



Mumo alias Mbisi Daniel & 3 others v Daniel & another (Sued as the personal representative of Daniel Mulwa Kavithi alias Daniel Mulwa Kavithi (Deceased) & 5 others (Environment & Land Case 7 of 2015 & 45 of 2018 (Consolidated)) [2024] KEELC 3921 (KLR) (29 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3921 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 7 OF 2015 & 45 OF 2018 (CONSOLIDATED)
CA OCHIENG, J
APRIL 29, 2024

BETWEEN

FREIZER MUMO ALIAS MBISI DANIEL PLAINTIFF

AND

JONAH KAVITHI DANIEL AND MAGDALENE WAYUA DANIEL (SUED AS THE PERSONAL REPRESENTATIVE OF DANIEL MULWA KAVITHI ALIAS DANIEL MULWA KAVITHI (DECEASED)) 1ST DEFENDANT

MAGDALENE WAYUA DANIEL 2ND DEFENDANT

LIQUIDATOR IN LUKENYA RANCHING AND FARMING CO-OPERATIVE SOCIETY 3RD DEFENDANT

COUNTY LAND REGISTRAR OF MACHAKOS 4TH DEFENDANT

AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 45 OF 2018

BETWEEN

NICHOLAS NYALA MULWA 1ST PLAINTIFF

FREIZER MUMO ALIAS MBISI DANIEL 2ND PLAINTIFF

ADAMSON MUTHAMA 3RD PLAINTIFF

SUING AS THE LEGAL REPRESENTATIVES AD LITEM OF THE ESTATE OF THE LATE TABITHA MULWA

AND



**JONAH KAVITHI DANIEL AND MAGDALENE WAYUA DANIEL
(SUED AS THE PERSONAL REPRESENTATIVE OF DANIEL MULWA
KAVITHI 1ST DEFENDANT
MAGDALENE WAYUA DANIEL 2ND DEFENDANT
THE LIQUIDATOR IN LUKENYA RANCHING AND FARMING CO-
OPERATIVE SOCIETY 3RD DEFENDANT
COUNTY LAND REGISTRAR OF MACHAKOS 4TH DEFENDANT**

JUDGMENT

1. These two suits (ELC No. 7 of 2015 and ELC No. 45 of 2018) emanate from a dispute revolving around two Shares No. 241 and 350 respectively, at Lukenya Ranching and Farming Co-operative Society Limited (3rd Defendant). One Daniel Mulwa Kavithi (deceased 1st Defendant) was the father of the Plaintiffs' in the two suits and husband to Tabitha Mbula Daniel (deceased) and Magdalene Wayua Daniel. Further, Tabitha Mbula Daniel was the mother of the Plaintiffs' in the two suits while Magdalene Wayua Daniel was the stepmother to the Plaintiffs and the 2nd wife to Daniel Mulwa Kavithi (deceased).
2. In ELC No. 7 of 2015, through a Complaint dated the 8th November, 2017 and amended on 21st February, 2018, the Plaintiff sought for the following orders against the Defendants:-
 - a. A declaration that allocation of LR Number Mavoko Town Block 3/2261, 2563, 1306 and 1493 to the 1st Defendant Daniel Mulwa Kavithi were illegal and therefore null and void.
 - b. A declaration that transfers effected by Daniel Mulwa Kavithi (deceased) and the society to the 2nd Defendant in respect of any of the parcels of land, namely Mavoko Town Block 3/2563, 1306 and 1493 be declared a nullity.
 - c. An order be granted directing that all the registration in respect of Mavoko Town Block 3/2563, 1306 and 1493 be cancelled and rectified by deleting the names of Daniel Mulwa Kavithi (Deceased) and the 2nd Defendant and substituting the same with the name of the Plaintiff.
 - d. An order directed to the 4th Defendant to cancel the title deed issued to Daniel Mulwa Kavithi (deceased) in respect of the Numbers Mavoko Town Block 3/1306 and 1493 and substitute the same with the name of the Plaintiff.
 - e. An order directed to the 4th Defendant to cancel the title deed issued to the 2nd Defendant in respect of the Numbers Mavoko Town Block 3/2563 and substitute the same with the name of the Plaintiff.
 - f. In the alternative, the estate of Daniel Mulwa Kavithi (deceased) and 2nd Defendant be ordered to compensate the Plaintiff the equivalent market price of parcels MAVOKO TOWN BLOCK 3/2261, 1306, 1493 and 2563.
 - g. Costs of this suit.
 - h. Any other or such other better reliefs as this Honourable Court deems fit to grant in the circumstances of this suit.



