



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

**AT MALINDI**

**ELC CIVIL CASE NO.107 OF 2014**

**FREDRICK KIVALA NZUKI.....PLAINTIFF**

**VERSUS**

**1. ALLEXANDER TOYA IHA**

**2. COMMISSIONER OF LANDS**

**3. HONOURABLE ATTORNEY GENERAL**

**4. REGISTRAR OF LANDS, KILIFI.....DEFENDANTS**

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

1. The Plaintiff filed this suit claiming that he purchased parcel of land number Kilif/Jimba/276, the suit property, in the year 1985 from Alexander Thoya Iha; that prior to the said purchase, Alexander Thoya Iha was the first registered proprietor of the suit property and that the 1<sup>st</sup> Defendant, through fraudulent acts took possession of the suit property.
2. The Plaintiff is seeking for a declaratory order that he is the rightful owner of the suit property.
3. Although the Defendants were served with Summons to Enter Appearance and Plaint on 20<sup>th</sup> June 2014, they neither entered appearance nor filed a Defence.
4. The matter proceeded for formal proof on 13<sup>th</sup> April 2015.
5. The Plaintiff, Pw1, informed the court that he purchased the suit property in 1985 whereafter a sale agreement was executed in his favour.
6. According to PW1, this court should declare her as a purchaser for value without notice.
7. PW1 produced in evidence the Sale Agreement dated 10<sup>th</sup> February, 1985 between him and the vendor.
8. PW1 also produced in evidence the Land Certificate that was issued to Alexander Thoya Iha, the seller, on 25<sup>th</sup> November 1983 and the Transfer document which is executed but not registered.
9. The advocate who drew the Sale Agreement dated 10<sup>th</sup> February 1985, PW2, informed the court that the Plaintiff herein was his client in the land transaction.
10. It was the evidence of PW2 that he prepared a Sale Agreement which was executed together with the Transfer document. However, when he presented it, he was informed that an embargo in respect to the suit property was in existence.
11. The Plaintiff's claim is for a declaration that he is the owner of the suit property. The Plaintiff is not seeking for the eviction of the Defendant who is said to have trespassed on the suit property.
12. Although a Transfer document was signed by the Transferor and the Plaintiff on 20<sup>th</sup> February 1985, a few days after the Agreement was signed, the same has never been registered.

13.The Application for registration of the Transfer has been produced in evidence. The said Application was rejected by the District Land Registrar on 5<sup>th</sup> March, 1985 as follows:

**“the documents presented for registration are herewith returned together with the contents as the title is still with the Commissioner of Lands for investigation purposes”.**

14.The Plaintiff has not informed this court why after the Application for registration of the Transfer was rejected on 5<sup>th</sup> March 1985 and why, he waited for over 30 years to file this suit. This suit should have been filed within twelve (12 ) years from the date when the District Land Registrar declined to register the Transfer. The suit is therefore time barred.

15.In the circumstances, I find that the Plaintiff has not proved his case on a balance of probabilities.

16.For those reasons, I dismiss the Plaintiff's Plaint dated 23<sup>rd</sup> April 2014 with no order as to costs.

Dated and delivered in Malindi this **10<sup>th</sup>** day of **July** 2015.

**O. A. Angote**

**Judge**