



**Mohammed & 2 others v Wananchi Estates Limited & 5 others;  
Mohammed (Interested Party) (Environment & Land Case 7 of 2024)  
[2024] KEELC 6845 (KLR) (Environment and Land) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6845 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE 7 OF 2024**

**EK WABWOTO, J  
OCTOBER 18, 2024**

**BETWEEN**

**FATUMA MOHAMMED ..... 1<sup>ST</sup> PLAINTIFF  
ASHA MOHAMMED ..... 2<sup>ND</sup> PLAINTIFF  
WANANCHI RANCHING LIMITED ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**WANANCHI ESTATES LIMITED ..... 1<sup>ST</sup> DEFENDANT  
HARRIS HORN ALIAS HARRY HORN ..... 2<sup>ND</sup> DEFENDANT  
SETTLEMENT FUND TRUSTEES ..... 3<sup>RD</sup> DEFENDANT  
COMMISSIONER OF LANDS ..... 4<sup>TH</sup> DEFENDANT  
HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**LEILA ZAMZAM MOHAMMED ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiffs instituted this suit vide a plaint dated 6<sup>th</sup> October 2000. The plaint was later amended on 23<sup>rd</sup> April 2014 and subsequently thereafter on 11<sup>th</sup> June 2024. The Plaintiff sought the following reliefs against the Defendants:-



- a. A permanent injunction be issued restraining the Defendant by themselves, their agents, servants, employees, attorneys, assigns and/or any other of their representatives from selling, disposing, evicting, alienating, demarcating and issuing of titles, interfering with the Plaintiff quiet possession or in any way dealing with LR No 12924 – CR 20403 situated in Mwatate.
  - b. The transfer to the 3<sup>rd</sup> Defendant be declared null and void and all consequential transfers be so declared.
  - c. A declaration that LR No 12924 belongs to Wananchi Ranching (Directed Agricultural) Limited.
  - d. Damages.
  - e. Costs.
2. Upon service of the pleadings and summons to the Defendant, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered appearance through the firm of K. H. Osmond Advocate while the 3<sup>rd</sup> to 5<sup>th</sup> Defendants entered appearance vide a Memorandum of Appearance dated 16<sup>th</sup> August 2012 through the Honourable Attorney General. The Defendants did not file any statement of defence nor any response in respect to the Plaintiff's claim. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants later filed a Notice of Change of Advocates appointing the firm of A. W. Maina to act for them vide a Notice of Change dated 18<sup>th</sup> September 2015.

#### **The Plaintiff's case**

3. It was the Plaintiff's case that the 3<sup>rd</sup> Plaintiff was at all material times the registered owner of LR No 12924 composing of 9070 hectares in Voi, Taita Taveta in which the late Haji Mohamed Adan had the majority shares together with his family and others.
4. It was averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fraudulently and without knowledge of the 3<sup>rd</sup> Plaintiff made themselves Directors of the 3<sup>rd</sup> Plaintiff company and subsequently transferred the land to the 1<sup>st</sup> Defendant thereafter selling to other persons for Kshs 40 Million. The following particulars of fraud were pleaded in their amended plaint:-
  - a. The deceased was not a party to the charges effected in the Directorship of the 3<sup>rd</sup> Plaintiff by the Defendant.
  - b. The deceased did not know the persons who made the 1<sup>st</sup> and 2<sup>nd</sup> Defendants directors.
  - c. There was not valid consideration for the transfer of shares to the Defendant.
  - d. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant did not inform the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs of any changes in the Directorship of the records of the 3<sup>rd</sup> Plaintiff.
  - e. The 3<sup>rd</sup> Plaintiff was not party to the sale of land to other persons who now claim to have bought the land.
  - f. The subsequent sale by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were after the death of the said Haji Mohamed Adan and Ahmed Mohammed Haji Adan.
  - g. The Estate of Haji Mohamed Adan was not party to the sale by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  - h. The Estate of Haji Mohamed Adan and that of Ahmed Mohamed Haji Adan was never made aware of the sale of Kshs 40Million.
  - i. That the 2<sup>nd</sup> Defendant was unknown to the late Haji Mohamed Adan.



