



Republic v Chief Land Registration Officer Kilifi County & another; Vue Taure Vue & 3 others (Interested Parties); Newlife Prayer Centre and Church (Exparte) (Environment and Land Judicial Review Case E014 of 2024) [2025] KEELC 656 (KLR) (19 February 2025) (Judgment)

Neutral citation: [2025] KEELC 656 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E014 OF 2024
FM NJOROGE, J
FEBRUARY 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF LAND REGISTRATION OFFICER KILIFI COUNTY 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

VUE TAURE VUE INTERESTED PARTY

ANTONY KIRINGI TSORI (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF TSORI CHIWASI SUDI (DECEASED)) INTERESTED PARTY

DANCAN JAMES WATTA INTERESTED PARTY

AND

NEWLIFE PRAYER CENTRE AND CHURCH EXPARTE

AND

FELIX TSORI CHIVATSI INTERESTED PARTY

JUDGMENT

1. The present suit was wrongly intituled and the court at the present stage has found it necessary in the interests of justice to have the proper title as it is now reflected in this judgment. The issue of intitulement was not brought to the court’s attention before the hearing and so appropriate orders to counsel to effect amendments before proceeding were not issued. The ex parte applicant was granted leave to bring judicial review proceedings on 3rd October 2024 and its status as an applicant ended



there. Thereafter in the substantive judicial review notice of motion, the Republic was to be named as the applicant.

2. The applicant thereafter filed the present Notice of Motion dated 4th October, 2024. The said application is brought under Article 40 Constitution of Kenya 2010, Section 4 and 5 of the *Fair Administrative Action Act*, Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 53, Rule 2 and 3 of the Civil Procedure Rules, 2010. The Ex Parte Applicant prays for the following orders:
 1. An Order of Certiorari do issue removing to this Honourable Court for purpose of quashing the decision of the Chief Land Registration Officer Kilifi County reverting title No. Kilifi/Vyambani/359 to Kilifi/Vyambani/92;
 2. An order of Mandamus to compel the Chief Land Registration Officer Kilifi County to revoke the undated notice reverting title No. Kilifi/Vyambani/359 to Kilifi/Vyambani/92;
 3. Grant of leave to apply for the Judicial Review Orders sought herein do operate as a stay against the 1st Respondent's reversion contained in the instrument for registration of reversion pending the hearing and determination of the substantive motion;
 4. Cost of this application be awarded to the Ex-Parte Applicant
3. The application is premised on the grounds set out at its foot and further elaborated in the statutory statement dated 2nd October 2024. The grounds are that the applicant owns title No. Kilifi/Vyambani/359 (the suit land); that the orders made in Malindi ELC Case No 184 Of 2023 (hereinafter "the former suit") did not affect the said parcel; that the decision made by the 1st respondent to include the suit land among the affected parcels is ultra vires the decree issued on 22/2/2022 in the case; that the 1st respondent's decision thus infringes on the applicant's right to property under Article 40 of *the Constitution* and it ought to be quashed.
4. I have perused the judgment in the stated case which is reported as *Vue Taure Vue & another v Felix Tsori & another* [2015] eKLR. The ex parte applicant was not a party thereto. The judgment reads as follows:

"Judgment

1. The suit was commenced by way of a Complaint dated 17th October 2013. the Complaint was amended on 25th August 2014.
2. In the Amended Complaint, the Plaintiffs are claiming for a declaration that the Defendants are holding the title documents in respect of Kilifi/Vyumbani/92 which has since been subdivided in trust for them and in the alternative for an order that they have acquired the title to the land they occupy by virtue of the doctrine of adverse possession.
3. Although the Defendants were served with Summons to Enter Appearance and the Complaint, they neither entered appearance nor filed a Defence.
4. The 1st Plaintiff, PW1, informed the court that he is from Vyumbani village, Kauma Location.
5. It was the evidence of PW1 that it is his grandfather who bought parcel of land number Kilifi / Vyumbani/92. His father, according to PW1, was born on the land in 1918.
6. According to the 1st Plaintiff, he has been living on the land since he was born in 1947 and has been cultivating the same.



7. During the adjudication process, PW1 informed the court that he was in Lungalunga although his family was still living on the suit premises.
8. It was the evidence of PW1 that he later learnt that the 1st Defendant had the whole land registered in his name. The Plaintiffs sue the 1st Defendant at the Dispute Land Disputes Tribunal.
9. PW1 informed the court that the Tribunal decided the case in their favour.
10. The second Plaintiff, PW2, echoed the evidence of PW1.
11. PW3 stated that from 1960, him and his family owned land which neighbours the suit property.
12. According to PW3, the 1st Defendant took possession of the suit property around the year 2000. It was his evidence that the land belongs to Chiwai Sudi.
13. The other neighbour of the Plaintiffs, PW4, stated that the suit property belongs to the Plaintiffs, the Plaintiffs having inherited it from their father.