3. The 1st and 2nd Defendants opposed the suit and filed a joint Defence where they denied the averments in the Plaint. They contended that the Plaintiff sought to deny them including the children of the 1st and 2nd Defendants' their entitlements. They denied that the Plaintiff ever owned a Share with Lukenya Ranching. They provided the background of the disputed shares as well as suit lands herein. The 1st Defendant contended that he simply purchased Share No. 241 in the Plaintiff's name but the rights over the said shares accrued to him. He states that he is a bona fide owner of the suit lands as the transfers including issuance of titles were legally done.
4. The 3rd and 4th Defendants never filed their Defences to controvert the Plaintiffs' averment.
5. While in ELC No. 45 of 2018 vide a Plaint dated the 8th March, 2018, the Plaintiffs' sought for Judgment against the 1st, 2nd, 3rd and 4th Defendants jointly and severally:-
 1. A declaration that allocation of LR Number Mavoko Town Block 3/1498 to the late Daniel Mulwa Kavithi was illegal and therefore null and void.
 2. A declaration that the transfers effected by the Lukenya Ranching and Farming Cooperative Society to the 2nd Defendant in respect of parcels of land namely Mavoko Town Block 3/1311 and 2364 be declared a nullity.
 3. An order directed to the 4th Defendant to cancel the titles deeds issued to the late Daniel Mulwa Kavithi and the 2nd Defendant in respect of Mavoko Town Block 3/1498 and Mavoko Town Block 3/1311 and 2364 respectively and substitute the same with the name of the Plaintiffs, the administrators of the estate of the late Tabitha Mulwa.
 4. In the alternative the estate of Daniel Mulwa Kavithi (deceased) and the 2nd Defendant be ordered to compensate the Plaintiffs the equivalent market price value of parcels Mavoko Town Block 3/1498, 2364 and 1311.
 5. Cost of this suit.
 6. Any other or such other better reliefs as this Honourable Court deems fit to grant in the circumstances of this suit.
6. The 2nd Administrator of the 1st Defendant and 2nd Defendant filed a joint Defence dated the 15th March, 2019, where they denied the averments in the Plaint except the descriptive. They denied the particulars of fraud as itemized in the Plaint. They argued that the deceased Daniel Mulwa Kavithi was a founding member of Lukenya Ranching and Farming Co-operative Society Ltd (3rd Defendant), out of which he acquired three shares namely 22 and 241 and 22. They insisted that the Plaintiffs' mother as a non-member was not allowed to purchase shares in Lukenya Ranching and Farming Co-operative Society, hence it is the deceased Daniel Mulwa Kavithi who purchased a share and registered in his first wife's name as a nominee. They contended that the deceased Daniel Mulwa Kavithi had the right to withdraw his proxy whether the said proxy was alive or dead. They reiterated that the 1st Administrator to the Estate of Daniel Mulwa Kavithi had committed fraud by filing an admission to the suit knowing fully well the deceased had denied liability in all the suits more particularly Machakos ELC No. 20 of 2015.
7. The 1st Administrator Jonah Kavithi Daniel in his Statement of Defence dated the 16th July, 2018 admitted the Plaintiff's claim.
8. The Plaintiffs filed a reply to Defence dated the 16th March, 2019 denying the averments in the 2nd Administrator and 2nd Defendant's Defence. They insisted that the deceased Daniel Mulwa Kavithi



had only one Share No. 22 and that Share No. 350 belonged to Tabitha Mulwa who was a member of the Society. Further, Share No. 241 belonged to Freizer Mumo alias Mbisi Daniel. They denied that the deceased Daniel Mulwa Kavithi was allowed to have a proxy or nominee registered on his behalf. They reaffirmed that, to the contrary, the late Daniel Mulwa Kavithi changed the shares from the name of the late Tabitha Mulwa without Grant of Letters of Administration and this amounted to intermeddling with the Estate of the deceased. Further, that the transaction is hence null and void as the registration was illegal as well as unprocedural.