- j. The 2<sup>nd</sup> Defendant has never been onto the land.
- k. The Defendant sold the land without authority to do so and well knowing that the Directors with the majority shareholders were deceased.
5. During trial 2 witnesses testified on behalf of the Plaintiffs. The 1<sup>st</sup> Plaintiff Fatuma Mohamed the administratrix of the Estate of Haji Mohamed Adan testified as PW1 while Abdisatar Haji a Director of the 3<sup>rd</sup> Plaintiff testified as PW2.
6. PW1 adopted her witness statement filed on 2<sup>nd</sup> December 2022 and the Plaintiff's bundle of documents on record. It was her evidence that her father was the brain behind the formation of the 3<sup>rd</sup> Plaintiff's company and its subsequent allocation of LR 12924 comprising of 9070 hectares in Voi. Her late father owned 1190 shares in the said company and her late brother Ahmed Mohamed Haji Adam also owned 800 shares in the said company.
7. It was also her testimony that her late father's shares were more than 30% of the share capital and that between her late father and her late brother the two owned the majority of the issued share capital.
- She also stated that the land is utilized for mining and ranching and on the ranch stands huge developments by the whole family of around 200 dependents. There are more than 1000 cattle on the land which is a source of income and owned by the family of the late Haji Mohamed Adam. Before his demise, her father swore an affidavit as he was very sick when he learnt that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein had fraudulently placed their names in the land title through directorships and ownership which was not done nor consented by him or the company.
8. It was also her testimony that her sister Asha Mohamed and her are the administratrix of the estate of Haji Mohamed Adam, their late father, by grant of this Honourable Court in Succession Cause No 870 of 1997. That when her father realized what was happening, he prepared to institute a suit but died before instituting the same. The 2<sup>nd</sup> Defendants never sought to know or inform the family of her deceased father their activities on the suit land. The suit property was at all material times registered to the Wananchi Ranching (Directed Agricultural) Company Ltd.
9. She also stated that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants allegedly surrendered the Certificate of Title of the suit land for allocation by the Government and they have purportedly received Kenya Shillings Forty Million (Kshs 40,000,000/-) as payments for the suit property.
- The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants herein have gone ahead and allowed strange people into the land who have surveyed and allocated the same to themselves and others. The Plaintiffs and their animals have lost access to important amenities such as boreholes, dams and shelter on their land as a result of these acts by the Defendants. That she wishes to vividly state that there has never been any agreement for sale or transfer of the suit land to anyone by the Plaintiffs and the 3<sup>rd</sup> Plaintiff herein which is the sole proprietor of the suit property. The acts by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are fraudulent in that the Plaintiffs did not have knowledge of them.
10. The 1<sup>st</sup> Defendant never purchased the suit land from the 3<sup>rd</sup> Plaintiff nor was it authorized to sell or receive payment for the land on behalf of anyone.
11. Abdisatar Haji testified as PW2. He also relied on his witness statement filed in court on 2<sup>nd</sup> December 2022 in his evidence in chief. It was his testimony that the suit land LR 12924 belongs to the 3<sup>rd</sup> Plaintiff as evidenced by the Certificate of Title under The [Registration of Titles Act](#) Cap 281, Grant No CR 20403, issued to it on the 1<sup>st</sup> of February 1975. The 1<sup>st</sup> Defendant Wananchi Estate limited was fraudulently established/made without the knowledge of the directors/shareholders of the Wananchi



Ranching (Directed Agricultural) Company Limited, with the purpose of fraudulently transferring the suit property LR 12924. The said transfer was illegal since the 1<sup>st</sup> Defendant herein could not possibly have or enjoy any rights over the said property. It was not the registered proprietor.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants conspired to fraudulently transfer the suit land to the 3<sup>rd</sup> Defendant which transfer took place without the knowledge or consent of the Plaintiffs and while the present suit was in progress. That subsequently surveyors moved into the suit land and started subdividing the same with instructions from the 3<sup>rd</sup> Defendants. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants further proceeded to initiate the transferring of the suit land to other people to the detriment of the Plaintiffs.