Analysis and findings:

14. The Plaintiffs produced in evidence a copy of the official search for land known as Kilifi/Vyumbani/92.
15. According to the search, the title deed for the said property was issued to the 1st Defendant on 13th November 2005. On 18th April 2013, the register in respect to the suit property was closed upon sub-division vide mutation number 0399337.
16. The sub-division of Kilifi/Vyumbani/92 created parcel numbers 353, 354, 355, 356 and 359.
17. The Plaintiffs also produced in evidence the Judgment that was delivered by the Bahari Land Dispute Tribunal in Land Case Number 60 of 2007 on 24th July 2007.
18. After hearing all the parties, the Tribunal found that during the adjudication process, the 1st Defendant gave to the land officials false information and the suit property was registered in his name.
19. According to the decision of the Tribunal, the 1st Plaintiff gave to the 1st Defendant his identity card for the purpose of presenting his name during the adjudication process but instead the 1st Defendant presented his own national identity card.
20. The Tribunal found in favour of the Plaintiffs herein.
21. There is no evidence that the 1st Defendant did file an appeal in respect of the decision of the Tribunal.
22. The Defendants did not call evidence to controvert the Plaintiffs' evidence that the suit property was registered in favour of the 1st Defendant fraudulently.
23. In the circumstances, and based on the evidence before me, I find and hold that the Plaintiffs have proved that the 1st Defendant could only have been registered as the proprietor of the suit property as a trustee.
24. For those reasons, I make the following orders:



- (a) A declaration be and is hereby issued that the Defendants are holding the title documents for Kilifi/Vyumbani/92 which has been subdivided to create parcel numbers 353, 354, 355, 356 and 357 in trust for the Plaintiffs.
- (b) An order be and is hereby issued directed to the District Land Registrar, Kilifi to amend and rectify the register by registering the Plaintiffs as the proprietors of the parcel of land known as Kilifi/Vyumbani/92 as tenants in common.
- (c) The District Land Registrar, Kilifi to issue to the Plaintiffs the Title Deed in respect of Kilifi/Vyumbani/92 without requiring the surrender of the original title deed or the title deeds for the subsequent sub-divisions.
- (d) The 1st Defendant to pay the costs of the suit.

Dated and delivered in Malindi this 18th day of September, 2015. O. A. Angote

Judge”

5. Though the judgment at paragraph 16 stated that “...the sub-division of Kilifi/Vyumbani/92 created parcel numbers 353, 354, 355, 356 and 359”, there was no mention of the suit parcel in the final orders that the court gave; consequently, it was absent in the decree.
6. In the context of the judgment in the former suit, it is clear that the mention of “parcel no 359” was purely a typographical error. It ought to have read “parcel no 357” as in the other paragraphs. The judgment in that case is not a complex judgment that should have presented the Land Registrar any problems in interpretation, especially for the reason that the final orders were correctly framed.
7. It is therefore the case as urged by the ex parte applicant that the decree in that suit should have affected only the parcels mentioned therein; the suit parcel herein was not included.
8. An order was issued in the former suit directed to the District Land Registrar, Kilifi to amend and rectify the register by registering the Plaintiffs in that case as the proprietors of the parcel of land known as Kilifi/Vyumbani/92 as tenants in common.
9. For that reason, parcel number Kilifi/Vyumbani/ 92 had to be reconstituted by dissolving the subdivisions and reinstating it as it was before. In the process of reverting the subdivisions of parcel no Kilifi/Vyumbani/92 to reconstitute it as it was prior to subdivision, only the subdivisions that arose from it ought to have been affected. These are parcel numbers Kilifi/Vyumbani/353, Kilifi/Vyumbani/354, Kilifi/Vyumbani/355, Kilifi/Vyumbani/356 and they are specified in the final orders in that judgment.
10. It is not known how the 1st respondent came to the conclusion that the suit land herein should be included in the document of reversion; probably it is because the parcel was erroneously mentioned in paragraph 16 of the judgment as I have earlier observed, but even then, it is the decree that should speak and not the body of the judgment, for the decree is the final expression of the definitive orders that the court gave. Regardless of what has been sought in a case, whether mentioned in the body of the judgment or not, it is the final expression of the court in the decree that should be implemented. Through Mulwa Nduya & Co Advocates the ex parte applicant made a demand for correction of the 1st respondent’s notice that erroneously included the suit land but in vain hence the present proceedings. It is noteworthy that the amended plaint in the former suit had not included the suit parcel herein.



11. The existence of error was addressed in another judicial review case, Malindi ELC JR NO. 3 OF 2023, where the defendant in the former suit challenged the instrument of reversion. This court stated as follows in that case:

“Another relevant issue that was raised by the 4th Interested Party was that the impugned undated notice published by the 1st Respondent erroneously included the parcel Kilifi/Vyambani/359 which was the subject of ELC 184 of 2013. I have perused the said judgment and decree; it is evident that the land in dispute therein was originally identified as Kilifi/Vyambani/92 and it was subsequently subdivided into five plots 353, 354, 355, 356 and 357. It is therefore necessary that the said notice be amended in terms of the judgment and decree.

The upshot of the foregoing is that the substantive judicial review notice of motion dated 27/2/2023 lacks merit and the same is hereby dismissed with costs to all the respondents and all the interested parties.”

12. It is not exactly clear why the Land Registrar, in the face of such an obvious error exposed by that judgment, did not take the initiative and follow the advice therein to rectify the situation.
13. The conclusion of this court is that the motion dated 4th October 2024 has merit and the same is allowed in the following terms:
1. An Order of Certiorari is hereby issued removing to this Honourable Court for purpose of quashing the decision of the Chief Land Registration Officer Kilifi County purporting to revert title No. Kilifi/Vyambani/359 to Kilifi/Vyambani/92;
 2. An order of Mandamus is hereby issued to compel the Chief Land Registration Officer Kilifi County to revoke the undated notice in so far as it purports to order the reverting of title No. Kilifi/Vyambani/359 to Kilifi/Vyambani/92.
 3. The costs of these proceedings shall be borne by the 1st respondent officer who failed to correct the anomaly upon request and he shall do so in person.

JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 19TH DAY OF FEBRUARY 2025.

MWANGI NJOROGE

JUDGE, ELC MALINDI

