



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 86 OF 2007

MADETENI LTD.....PLAINTIFF

=VERSUS=

1. THE ATTORNEY GENERAL (*sued on behalf of the Government of Kenya, the
Commissioner of Lands and the Kilifi District Land Registrar*)

2. ALDEHEID KAZUNGU SHAFFTER

3. GENTEEL WAVES PROPERTIES LIMITED.....DEFENDANTS

J U D G M E N T

Introduction

1. The Complaint in this matter was filed in Mombasa on 11th October, 2007. The Complaint was then amended on 16th September, 2008 and re-amended on 25th June, 2009.
2. In the Re-amended Complaint, the Plaintiff averred that it is the bona fide proprietor of a piece of land known as Kilifi/Madeteni/368 (the suit property) having purchased the same in 1984 and having been issued with an original Land Certificate on 5th July, 1984.
3. The Plaintiff averred in its Complaint that in 1994, James Ponda Kazungu, now deceased, wrongfully entered on the suit property; that the Plaintiff resisted the claim by the deceased and filed Mombasa HCCC No. 142 of 1994 and that the said suit was decided in its favour.
4. It is the Plaintiff's averment that in the year 2007, it received a copy of a Title Deed in respect of the suit property purportedly issued to the 2nd Defendant on 29th May, 2001 and after inspecting the register, it discovered that there was in existence a new edition green card in respect of the suit property on which the 2nd Defendant's name appeared as the proprietor of the land.
5. The Plaintiff has averred that it was informed that its title had been cancelled by the Commissioner of Lands in 1986 by way of a Gazette Notice No.2505 dated 30th May, 1986; that the purported cancellation of its title was capricious, illegal, unlawful and in breach of the provisions of the Registered Land Act (RLA) and that the Commissioner of Lands and the Land Registrar acted fraudulently in cancelling its title.
6. According to the Plaintiff, the 2nd Defendant purported to sell the suit land to the 3rd Defendant; that the 1st and 2nd Defendants fraudulently colluded to have the land registered in the 3rd

- Defendant's name and that the 3rd Defendant's representative was aware of the 2nd Defendant's defective title before it purported to purchase it.
7. The Plaintiff has sought for numerous declaratory orders in the Plaint, including a declaration that the removal of the Plaintiff's name from the land register and the entry of the 2nd Defendant's name was null and void; a declaration that the transfer of the suit land to the 3rd Defendant was illegal, null and void; and for an order requiring the Land Registrar to rectify the Land Register to restore the Plaintiff's name as the proprietor of the suit land.
 8. In the alternative, the Plaintiff is sought for indemnity from the Government.
 9. In its Amended Defence, the 3rd Defendant denied the allegations raised in the Plaint and averred that it was properly issued with a Title Deed in respect to the suit property; that the 2nd Defendant obtained the Title to the suit property by means of a direct grant from the Government and that the 2nd Defendant lawfully sold it the land.
 10. It is the 3rd Defendant's case that it purchased the suit property for valuable consideration with no knowledge of any omission, fraud or mistake and that the Plaintiff has not raised any grounds for rectification of the register and cancellation of its title.
 11. The 3rd Defendant finally pleaded in its Defence that the Plaintiff's claim is statute barred.
 12. The 1st and 2nd Defendant neither filed a Defence nor adduced any evidence.

The Plaintiff's case:

13. PW1, an advocate of this court and a director in the Plaintiff's company, relied and adopted the statement that he signed on 9th October, 2012 as his evidence in chief.
14. PW1 informed the court that the Plaintiff became the proprietor of the suit land after purchasing it from Esther Nyokabi Kamau in July 1984.
15. It was the evidence of PW1 that he was involved in the transaction relating to the purchase of the land because he was the Plaintiff's principal contact person.
16. PW1 produced in evidence the requisite consents that he obtained for the transaction to be completed. In addition, PW1 produced the copy of the Land Certificate that was issued to Esther Nyokabi Kamau on 31st July, 1981, the Application for Consent of the Land Control Board, the Consent of the Board, the Transfer document, the Land Certificate that was issued to the Plaintiff on 5th July, 1984 in respect to the suit property, the official search dated 4th September, 1984, amongst other documents.
17. PW1 informed the court that in July, 2007, the Plaintiff entered into negotiations relating to the sale of the suit property with Lynda Holt who was interested in purchasing the land. However, when Ms Holt visited the land registry, she was shown a copy of the Title Deed showed that the land was registered in the name of the 2nd Defendant on 29th May, 2001.
18. It was the evidence of PW1 that when he sent his representative to lands registry, he was informed by the Land Registrar that the Plaintiff's name had been removed from the Register in 1986 after its title was cancelled vide a Gazette Notice No. 2505 dated 30th May, 1986 and that there was an embargo on all titles in the area. According to PW1, the the Land Registrar declined to issue to the Plaintiff's representative with an official search.
19. PW1 produced in evidence the letters that he wrote to the District Land Registrar complaining about the cancellation of the Plaintiff's title. PW1 also informed the court that the Plaintiff, through the firm of Mogaka Omwenga & Mabeya advocates, lodged a caution on the land on 27th April, 2007; that the caution was never registered and that the Registrar was unable to give a satisfactory explanation for his refusal to register the caution and that the Plaintiff proceeded to file this suit in October, 2007.
20. When PW1 learnt in February, 2008 that the 2nd Defendant was in the process of selling the suit property, PW1 informed the court that the Plaintiff caused a caveat emptor notice to be published in the Daily Nation Newspaper of 14th February, 2008.
21. PW1 produced in evidence the numerous correspondences that the Plaintiff's advocate entered into with Mr. Omollo advocate who was then acting for Barbar Tyack in the purchase of the land from the 2nd Defendant.

22. It was the evidence of PW1 that between March and May, 2008, he made various inquiries in a bid to obtain the contact details of Barbara Tyack and indeed managed to confirm that she resides in Karen. PW1 informed the court that he then did a letter dated 6th May, 2008 which was hand delivered to Barbara Tyack at her residence in Karen.
23. PW1 informed the court that Barbara Tyack responded to his letter vide her letter dated 20th May, 2008 and that he later learnt that the 3rd Defendant had been registered as the proprietor of the suit property in August, 2007.
24. It was the evidence of PW1 that his investigations revealed that the 3rd Defendant was incorporated on 18th June, 2007; that by a Transfer of Share dated 23rd November, 2007, Shaukatali Saleh Mohamed Aboo transferred his ordinary share to Barbara Tyack and that Alex Hooper and Babara Tyack were thereafter appointed as directors of the 3rd Defendant.
25. It was the evidence of PW1 that the cancellation of the Plaintiff's title was illegal, null and void; that the transfer of the land to the 2nd Defendant was null and void; that the transfer of the land to the 3rd Defendant was a nullity for want of the consent of the Land Control Board and that the purported transfer of the land from the 2nd Defendant to the 3rd Defendant could not have been approved by the Land Control Board because the shares in the 3rd Defendant's company were beneficially owned by Alex Hooper and Barbara Tyack, who were not citizens of Kenya.
26. In cross-examination, PW1 stated that the 3rd Defendant was aware of the defect of the 2nd Defendant's title, and so was Ms Barbara.
27. PW2 informed the court that he is a chartered valuation surveyor and one of the Plaintiff's director.
28. It was the evidence of PW2 that the Plaintiff purchased the suit property from Esther Nyokabi Kamau and was issued with a Land Certificate.
29. In his statement, PW2 rehashed the evidence of the advocate who was involved in the transaction, PW1.
30. The other director of the Plaintiff, PW3 also reiterated the evidence of PW1, which I have summarised above.
31. PW4 informed the court that he is a director of Turtle Bay Services, a company that offers construction, property management and maintenance services in Watamu, Malindi.
32. It was the evidence of PW4 that in February, 2007, Barbara Tyack was interested in purchasing plot number 390, which is located in Watamu.
33. It was the evidence of PW4 that during the negotiations, Ms Barbara asked him if the suit property, which was within the vicinity of plot 390, was for sale.
34. PW4 stated that he informed Ms Barbara that the suit land was owned by Mr. Herber (PW2) and that to the best of his knowledge, the land was not available for sale.
35. PW4 informed the court that Ms Barbara proceeded with negotiations in respect to plot 390 until May, 2007 when she failed to respond to correspondences. However, he learnt that the suit property had been transferred to a third party.
36. When he noticed that it was Ms Barbara who had commenced construction on the suit land, PW4 informed Mr. Harber via an email dated 27th April, 2008.