12. He also stated that the 3<sup>rd</sup> Plaintiff has over 3,000 herd of cattle on the land and risks losing and utilizing the same because of the interferences it already faces on the suit land.

### **Defendants case**

13. The Defendants save for entering appearance did not file any statement of defences neither did they participate in the trial herein despite service by the Plaintiffs.

### **The case of the Interested Party**

14. The Interested Party never testified during trial but participated in the proceedings herein and filed written submissions in support of the Plaintiff's case.

### **The Plaintiff's submissions**

15. The Plaintiffs filed written submissions dated 1<sup>st</sup> July 2024 through the firm of KKOAA Advocates LLP. Counsel submitted on the following issues:-
  - i. Whether the Defendants engaged in fraudulent activities to acquire the property.
  - ii. Who has the legal and beneficial ownership of the property.
  - iii. Whether the titles generated fraudulently should be cancelled.
  - iv. Who should bear the costs of the suit.
16. On the first issue, it was submitted that Haji Mohamed Adam (deceased) and three other shareholders incorporated the 3<sup>rd</sup> Plaintiff for ranching purposes. (Refer to page 13 of the list and bundle of documents dated 1<sup>st</sup> December 2022). The original shareholders of the 3<sup>rd</sup> Plaintiff were:-
  - i. Haji Mohamed Adam
  - ii. Ahmed Mohamed Haji Adam
  - iii. Rufus Mwanyasi Mwabaki; and
  - iv. Central Agricultural Board (CAB)
17. The Company acquired the suit property as evidenced by the Certificate of Title under *Registration of Titles Act* Cap. 281, Grant No CR 20403 which was acquired on 1<sup>st</sup> February, 1975. The 1<sup>st</sup> Defendant Company was formed by Harris Horn (Deceased) who was the father to the 2<sup>nd</sup> Defendant. The Directors of the 1<sup>st</sup> Defendant were Harris Horn (Deceased), Harris Horn Jr (the 2<sup>nd</sup> Defendant herein), Ahmed Mohaemd Haji and Ruel E. M. Kachula. The shareholders were Harris Horn and Ruel E. M. Kachula who each had one share in the 1<sup>st</sup> Defendant. There was also established another company



known as Ol-Leila Holdings Limited whose directors and shareholders were Harris Horn Sr (Deceased) and Ruel E. M. Kachula.

18. It was also submitted that a keen look at the three companies shows that there was a thread running through joining them into a centralized administrative structure. The structure was fraudulently manipulated by Harris Horn (Deceased) and the 2<sup>nd</sup> Defendant with a view to eventually acquiring the suit property. This can be evidenced by the presence of Harris Horn (deceased) in the directorship of all the three companies. He also held shares in all the three companies. Harris Horn, Harris Horn Jr. Ruel Kachula and Ol-Leila Holdings became additional shareholders and directors incorporated into the 3<sup>rd</sup> Plaintiff company without a properly convened members meeting and resolution.
19. It was further submitted that there is no documented evidence of the procedure used to admit these four members. Furthermore, there is no evidence of a member's resolution authorizing the issuance of shares, nor is there any evidence indicating that the members extended an invitation for these four individuals to join the company. Additionally, there was no evidence of any valuable consideration given for the purchase of allotted shares and it is very evident that all these were done without the knowledge of Mr. Haji Mohamed Adam, the main shareholder and in essence the owner and founder of the 3<sup>rd</sup> Plaintiff Company and a Director thereof.

According to the Affidavit of Mr. Haji Mohamed Adam sworn on the 25<sup>th</sup> of October, 1993 he neither attended the meetings that made the resolution to appoint additional directors, if at all they were held, nor was he informed of the said changes. This is despite the fact that Mr. Haji Mohamed was the major shareholder of the company. Moreover, there is no available documentation on any of the aforementioned transactions. (refer to pages 1 – 4 of the list and bundle of documents dated 1<sup>st</sup> December, 2022).