9. On 8th February, 2022, all the parties present agreed that both ELC No. 7 of 2015 and ELC No. 45 of 2018 should be heard jointly since they were related suits.

Evidence of the Plaintiffs

10. The Plaintiffs' claim is based on a claim for ownership of Share No. 241 and 350 respectively. It is their contention that in 1979, the 1st Plaintiff (Freizer Mumo) gave his father the late Daniel Mulwa Kavithi monies to purchase share No. 241 on his behalf. He testified that Share Number 241 was purchased from Joel Mwanzia and transferred in his name on 6th September, 1980. Further, that he paid the transfer fees. The Plaintiff explained that on 2nd June, 2006, 22nd February, 2008 and 26th September, 2002, Daniel Mulwa Kavithi (deceased), fraudulently had land parcel numbers Mavoko Town Block 3/2261, 2563, 1306 and 1493 registered in his name and sold Mavoko Town Block 3/2261 to a third party, one Mr. Mburu while Mavoko Town Block 3/2563 was transferred to the 2nd Defendant on 22nd February, 2008. The Plaintiff contends that his late father who was an official of Lukenya Ranching did this fraudulently and illegally. Further, that land parcel numbers Mavoko Town Block 3/1306 and 1493 remained registered in the deceased name. He denied allowing his late father to sell land parcel number Mavoko Town Block 3/2563 to settle his hospital bills. He claimed to have suffered loss and damage as a result of the said transfers. The Plaintiffs' further reiterated that their late father transferred their mother (Tabitha Mulwa Daniel's) Share No. 350 to himself and disposed of the suit lands being Mavoko Town Block 3/1311, 2364 and 1498, emanating therefrom without their consent. Further, that some of the parcels of land were disposed directly to the 2nd Defendant after their mother's demise. The Plaintiff produced the following documents as Exhibits: Grant of Letters of Administration dated 4th May, 2017 for the estate of Daniel Mulwa Kavithi (deceased); Receipt No. 2932 for Transfer Fees of Share No. 241 from Joel Mwanzia to the Plaintiff dated 6th September, 1980; Letter of Allotment No. 4696 for provisional Plot No. 818 Member 241 dated 24th June, 1999 measuring 100 ft by 50ft; Letter of Allotment No. 4848 for provisional Plot No. 713 measuring 40 acres, member 241 dated 10th January, 2002; Letter of Allotment No. 4932 for provisional Plot Number 558 measuring 20 acres; Certificates of official searches for land parcels numbers Mavoko Town Block 3/1319, 1493 and 2563; Application form for transfer of Shares/Plot at Lukenya Ranching and Farming Cooperative Ltd; Abstract of titles for land parcel numbers Mavoko Town Block 3/1493, 2563 and 1306; and Court Order dated the 18th October, 2017 allowing the Liquidator Lukenya Ranching and Farming Cooperative Society to be sued as a Defendant herein.
11. The Plaintiff further produced the following documents as exhibits: Limited Grant of Letters of Administration Ad Litem dated 27th November, 2017; Certificate of Death issued on 25th November, 2016 of Tabitha Mulwa; Receipt issued by Lukenya Ranching and Farming Co-operative Society Limited dated 17th January, 1978; Receipt issued by Lukenya Ranching and Farming Co-operative Society Limited dated 1st November, 1977; Receipt issued by Lukenya Ranching and Farming Co-operative Society Limited dated 15th May, 1980; Letter of Allotment of Plot No. 818 issued by Lukenya Ranching and Farming Co-operative Society Limited; Letter of Allotment for plot No. 74 issued by Lukenya Ranching and Farming Co-operative Society Limited; Letter of Allotment for Plot No. 163