The Defence case:

37. Ms Barbara Ann Tyack (DW1), informed the court that she came to Kenya 32 years ago.
38. It was the evidence of DW1 that she visited the Oyombo coastline in February, 2007 and was shown plot number 390 by PW4.
39. When the sale of plot NO. 390 fell through, it was the evidence of DW1 that she was informed by a relative of the late councillor James Kazungu that the suit property was up for sale.
40. After viewing the property, it was the evidence of DW1 that she instructed his advocate to handle the conveyance transaction.
41. DW1 informed the court that her advocate conducted a search at the registry. The search showed that the suit land was registered in the name of the 2nd Defendant.
42. According to DW1, her advocate prepared the sale agreement which was duly signed by Heidi Kazungu and herself; that the 3rd Defendant lawfully obtained all the relevant consents; that she

- had no knowledge of the Plaintiff's interest in the land and that by the time she was entering into an agreement with the 2nd Defendant, she was not aware that the 2nd Defendant was registered as the proprietor of the land after cancellation of the Plaintiff's title.
43. DW1 denied that during the negotiations relating to the possible sale of plot number 390 with PW4, she did not at any point in time ask him anything relating to plot 368 as alleged by PW4.
44. DW1 informed the court that he heard about the issue of PW2 being the initial owner of the suit land after she had been issued with a title document.
45. DW1 stated that she was not aware of the suit that the Plaintiff had filed against Mr. Kazungu.
46. DW1 informed the court that although the 3rd Defendant has five shareholders, none of them is a director and that it was her advocate who informed her that he had a company which could buy the land on her behalf.
47. It was the evidence of DW1 that the Board gave its consent before the land was transferred to it.
48. The other Directors of the 3rd Defendant, DW2, informed the court that DW1 asked him if he was interested in buying a plot in their joint names, which proposal he acceded to.
49. According to DW2, before they purchased the land, he established that the suit land was initially owned and farmed by a lady known as Kadzo Kombe before the Kazungus acquired it.
50. It was the evidence of DW2 that the said Kadzo showed them a copy of the sale agreement which showed that she had sold the land to Jimmy Kazungu. This is the information that he learnt in the year 2008 when he visited the plot.
51. It was the evidence of DW2 that he learnt that the Plaintiff's title document was canceled in 1986 because it had been improperly issued.
52. In cross-examination, DW2 stated that him together with his wife are directors in the 3rd Defendant's company; that none of them are citizens of Kenya and that although the Plaintiff produced in evidence the Transfer of Shares to Ms Barbara, those shares have never been transferred.

The Plaintiff's submissions:

53. The Plaintiff's advocate submitted that the Plaintiff's interest over the suit property was registered under the now repealed Registered Land Act and that pursuant to Section 107 (1) of the Land Registration Act, the Plaintiff's company's interest over the suit property continues to be governed under the Registered Land Act (RLA).
54. The Plaintiff's advocate submitted that the effect of the 1st and 2nd Defendant's non-appearance during the hearing of the case should result in the Plaintiff's case being uncontroverted in so far as its claim against the said Defendants are concerned. Counsel relied on the cases of **Abraham Mukunya Vs Mega Spin Limited (2014) e KLR** and **Peter Nganga Muiruri Vs Barclays Bank Limited (2015) e KLR**.
55. Counsel submitted that it is uncontroverted that the Plaintiff was deprived of the suit property by the 1st and 2nd Defendants illegally, unlawfully and unfairly and as such, the 2nd Defendant did not acquire a good and valid title over the suit land.
56. The Plaintiff's counsel urged that the transfer of the suit property to the 3rd Defendant's company was null and void and the Register ought to, pursuant to the provisions of Section 143 (2) of the RLA, be rectified to reflect the same.
57. Counsel submitted that courts have held that in an instance where the transfer of land is founded on the illegal or fraudulent acts of a transferor, the said transfer is null and void and the transferee does not acquire a good title. Counsel relied on the cases of **Samuel Komora Vs Land Registrar, Kajiado (2015) e KLR** and **West End Butchary Limited Vs Athi Highway Developers Ltd & 6 others (2012) Eklr** amongst others.
58. The Plaintiff's counsel submitted that the 1st Defendant had no basis in law to revoke the Plaintiff's title to the suit property; that the subject gazette notice did not state that the Plaintiff's title had been cancelled; that it is only the High Court that cancel a title and that the ratio decidendi alluded to in the decisions of the court is to ensure that the proprietor of land does not have his right to a fair hearing infringed upon. Counsel relied on numerous authorities to buttress his submissions.
59. Counsel submitted that the 2nd Defendant did not contest the allegations that she knowingly aided