20. Citing Section 77 of the Repealed *Companies Act* which was in force by then and the case of Manchester Outfitters Limited =Versus= Pravin Galot & 4 others Civil Suit No 55 of 2012 it was argued that the registration of a transfer of shares without production of an instrument of a transfer of shares was prohibited. It was also argued that in the instant case, there was no such instrument of transfer registered by the 2<sup>nd</sup> Defendant and the other new members who joined the 3<sup>rd</sup> Plaintiff as Directors/ Shareholders and as such their membership remains tainted with fraud and illegality.
21. It was further submitted that on 7<sup>th</sup> November 1991, the 1<sup>st</sup> Defendant purportedly transferred LR No 12924 the property of the 3<sup>rd</sup> Plaintiff to itself. The said action was taken in total disregard to the directors' duties to the company as outlined under the *Companies act*, without any resolution from the members of the 3<sup>rd</sup> Plaintiff and in complete non-compliance with the 3<sup>rd</sup> Plaintiffs Articles of Association. The Plaintiffs further cited the case of *Ardhi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] in support of this issue.
22. It was also submitted that pursuant to Section 26(1) of the *Land Registration Act*, a certificate of title shall not be taken as conclusive evidence of ownership if procured by fraud, omission or mistake. It was submitted that the transfer of the suit property from the 3<sup>rd</sup> Plaintiff to the 1<sup>st</sup> Defendant was irregular, unlawful and fraudulent and there are no conveyancing documents to demonstrate that the transfer occurred and no company resolution was ever passed allowing the company or its directors to sell the land or transfer the same to Wananchi Estates Limited.
23. As to whether the titles generated fraudulently ought to be cancelled, it was submitted that after fraudulently taking over the operations of the 3<sup>rd</sup> Plaintiff, the 2<sup>nd</sup> Defendant proceeded to form another shadow company called Project Advisory Services Ltd which company was totally unrelated to Wananchi Ranches. Through the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant purported to enter a negotiation



with the 3<sup>rd</sup> Defendant on the sale of LR 12924 comprising 9070 hectares in Voi, a property owned by the 3<sup>rd</sup> Plaintiff. The 1<sup>st</sup> Defendant entered into the Sale Agreement over LR No 12924 comprising 9070 hectares in Voi with the 3<sup>rd</sup> Defendant for Kenya Shillings Forty Million (Kshs 40,000,000/=) (refer to pages 29 – 54 of the bundle of documents dated 1<sup>st</sup> December 2022).

24. The Plaintiffs also submitted that the 2<sup>nd</sup> Defendant, acting as a director of the 1<sup>st</sup> Defendant, signed the sale agreement and received Kenya Shillings Forty Million (Kshs 40,000,000/-) through another company known as Project Advisory Services Limited. However, the proceeds of the sale were not deposited into the account of either the 1<sup>st</sup> Defendant or the 3<sup>rd</sup> Plaintiff. Instead, the funds were deposited to the bank account of Project Advisory Services Limited, a shell company established by the 2<sup>nd</sup> defendant which purportedly claimed to be a sister company of the 1<sup>st</sup> Defendant. To further the fraud, the 2<sup>nd</sup> Defendant colluded with Senior Lands Officials and hence the reason the 3<sup>rd</sup> to 6<sup>th</sup> Defendants were sued for being responsible for the acts of their staff members. Before the Sale Agreement was signed, the 2<sup>nd</sup> Defendant was in several meetings with Ministry of Lands officials, especially Mr. Tomno, Director, Land Adjudication and Settlement. The meetings were private and confidential, and their proceedings were to be kept top secret.
25. It was also submitted that the 3<sup>rd</sup> to 6<sup>th</sup> Defendants never conducted proper professional due diligence on the property as they were complicit in the fraudulent activities since the search conducted indicated that the property belonged to the 3<sup>rd</sup> Plaintiff.
26. The Plaintiffs further submitted that the 3<sup>rd</sup> Defendant is not a bonafide purchaser since it did not acquire a valid and legal title and it did not carry out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title. The case of *Dina Management Limited v County Government of Mombasa & 2 others* [2023] eKLR was cited in support.
27. The Plaintiffs concluded their submissions by urging the court to grant the reliefs sought together with costs of the suit.