issued by Lukenya Ranching and Farming Co-operative Society Limited; Letter of Allotment for Plot No. 399 issued by Lukenya Ranching and Farming Co-operative Society Limited; Abstract of Title for Mavoko Town Block 3/3085; Abstract of Title for Mavoko Town Block 3/1498; Abstract of Title for Mavoko Town Block 3/2364; Abstract of Title for Mavoko Town Block 3/1311; Letter dated 23rd January, 2017 issued by Chief Mua Hills Location; Certificate of Official Search for parcel number Mavoko Town Block 3/2364; Certificate of Official Search for parcel Mavoko Town Block 3/1498; He also produced Plaintiff's Supplementary List of Documents dated 9th August, 2021 as exhibit 17 which is a list of members for Lukenya Ranching and Farming Co-operative Society Limited who paid for their shares; He also produced Plaintiff's additional list of documents dated 22nd February, 2021 as follows; Personal file member No. 350 Lukenya, Ranching and Farming Co-operative Society Limited Tabitha D. Mulwa containing the following documents; Letter of allotment commercial Plot No. 74; Letter of allotment Plot No. 816; Letter of allotment 20 acres Plot No. 399; Letter of allotment Plot No. 163; Letter of allotment Plot No. 699 changed to 750 Exhibit 18; Member number 350 parcel numbers allocation list for parcels Nos. 1498, 1311, 3085 and 2364 exhibit 19; Certificate copy of the main register for member numbers 350 certified on 25th February, 2021 exhibit 20; Part of map showing plot allocation by the Society exhibit 21; Letter dated 28th January, 2021, Affidavit of Service court order given on 7th October, 2020 and Notice to produce dated 17th December, 2018 and letter dated 28th January, 2021 acknowledging receipt of the documents exhibit 22.

Evidence of the Defendants

12. The 1st and 2nd Defendants' denied that the 1st Plaintiff (Freizer Mumo) ever owned Share No. 241 at Lukenya Ranching (3rd Defendant). They contended that Share No. 241 belonged to Joel Mwanzia who sold his membership to the 1st Defendant (deceased) in 1979. They insisted that Share No. 241 belonged to the 1st Defendant (deceased) who caused it to be registered in the name of the Plaintiff (Freizer Mumo) who was his son and he was to hold the said Share on his behalf. The 1st and 2nd Defendants reiterated that they are bona fide owners of the suit lands. Further, the 1st Defendant (deceased) explained that the Society had not processed title deeds for its land, but subsequently when they did so, as the lawful owner and or beneficial owner of Share No. 241, he caused title numbers Mavoko Town Block 3/1311, Mavoko Town Block 3/2563 and Mavoko Town Block 3/2364 to be registered in the 2nd Defendant's name while Mavoko Town Block 3/ 1493 in the name of Daniel Mulwa Kavithi. The Defendants did not tender any evidence to controvert the fact that the deceased Tabitha Mulwa was the owner of Share No. 350 which Daniel Mulwa Kavithi (deceased) transferred to himself. They produced the following documents as exhibits: Sale Agreement dated 22nd October, 1979; Agreement signed dated 26th November, 1979; Copies of receipt No. 155 dated 23rd August, 1974, receipt No. 37441 dated 8th May, 1978; Receipt No. 905 dated 23rd August, 1974; Receipt No. 29061 dated 8th May, 1978, Receipt No. 9520 dated 30th June, 1978; Receipt No. 6418 dated 28th August, 1972 and Receipt No. 6286 dated 14th December, 1971; Certificates for official Searches for title numbers Mavoko Town Block 3/1311, 2563, 2364 & 1493.

Submissions

Plaintiffs 'Submissions

13. The Plaintiffs' in their submissions provided the background of the dispute herein, relied on the evidence presented and reiterated that the allocation of LR Number Mavoko Town Block 3/2261, 2563, 1306 and 1493 to the 1st Defendant Daniel Mulwa Kavithi (deceased) was illegal and therefore null and void as the deceased who was an official of Lukenya Ranching did the transfers' without the consent of Freizer Mumo. They highlighted the various transactions their late father undertook