- the fraud or mistake of law and fact by the 1st Defendant which saw the Plaintiff dispossessed of his suit land; that the 2nd Defendant, being the widow of James Kazungu was always aware of the proceedings in Mombasa High Court Civil Suit No. 142 of 1994 even before the land was purportedly transferred to her and that as per the Judgment in the said suit, the 2nd Defendant's husband was declared a trespasser upon the suit property and was ordered to vacate it.
60. It is the Plaintiff's counsel's submissions that all the Defendants in this suit acted in a fraudulent concert with an end to depriving the Plaintiff's company of the suit property.
61. In any event, it was submitted, the 3rd Defendant's company could not secure a valid Land Control Board consent in respect of the transfer of the suit property from the 2nd Defendant because the shareholders and the directors of the company were all foreigners.
62. The Plaintiff's advocate finally submitted that the 3rd Defendant, through DW1 and DW2 were aware that the suit property belonged to the Plaintiff.
63. Counsel submitted that on the basis that the Plaintiff company was ab initio fraudulently and illegally deprived of the suit property, the appropriate remedy is to have the register rectified and the suit property reverted back to the Plaintiff.
64. To order otherwise, it was submitted, would be to perpetuate and give force to an illegality and fraud.

The 3rd Defendant's submissions:

65. The 3rd Defendant's advocate submitted that the Plaintiff had a duty to prove that the 3rd Defendant participated in the fraud while obtaining the title to plot No.368; that the Plaintiff has failed to discharge its burden of proof and that from the Plaintiff's pleadings, no fraud was alleged or pleaded against the 3rd Defendant.
66. Counsel submitted that all the publications which were produced in evidence were made after the acquisition of the suit property by the 3rd Defendant; that the Plaintiff departed from its pleadings and focused on unpleaded allegations of failing to obtain the Land Control Board consent; that the 3rd Defendant obtained the consent of the Board and that the shares in the company remained in the names of the previous owners until such a time that the intended shareholders will obtain Kenyan citizenship.
67. The 3rd Defendant's counsel submitted that his client did and obtained an official search of plot number 368; that the 3rd Defendant had neither the knowledge nor ability to know of the alleged irregularities; that the publication of the caveat emptor was done after the successful registration of the transfer of the land in favour of the 3rd Defendant and that the Plaintiff's alternative prayer for compensation may be allowed.

Analysis and findings:

68. The evidence by the Plaintiff's witnesses is that the Plaintiff purchased parcel of land known as Kilifi/Madeteni/368 (the suit property) from Mrs Esther Nyokabi Kamu in 1984 and was duly registered as the owner.
69. It is the Plaintiff's case that it followed all the prescribed legal procedures to the letter, including obtaining all the requisite consents.
70. PW1, produced in evidence the Land Certificate that was issued to the initial allottee of the suit property on 31st July, 1981 and the Consent of the Land Control Board which allowed the transfer of the suit property to the Plaintiff.
71. PW1, also produced in evidence the transfer document that was duly executed, attested, stamped and registered in the lands office, and the Land Certificate that was issued to the Plaintiff on 5th July, 1984.
72. After the Land Certificate was issued in favour of the Plaintiff, a representative of the Plaintiff conducted an official search on 4th September, 1984. PW1 produced the said search which showed that indeed the Plaintiff was the duly registered proprietor of the suit property.
73. It was the evidence of PW1 that in 1994, the Plaintiff sued James Ponda Kazungu (deceased)

seeking for vacant possession. According to the testimony of PW1, the said James Ponda Kazungu was the 2nd Defendant's husband.

74. PW1 produced in evidence a Ruling dated 28th June, 1995 in which the court barred the 2nd Defendant's husband from trespassing on the suit property.
75. Unbeknown to the Plaintiff, by the time it was suing Mr. Kazungu in Mombasa HCCC No. 142 of 1994, the Commissioner of Lands had purportedly cancelled its title vide gazette notice NO.2505 of 20th June, 1986. The notice read as follows:-

“NOTICE TO LAND OWNERS IN KILIFI DISTRICT”

A letter has been sent to the land owners within Chembe/Kibabamshe, Kilifi/Jimba, Kilifi/Madeteni, Kakuyuni/Madunguni, all in Kilifi District, requesting them to respond to the said letter before 31st July, 1986 and also requesting them to report to the District Lands Officer, Kilifi District before 31st July, 1986”.