### **The submissions of the Interested Party**

28. The Interested Party filed written submissions dated 21<sup>st</sup> June 2024 in support of the Plaintiff's case. Counsel for the Interested Party submitted on the following issues:-
  - i. Whether the Plaintiffs are entitled to the reliefs sought.
  - ii. Who should bear the costs of the suit.
29. Citing Section 24 and 26 of the *Land Registration Act* and the case of *Willy Kipsogok Morogo v Albert K. Mbogo* [2017] eKLR, it was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants should not be allowed to get away with the fraud that was committed herein. The court was urged to grant the reliefs sought together with costs of the suit.

### **Analysis and Determination**

30. The court has considered the pleadings, evidence tendered and the written submissions filed by the Plaintiffs and the Interested Party and is of the view that the following are the salient issues for determination herein:-
  - i. Whether the Plaintiffs are the legitimate and bonafide owners of the suit property.
  - ii. Whether the Plaintiffs have proved the particulars of fraud as against the Defendants.
  - iii. What are the appropriate reliefs to grant herein.



- iv. Who should bear the costs of the suit.
31. This court shall now proceed to determine the said issues sequentially.

**Issue No (i) Whether the Plaintiffs are the legitimate owners of the suit property**

32. It is the Plaintiffs case that the 3<sup>rd</sup> Plaintiff was at material times the registered owner of the suit property comprising of 9070 hectares in Voi, Taita Taveta which the late Haji Mohamed Adan had the majority shares together with his family and others and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fraudulently sold the same to other persons for Kshs 40 Million.
33. During trial the Plaintiffs adduced evidence and produced a copy of the Certificate of Title for LR No 12924 dated 1<sup>st</sup> February 1975 confirming ownership of the suit property by the 3<sup>rd</sup> Plaintiff. The Plaintiffs also adduced evidence of an Affidavit by Haji Mohamed Adam (Deceased) sworn on the 25<sup>th</sup> of October 1993, Grant of Probate and Written Will of Haji Mohamed Adam (Deceased) which administrator of all his estate devolves to and vests in his personal representative Fatuma Mohamed and Asha Mohamed, copy of CR 12 for the 3<sup>rd</sup> Plaintiff among other documents.
34. Article 40 of the Constitution of Kenya, 2010, elaborates on the right to own property in Kenya. It provides as follows; -

- “(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
- (a) of any description; and
  - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person--
- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
  - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that
    - (i) requires prompt payment in full, of just compensation to the person; and
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a Court of law.”



35. Indefeasibility of the title is provided for in Section 26 (1) (b) of the [Land Registration Act](#) which states;
- “The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... 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 ... 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.”
36. It is trite law that he who alleges must prove. This is set out under Section 107(1)(2) of the [Evidence Act](#), which provides as follows:
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
37. The evidence before court shows that the Plaintiffs have been able to prove and demonstrate that the 3<sup>rd</sup> Plaintiff was the registered proprietor of the suit property before the same was fraudulently transferred to other parties without their consent and knowledge and in the absence of any evidence to the contrary, it is the finding of this court that the 3<sup>rd</sup> Plaintiff is the bonafide and legitimate owner of the suit property.

**Issue No (ii) Whether the Plaintiffs have proved fraud as against the Defendants**

38. Fraud is defined under the [Black’s Law Dictionary](#) 10th Edition as “A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment”.
39. How then can fraud be proved? The Court of Appeal in Mombasa Civil Appeal No 312 of 2012 [Emfil Limited v Registrar of Titles Mombasa & 2 others](#) [2014] eKLR held:

“Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities”.

Similarly, the Court of Appeal decision in the case of *John Kamunya & another v John Nginyi Muchiri & 3 others* [2015] eKLR held that:

“We find that the law is clear as put by Mr. Karanja that matters of “fraud” must be strictly and specifically pleaded before these can be interrogated by a court of law. Alternatively, even though not pleaded, these may be raised in the cause of the trial, evidence tendered on them, submission made on them and then left for the court to determine.