in respect to Share No. 241 and insisted that no person was supposed to change a member's record without any application and consent of the said member/shareholder. They insisted that Freizer Mumo was never registered as a proxy to the deceased as claimed. They argued that the Defendants' never produced any documents to confirm their averments. They reiterated that the allocation of LR No. Mavoko Town Block 3/1498 to the late Daniel Mulwa Kavithi was illegal and therefore null and void. They reaffirmed that the transfers of Mavoko Town Block 3/1311 and 2364 effected by the Lukenya Ranching and Farming Co-operative Society to the 2nd Defendant be declared a nullity. To support their averments they relied on Section 55 of the Law of Succession Act, Section 26 of the Land Registration Act as well as the following decisions: RNM v JMN & 5 Others (2020) eKLR; Zacharia Wambugu Gathimu & Another v John Ndungu Maina (2019) eKLR; Stephen Gachau Githaiga & Another v Attorney General (2015) eKLR; Motex Knitwear Limited v Gopitex Knitwear Mills Limited (2009) eKLR; Trust Bank Limited v Paramount Universal Bank Limited & 2 Others (2009) eKLR; Kenneth Nyaga Mwige v Austin Kiguta Court of Appeal CA No. 140 of 2008 and Gerald Oyugi v Evans Okeyo Mochere (2019) eKLR.

Defendants' Submissions

14. The Defendants' failed to file written submissions despite being granted leave to do so.

Analysis and Determination

15. I have considered the Plaints in ELC No. 7 of 2015 and 45 of 2018; Defences, testimonies of the witnesses and the submissions and the following are the issues for determination:-
 - a. Who owned Shares No. 241 and 350 respectively at Lukenya Ranching and Farming Co-operative Society.
 - b. Did the late Daniel Mulwa Kavithi have a right to dispose of the said shares or parcels of land emanating therefrom.
 - c. Whether the Plaintiffs' are entitled to the orders as sought in the respective Plaints.
16. Before I make a determination of the issues herein, since the fulcrum of the dispute in the two suits, revolves around Shares No. 241 and 350 respectively from the Lukenya Ranching and Farming Co-operative Society, I wish to reproduce an excerpt from their Bylaws, which were produced as an Exhibit:
 10. On admission to membership of the Society, the Secretary of the Society shall cause each member, including those who signed the application for registration, to nominate in writing the name of one person to whom on the death of a member his shares and interest shall be transferred. The name of such nominee shall be written in the Register of Members and shall be written in the Register of Members and shall be duly witnessed by the nominating member and the Secretary of the Society.
 20. Shares shall be paid for in full on application.
 21. With the approval of the committee a member may at any time, provided that he has been a member for not less than two years, transfer his shares to another member but not to any other person.
 22. All transfers of shares must be registered with the Secretary of the Society and no transfer is valid unless so registered. A fee of Shillings Twenty (Shs. 20) shall be paid by the transferee to the Statutory Reserve Fund of the Society for every such transfer.”