76. It is the Plaintiff's case that the above gazette notice did not cancel any specific title document and that the same was never brought to its attention.
77. Indeed, the reading of the gazette notice does not indicate which title the Commissioner of Lands cancelled, if at all. The said notice does not also indicate the law that the Commissioner of Lands invoked in issuing the notice.
78. The existence of the above notice, and the fact that the Commissioner of Lands had cancelled the Plaintiff's title was only known to the Plaintiff in the year 2007 when the Plaintiff attempted to sell the property.
79. On investigations, the Plaintiff discovered that a Title Deed for the suit property had been issued to the 2nd Defendant on 29th May, 2001.
80. Indeed, in his ground report dated 22nd May, 2007, the District Land Adjudication and Settlement Officer confirmed that the 2nd Defendant was the registered proprietor of the suit land after the same had been allocated to her late husband.
81. It is after the discovery of the existence of the Title Deed in the name of the 2nd Defendant that the Plaintiff's advocate engaged the Attorney General and the Ministry of Lands officials, with the first letter being authored on 17th August, 2007.
82. The documents produced by the Plaintiff shows that its advocate made several attempts to lodge a caution on the suit property, and more specifically on 27th August, 2007, without any success.
83. After failing to lodge the caution as against the suit property, the Plaintiff filed this suit as against the 1st and 2nd Defendants on 1st October, 2007, just to learn later that the land had been transferred to the 3rd Defendant and a Title Deed issued to it on 24th August, 2007.
84. The evidence of DW1 was that she conducted due diligence before she purchased the suit property from the 2nd Defendant.
85. DW1 produced in evidence a letter that was authored by the Assistant Chief in which he confirmed that he had given to DW1 the history concerning the ownership of the suit property.
86. DW1 also produced in evidence the sale agreement dated 11th June, 2007 that she entered into with the 2nd Defendant in respect of the suit property.
87. Although the Agreement dated 11th June, 2007 was between the 2nd Defendant and DW1, the Title Deed was issued in the name of the 3rd Defendant's company, whose shareholders were two Kenyans. The 3rd Defendant was granted the Consent of the Board before the transfer was effected.
88. It is clear from the evidence adduced in this court that while the Plaintiff was making all efforts to register a caution over the suit land property, the 3rd Defendant was in the process of purchasing the suit land. Indeed, the 1st Defendant proceeded to register the suit property in the name of the 3rd Defendant and issued a Title Deed to the 3rd Defendant on 24th August, 2007.

89. The 2nd Defendant neither filed a Defence nor adduced evidence in this matter. There is therefore no evidence before this court to show how the 2nd Defendant was allocated the suit property while the Plaintiff was still holding a Title Deed for the same land.
90. Although the 1st Defendant filed a Defence, it did not adduce evidence to rebut the Plaintiff's allegations that the Commissioner of Lands did not have the legal mandate to cancel the Title Deed that the Plaintiff was holding.
91. As has been held in numerous decisions of this court and the Court of Appeal, non appearance of the Defendant during the hearing of a matter will result in the Plaintiff's case being held to be uncontroverted in so far as its claim as against the said Defendant is concerned.
92. Consequently, this court finds and holds that the averments made by the Plaintiff against the 1st and 2nd defendants in the Re-amended Plaintiff, coupled with the evidence of PW1 are wholly uncontroverted.
93. Indeed, this court agrees with the evidence of PW1 and the Plaintiff's advocates submissions that the 1st Defendant had no power or authority, through the Gazette Notice No.2505 or otherwise, to cancel the Plaintiff's Land Certificate that was issued to it in 1984.
94. According to the provisions of Section 143(1) of the RLA, it is only the court that may order for rectification of the register by directing that any registration be cancelled where it is satisfied that any registration has been obtained by fraud or mistake.
95. In the circumstances of this case, and based on the evidence of PW1, this court finds and holds that the 1st Defendant, in collusion with the 2nd Defendant, acted fraudulently in depriving the Plaintiff of its title by purporting to cancel its title without notice.
96. It is now settled law that a benefit cannot be withdrawn until the reason for withdrawal has been given and the person concerned has been given an opportunity to comment on the reasons.
97. Having failed to give to the Plaintiff an opportunity to defend its title, and in view of the settled law that it is only the court that can cancel a title document and order for the rectification of the register under the repealed RLA, the 1st Defendant's purported actions of cancelling the Plaintiff's title and then issuing another title to the 2nd Defendant were null and void ab initio.
98. Having declared the actions of the 1st Defendant of cancelling the Plaintiff's title and issuing a Title Deed to the 2nd Defendant null and void, it follows that any subsequent transferee(s) cannot acquire a good title even in a situation where he is an innocent purchaser for value. That is the position that the Court of Appeal took in the case of **Samuel Kamara Vs Land Registrar, Kajiado (2015) e KLR** where it was held as follows:-

