing the consent and transfer forms but she has not satisfactorily adduced evidence to rebut the fact that there are documents at the Lands office indicating otherwise. The Land Registrar gave evidence and stated that the transfers were done procedurally as required by law. There is no evidence that anybody was charged with a criminal offence of making a document without authority, the Plaintiff having made a complaint to the CID. The Plaintiff alluded to fraud, that the 1st defendant illegally subdivided and sold the suit land to third parties without her knowledge or consent but has not specifically pleaded the fraud or illegality.
68. Section 24(a) of the *Land Registration Act* provides as follows:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”



69. Section 26 (1) of the [Land Registration Act](#) states as follows:

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

70. The Plaintiff’s title to the suit land plot No 717 was cancelled therefore she is no longer the registered owner of the resultant subdivisions. The 2nd and 3rd Defendants are the current registered owners of the resultant sub divisions together with Antony Safari who is not a party to this suit and that the Plaintiff admitted that she took part in the disposition of.

71. I have considered the pleadings, the evidence on record, submissions by counsel and the relevant judicial authorities and find that the Plaintiff has not proved her case on a balance of probabilities. The Plaintiff’s case is therefore dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 18TH 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.

M.A. ODENY

JUDGE