17. As to who owned Shares No. 241 and 350 respectively at Lukenya Ranching and Farming Co-operative Society and did the late Daniel Mulwa Kavithi have a right to dispose of the said shares or parcels of land emanating therefrom.
18. The Plaintiff in ELC. No. 7 of 2015 Freizer Mumo as PW1 claimed he owned Share No. 241 while their mother the late Tabitha Mulwa Daniel owned Share No. 350. It was his testimony that their late father (1st Defendant) had illegally dealt with the said shares by transferring them to himself, after which some of the parcels of land emanating therefrom were disposed to third parties. The Plaintiffs' produced various documents including Letters of Allotment for respective plots being Nos. 818, 74 163 and 399; several payment receipts from Lukenya Ranching; Abstracts of titles and Certificates of Searches to support their claim. The 1st Administrator to the 1st Defendant's Estate Jonah Kavithi Daniel as DW1 admitted the Plaintiffs' claim in his testimony. He confirmed that Freizer Mumo paid for the Share No. 241 by giving their late father monies in family gatherings in 1979. The 2nd Defendant as DW2 Magdalene Wayua Daniel disputed the Plaintiff's claim and in her testimony confirmed that the suit lands were given to her, by her late husband Daniel Mulwa Kavithi. Further, that the suit lands being Mavoko Town Block 3/1311, 2563 and 2364 were registered in her name. She claimed the late Daniel Mulwa Kavithi told her that he got money to purchase Share No. 241 and gave her the Sale Agreement including receipts to that effect. She admitted that she was married in 1996 and was not present in 1979 when Share No. 241 was purchased. She contended that she had receipts to prove the deceased solely purchased the said Share from one John Mwanzia. Further, that her late husband told her, he only registered the Share No. 241 in his son's name, since he had another Share with Lukenya Ranching.
19. Looking at the documents presented, I note Share No. 241 was registered in the name of Freizer Mumo in 1980. Further, it was allocated land parcel numbers Mavoko Town Block 3/1493, 1319, 2563 and 2261 respectively. DW2 confirmed that Mavoko Town Block 3/1493 was registered in her name while the rest of the parcels of land were in the name of the deceased. From a perusal of the Green Card for Mavoko Town Block 3/2563, I note the said parcel of land was transferred directly from the 3rd Defendant to the 2nd Defendant who was not its member. As per Letters of Allotment presented as exhibits, I note Share No. 350 was in the name of Tabitha Mulwa respectively. Further, it is evident there were various cancellations in the Letters of Allotment dated 22nd December, 1992, 16th July, 1988 and her name was being replaced with that of Daniel Mulwa Kavithi. From the excerpt above, it is clear there was a laid down procedure a member had to adhere to when he/she wanted to transfer their share but from the evidence tendered by both parties there is no indication that Tabitha Mulwa Daniel (deceased) nor Freizer Mumo transferred their shares to Daniel Mulwa Kavithi. Further, DW2 had claimed Daniel Mulwa Kavithi had nominated Freizer Mumo and Tabitha Mulwa as his proxies/nominees but there are no documents presented to that effect. I opine that the evidence of DW2 can be deemed to be hearsay which is not admissible at this juncture. As per the documents presented, Tabitha Mulwa Daniel, Shareholder No. 350 paid for her shares on 17th October, 1978, 1st November, 1977 and 15th May, 1980 respectively and she was entitled to land parcel numbers Mavoko Town Block 3/2364, 3085, 1311 and 1498 respectively. There is no documentation provided as per the Lukenya Ranching and Farming Co-operative Society, By-laws that she transferred her shares to Daniel Mulwa Kavithi prior to her demise but the said Daniel proceeded to deal with the said Share as though it belonged to him. Further, Tabitha Mulwa died on 22nd March, 1995 and after her demise on 23rd July, 1996 without Letters of Administration Intestate, Daniel Mulwa Kavithi proceeded to transfer Provisional Plot No. 816 belonging to the said Estate into his name on 29th July, 1999. On 20th June, 2006, another provisional Plot number 74 was transferred to Daniel Mulwa Kavithi. Further, Plot No. 163 was also transferred to Daniel Mulwa Kavithi, while on 2nd October, 2014, the 3rd Defendant used the allotment letter and transferred Mavoko Town Block 3/2364 to the 2nd Defendant. What is baffling is that most



of the parcels of land that were in the name of Tabitha Mulwa were transferred after her demise, by Daniel Mulwa Kavithi as well as Lukenya Ranching, without Letters of Administration Intestate. I note the 2nd Defendant failed to tender evidence to controvert the Plaintiffs' averments that Tabitha Mulwa owned Share No. 350 nor that she acquired some parcels of land belonging to the said Share.

20. From my analysis above, I find that Daniel Mulwa Kavithi (deceased) used his position as an official of Lukenya Ranching and Farming Co-operative Society and without adhering to the By-laws of the said Society proceeded to illegally transfer the two Shares in dispute into his name and continued to intermeddle with Tabitha's estate contrary to Section 45 of the *Law of Succession Act*. Based on the facts before me while associating myself with the decision of Zacharia Wambugu Gathimu & Another v John Ndungu Maina (2019) eKLR, I find that the transactions in respect to Share No. 350 without the consent of the deceased Estate as well as Letters of Administration Intestate was hence void ab initio.
21. Further, in the absence of the proxy or nominee documents in respect to Share No. 241, I find that the said Share was solely owned by Freizer Mumo and hence the deceased did not have capacity to dispose of the parcels of land emanating therefrom without his consent.
22. On validity of title, Section 26(1) of the *Land Registration Act* stipulates thus:-

The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.”

23. In the case of Joseph N.K. Arap Ng'ok V Mojjo Ole Keiwua & 4 Others [1997] eKLR, the Court of Appeal held that:-

Once one is registered as an owner of land, he has absolute and indefeasible title which can only be challenged on grounds of fraud or misrepresentation and such is the sanctity of the title bestowed upon the title holder.”