40. To succeed in claiming fraud the Plaintiffs not only need to plead but also particularized it by laying out water tight evidence which the Court would consider. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved.
41. The Plaintiffs pleaded particulars of fraud as against the Defendants at paragraph 7(a) of their amended plaint. In demonstrating fraud on the part of the Defendants the Plaintiffs witness Fatuma Mohamed who testified as PW1 testified that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants surrendered the suit land without their consent for allocation by the Government and received Kshs 40,000,000/= as payment for the same. There was no sale agreement executed by the Plaintiffs nor any transfer in respect to the same that had equally been executed by the Plaintiffs. The 1<sup>st</sup> Defendant never purchased the suit land from the 3<sup>rd</sup> Plaintiff nor was it authorised to sell or receive payment for the land on its behalf. The said testimony was equally corroborated by the testimony adduced by PW2.
42. It was evident from the evidence adduced herein that the 1<sup>st</sup> Defendant fraudulently transferred the suit property without the consent and or approval of the 3<sup>rd</sup> Plaintiff and the Estate of Haji Mohamed Adam was not a party to the said sale and or transfer.
43. Upon analysing the evidence that was tendered herein and in the absence of any evidence controverting the same, it is the finding of this court that the Plaintiffs have been able to prove the particulars of fraud as pleaded as against the Defendants herein.

#### **Issue No (iii) What are the appropriate reliefs to grant herein**

44. The Plaintiffs sought for several reliefs including a permanent injunction against the Defendants, an order declaring the transfer to the 3<sup>rd</sup> Defendant as null and void among other reliefs. The Plaintiffs have also sought for a declaration that the 3<sup>rd</sup> Plaintiff is the lawful owner and proprietor of the suit property. This court having already held that the 3<sup>rd</sup> Plaintiff is the legal and bonafide owner of the suit property it will proceed to grant the said relief.
45. In respect to the subsequent transfer of the suit property to the 3<sup>rd</sup> Defendant, the court in the case of *Kassim Ahmed Omar & another v Anwar Ahmed Abed & others*, Malindi ELC No 18 of 2015 the Court held that;
- “ A certificate of title is an end process. If the process that followed in issuing the title did not comply with the law, then such a title can be cancelled by the Court.”
46. Ultimately the court finds that the transfer of the suit property to the 3<sup>rd</sup> Defendant was unlawful and hence null and void and the same is amenable for cancellation. Section 80(1) of the *Land Registration Act* comes into play. It provides: -
- “ Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
47. This Court is satisfied that the Certificate of title held by the Defendants was procured illegally and as such it is impeachable and ought to be cancelled. Further this Court has already held and found that the 3<sup>rd</sup> Plaintiff is the legal owner of the suit property and it is only fair that the register be rectified to cure the illegality perpetrated by the Defendants. See also the Supreme Court case of *Dina Management Limited v County Government of Mombasa & 2 others* [2023] eKLR



48. In respect to costs, as a general rule, costs follow the event unless the court for good reasons orders otherwise. In the present case the Plaintiffs have succeeded in their claim as against the Defendants, However the court notes that the dispute that led to the institution of this suit was initiated by the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and as such only the 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall bear the costs of the suit payable to the Plaintiffs.

### **Final orders**

49. In conclusion, based on the totality of the evidence tendered herein, the Plaintiffs have been able to prove their case to the required standard as against the Defendants. The court hereby enters judgment in favour of the Plaintiffs as follows: -

- a. A declaration be and is hereby issued that LR No 1294 - CR 20403 situated in Mwatate belongs to Wananchi Ranching (Directed Agricultural) Limited.
- b. A permanent injunction be and is hereby issued restraining the Defendants by themselves, their agents, servants, employees, attorneys, assigns and/or any other of their representatives from selling, disposing, evicting, alienating, demarcating, issuing of titles and interfering with the Plaintiffs quiet possession or in any way dealing with LR No 12924 CR 20403.
- c. An order is hereby issued declaring the transfer of the suit property to the 3<sup>rd</sup> Defendant and all consequential transfers are null and void.
- d. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall bear the costs of the suit.

Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 18TH DAY OF OCTOBER, 2024.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Mr. Kurgat for the Plaintiffs.

N/A for the 1st Defendant.

N/A for the 2nd Defendant.

N/A for the 3rd, 4th and 5th Defendants.

N/A for the 6<sup>th</sup> Defendant.

Mr. Mwzighe for the Interested Party.

Court Assistant: Mary Ngoira.