“From the evidence, it is not disputed that prior to the registration of the appellant, the Plaintiff was the registered proprietor of the suit property. During the hearing, the Plaintiff produced an original certificate of title in respect of the suit property, which was confirmed to be authentic by the Respondent, and which was in his possession subsequent to the transfer of the suit property to the appellant. It is also undisputed that the Plaintiff did not sell the suit property to the appellant who in turn admitted that the person who sold him the suit property was charged in the District Magistrates court, Kajiado. Since the Plaintiff did not transfer his property to the appellant, having regard to Sections 27 and 28 of the Act, he retained an absolute and indefeasible title.”

99. The evidence produced in this court shows that the Plaintiff has never parted with its title. The only way the Defendants can defeat the Plaintiff's title in the instant case is by showing that in any event, the Plaintiff's title was fraudulently acquired and should not have been issued in the first place. In the case of **Munyu Maina vs Hiram Gathina Maina, Civil Appeal No. 239 of 2009**, the Court of Appeal held as follows:-

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered

proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

100. The Defendants did not produce any evidence to show that the Plaintiff or Ms Esther Nyokabi Kamau unlawfully and fraudulently acquired the suit property so as to bring the Plaintiff's title under the purview of Article 40 (6) of the Constitution, which provides that the right to own property does not extend to any property that has been found to have been unlawfully acquired.
101. Having failed to prove that either Ms Kamau or the Plaintiff unlawfully acquired the Land Certificate that was issued to them in 1981 and 1984 respectively, it follows that by the time the 2nd Defendant was issued with a Title Deed in the year 2001, the said suit property was not available for allocation.
102. Consequently, the said Title Deed should not have been issued to the 3rd Defendant in the year 2007 because the 2nd Defendant could not have transferred what she did not have in the first place. Indeed the doctrine of innocent purchaser for value cannot arise. In the case of **Arthi Highway Developers Limited Vs West End Butchery Limited & 6 Others (2015) e KLR**, the court of Appeal held as follows;

“The doctrine of purchaser without notice never enabled a purchaser to take free from legal rights, as distinct from equitable interests.”

103. It is therefore my finding that no valid title passed between the 2nd Defendant and the 3rd Defendant, because the 2nd Defendant should not have been issued with the Title Deed in respect to the suit property in the first place, more so where the Plaintiff's title has not been impugned at all.
104. Having held that the 2nd Defendant could not have legally passed an interest in the suit property to the 3rd Defendant, it will not be necessary for me to make a finding as to whether the 3rd Defendant obtained a valid Consent of the Board, or whether the Plaintiff is entitled to indemnity from the Government.
105. For the reasons I have given above, I allow the Plaintiff's Re-amended Complaint dated 25th June, 2009 in the following terms:-

(a) A declaration be and is hereby issued that the Plaintiff is and has always been the bona fide proprietor of parcel of land known as Kilifi/Madeteni/368 (the suit property).

(b) A declaration be and is hereby issued that the purported removal of the Plaintiff's name from the Land Register and the purported entry of the second Defendant's name as proprietor of the suit property was illegal, null and void.

(c) A declaration be and is hereby issued that the purported transfer of the land from the 2nd Defendant to the 3rd Defendant was illegal, null and void.

(d) An order be and is hereby issued directing the Kilifi Land Registrar to rectify the Land Register in respect of the suit property by cancelling the 3rd Defendant's name and substituting thereof the Plaintiff's name as proprietor of the land.

(e) A mandatory injunction be and is hereby issued compelling the 3rd Defendant, its directors, shareholders, servants or employees to vacate the land and to deliver vacant possession thereof to the Plaintiff.

(f) A permanent injunction be and is hereby issued restraining the 3rd Defendant by itself, servants and or agents from trespassing onto or in any other way interfering with the suit property.

(g) The Defendants to pay the costs of the suit jointly and severally.

Dated, signed and delivered in Malindi this **1st** day of **July**, 2016.

O. A. Angote

Judge