24. Further, in Civil Appeal No. 246 of 2013 Arthi Highway Developers Limited Vs West End Butchery Limited and Others, the Court of Appeal expressly stated thus:-

Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Sections 25 and 26 of the *Land Registration Act* set out below) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”



25. Based on the evidence before me, while associating myself with the cited decisions as well as the legal provisions quoted above, since the deceased Daniel Mulwa Kavithi dealt with shares which did not belong to him and together with 3rd Defendant proceeded to transfer parcels of land emanating from the said shares to the 2nd Defendant, I find that the 2nd Defendant did not acquire proper titles to her land, as the root of the said titles were fettered. In relying on Section 80 of the *Land Registration Act*, I opine that except for the parcel of land disposed to Mr. Mburu who is not a party to these proceedings, all other parcels of land emanating from Share No. 241, in the name of the deceased as well as 2nd Defendant, should be cancelled and revert back to the name of Freizer Mumo alias Mbisi Daniel.
26. As for the parcels of land emanating from Share No. 350, I direct that the same should be cancelled and reverted back to the Estate of Tabitha Mulwa (deceased).
27. As to who is to bear costs of the suit; I note it is the deceased Daniel Mulwa Kavithi and the 3rd Defendant who were responsible for the dispute herein, and I direct the Estate of the deceased including the 3rd Defendant to bear the costs of these suits.
28. It is against the foregoing that I find that the Plaintiffs' in both suits have proved their cases on a balance of probability and will enter Judgment in their favour as against the Defendants. I proceed to make the following final Orders:-
 - a. A declaration be and is hereby issued that the allocation of LR Number Mavoko Town Block 3/2261, 2563, 1306 and 1493 to the 1st Defendant Daniel Mulwa Kavithi (deceased) was illegal and therefore null and void.
 - b. A declaration be and is hereby issued that transfers effected by Daniel Mulwa Kavithi (deceased) and the Society to the 2nd Defendant in respect of any of the parcels of land, namely Mavoko Town Block 3/2563, 1306 and 1493 respectively is a nullity.
 - c. An order be and is hereby granted directing that all the registration in respect of Mavoko Town Block 3/2563, 1306 and 1493 be cancelled and rectified by deleting the names of Daniel Mulwa Kavithi (deceased) and the 2nd Defendant and substituting the same with the name of the Freizer Mumo alias Mbisi Daniel .
 - d. An order be and is hereby directed to the 4th Defendant to cancel the title deed issued in the name of the late Daniel Mulwa Kavithi (deceased) in respect of the Numbers Mavoko Town Block 3/1306 and 1493 and substitute with the name of Freizer Mumo alias Mbisi Daniel.
 - e. An order be and is hereby directed to the 4th Defendant to cancel the title deed issued to the 2nd Defendant in respect of the Numbers Mavoko Town Block 3/2563 and substitute the same with the name of Freizer Mumo alias Mbisi Daniel.
 - f. A declaration be and is hereby issued that the allocation of LR Number Mavoko Town Block 3/1498 to the late Daniel Mulwa Kavithi was illegal and therefore null and void.
 - g. A declaration be and is hereby issued that the transfers effected by the Lukenya Ranching and Farming Cooperative Society directly to the 2nd Defendant in respect of parcels of land namely Mavoko Town Block 3/1311 and 2364 is a nullity.
 - h. An order be and is hereby directed to the 4th Defendant to cancel the titles deeds issued to the late Daniel Mulwa Kavithi and the 2nd Defendant in respect of Mavoko Town Block 3/1498 and Mavoko Town Block 3/1311 and 2364 respectively and substitute the same with the Estate of Tabitha Mulwa.



- i. Costs of the suit is awarded to the Plaintiffs but to be borne by the 3rd Defendant and Estate of Daniel Mulwa Kavithi.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 29TH DAY OF APRIL, 2024.

CHRISTINE OCHIENG

JUDGE

In the presence of;

Ms. Nzili for Munyao for 2nd Defendant

Mutinda Kimeu for Plaintiff

Kyalo for 1st Defendant

No appearance for 2nd, 3rd and 4th Defendants

Court Assistant – Simon

