



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

**AT MALINDI**

**ELC CIVIL CASE NO. 85 OF 2014**

**NYEVU MAZIA MKONGO.....PLAINTIFF**

**=VERSUS=**

**ELIZABETH KASOHA ADEMA.....DEFENDANT**

**J U D G M E N T**

1. In the Plaint dated 5<sup>th</sup> May, 2014, the Plaintiff averred that he was allocated land known as Kilifi/Kijipwa/209 (the suit property) and that he has been in physical possession of the same since 1985.

2. However, in 1985, she entered into an agreement for sale of the suit property with Mtwapa Properties for Kshs.35,000 and that the agreement for sale became null and void because the Land Control Board Consent was not applied for and obtained within six months.

3. According to the Plaintiff's Plaint, she discovered in the year 2012 that the Defendant became the registered proprietor of the land in 1990; that the said registration was obtained by fraud and that he should be declared the rightful owner of the suit property.

4. The Defendant was served with Summons to Enter Appearance by way of advertisement in the Standard Newspaper of 26<sup>th</sup> June 2014. The Defendant never entered appearance and the matter proceeded for formal proof.

5. In his evidence, the Plaintiff, PW1 informed the court that he resides in the suit property and that he has never seen the Defendant.

6. It was his evidence that he has never transferred the suit property to the Defendant and that the title that was issued to the Defendant should be cancelled.

7. Although the Defendant was served in this matter, she neither enter appearance nor a Defence. The evidence of the Plaintiff has not been controverted. I have perused the copy of the Certificate of Official Search which shows that the Defendant was registered as the proprietor of the suit property on 24<sup>th</sup> August 1990. She has never taken possession of the suit property since then.

8. In view of the fact that the evidence of the Plaintiff that he is the lawful owner of the suit property has not been challenged, I find and hold that the Plaintiff has proved his case on a balance of probabilities.

9. I therefore allow the Plaint dated 5<sup>th</sup> July, 2014 as prayed.

Dated and delivered in Malindi this **15<sup>th</sup>** day of **May**, 2015.

**O. A. Angote**

**Judge**