



**Mbwana & 14 others v Attorney General & 8 others (Environment & Land Case 46 of 2015 & Civil Case 2 of 2014 (Consolidated)) [2024] KEELC 7579 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7579 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ENVIRONMENT & LAND CASE 46 OF 2015 & CIVIL CASE 2 OF 2014 (CONSOLIDATED)**  
**MAO ODENY, J**  
**NOVEMBER 15, 2024**

**BETWEEN**

**MOHAMED ABOUD MBWANA ..... 1<sup>ST</sup> PLAINTIFF**  
**BWANAMKUU MOHAMED BWANA ..... 2<sup>ND</sup> PLAINTIFF**  
**AHMED IMAMU ATHMAN ..... 3<sup>RD</sup> PLAINTIFF**  
**BADI MOHAMED NAGGI ABDULLA ..... 4<sup>TH</sup> PLAINTIFF**  
**BAKARI HAZMA BARKALE ..... 5<sup>TH</sup> PLAINTIFF**  
**TWAHA MOHAMED NAGI ..... 6<sup>TH</sup> PLAINTIFF**  
**KIRTWAS IMAN ATMAN ..... 7<sup>TH</sup> PLAINTIFF**  
**BAKARI MOHAMED ATHMAN ..... 8<sup>TH</sup> PLAINTIFF**  
**AHMED MOHAMED ASSAD ..... 9<sup>TH</sup> PLAINTIFF**  
**ALI HAMZA BARKALE ..... 10<sup>TH</sup> PLAINTIFF**  
**HASSAN MOHAMED SUFUAN ..... 11<sup>TH</sup> PLAINTIFF**  
**ALI MOHAMED ASSAD ..... 12<sup>TH</sup> PLAINTIFF**  
**NASSIR MOHAMED ASSAD ..... 13<sup>TH</sup> PLAINTIFF**  
**ABDUD MOHAMED HASSAN ..... 14<sup>TH</sup> PLAINTIFF**  
**ALI ATHMAN MOHAMED ..... 15<sup>TH</sup> PLAINTIFF**

**AND**

**THE HON ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**  
**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**  
**RUKIA MBWARALI MOHAMED ..... 3<sup>RD</sup> DEFENDANT**



**SALMA MOHAMED BWANANDUMIA ..... 4<sup>TH</sup> DEFENDANT**  
**BAKARI MOHAMED ABDULRAHMAN ..... 5<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**  
**CIVIL CASE 2 OF 2014**

**BETWEEN**

**RUKIA MBWARALI MOHAMED ..... PLAINTIFF**

**AND**

**KIRITWAS IMAMU ATHMAN ..... 1<sup>ST</sup> DEFENDANT**  
**AHMED MOHAMED ASAD ..... 2<sup>ND</sup> DEFENDANT**  
**BAKAR MOHAMED ATHMAN ..... 3<sup>RD</sup> DEFENDANT**  
**BADI MOHAMED NAGI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By Plaintiff dated March 31, 2015, the Plaintiff in ELC Case No 46 of 2015 sued the Defendants seeking the following orders:
  - a. A Declaration that the allocation and grant of titles of Lamu/pate Scheme/897 and Lamu/pate Scheme/ 897 and 898 (sic) to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants was unlawful and hence the annulment of the said title.
  - b. Issuance of title of Lamu/pate Scheme/ 897 and Lamu/pate Scheme/897 and 898 (sic) to the plaintiffs.
  - c. Costs of the suit.
  - d. Interests thereon at court rates.
  - e. Any other relief that court deems fit.
2. By Plaintiff dated February 25, 2014 in Civil Case No 2 of 2014, the Plaintiff sued the Defendants seeking the following orders:
  - a. A permanent injunction restraining the Defendants first by themselves, their agents, assigns and/or employees or anyone claiming in or through them or otherwise howsoever from intruding, entering into, occupying interfering and/or adversely dealing or in any manner interfering with the Plaintiff's ownership and quiet possession and enjoyment of the said property known as Title Number Lamu/pate Scheme/897.
  - b. Vacant possession.
  - c. Costs of and incidental to this suit.
  - d. Interests thereon at court rates.
  - e. Any other or further relief that the Court may deem fit to grant.



3. By a consent order dated February 26, 2016 the parties agreed as follows:

“That Civil Suit Number PMCC Number 2 of 2014 (Rukia Mbwarali Mohamed v Kiritwas Imamu Athman and 3 others) in the Principal Magistrate’s court at Lamu be transferred to the Environment and Land Court in Malindi and the same be consolidated with Malindi ELC Case No 46 of 2015 for trial and final disposal.”

#### **Plaintiff’s Case**

4. PW1 Mohamed About Mbwana adopted his witness statement dated 1<sup>st</sup> April 2015 and stated that the suit parcels are their ancestral lands which were historically inhabited and cultivated by their grandparents.
5. PW1 further testified that in 2012, the government through the Ministry of Lands and Settlement established a Settlement Scheme in Pate to cure historical injustices by granting titles to people who had inhabited and settled on the land for many years but had no titles.
6. It was PW1’s evidence that a committee was established which comprised of local residents whose role was to identify genuine landowners in Pate area. He stated that the 5<sup>th</sup> Defendant being one of the few literate people was appointed as the chairman.
7. PW1 further testified that the 5<sup>th</sup> Defendant fraudulently caused the suit parcels to be subdivided and registered in the names of his wives, the 3<sup>rd</sup> and 4<sup>th</sup> defendants. He urged the court to enter judgment as prayed in the plaint.
8. Upon cross-examination by counsel for the 1<sup>st</sup> Defendant, PW1 stated that he knows that the scheme Lamu- Pate was for settlement of squatters and that people were supposed to be there during the survey. PW1 informed the court that they sub-divided the land in their absence, as they were not living on the land but were farming.
9. According to PW1, the 5<sup>th</sup> Defendant was the chairman of the Committee whom they complained to when they were not allocated the suit parcels but had nothing to show such complaint. PW1 further stated that they were shown the land in 1980 when he was about 20 years old while residing in Lamu town.
10. PW1 also stated that they knew the LR number after they did a search at the Lands Office and that the 5<sup>th</sup> Defendant gave the land fraudulently to his two wives but that they never reported the fraud.
11. Upon cross-examination by counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, PW1 stated that they have no documents to show the land is theirs, lived on the suit land for about two years and never built houses on the suit land. PW1 also confirmed that he knows About Mohamed Haji who was a member of the previous committee whom he stated that was not straight forward hence his replacement with the 5<sup>th</sup> Defendant.
12. It was PW1’s testimony that the area has a cemetery and a mosque and those titles were issued in 1993, which he did not produce in court. PW1 further stated that owner wanted to evict them and reported them to the police. He also stated that they have never challenged the title and that they do not have the adjudication list indicating their names as allottees.
13. PW2 Ahmed Mohammed Hassan adopted his witness statement dated 1<sup>st</sup> April 2015 and testified that the suit land belongs to them as it was left to them by their ancestors which they have been cultivating. PW2 further testified that the demarcation and survey was done in their absence and the land taken away from them. It was his evidence that there is a Mosque and their relatives’ graves on the suit land.



14. Upon cross-examination by counsel for the 1<sup>st</sup> Defendant, PW2 stated that it is true that it is the government that was giving land in the scheme and that the 5<sup>th</sup> Defendant was elected as a member of the committee. It was his evidence that he complained when he did not get land and that he had no document to such complaint. Further that they neither built any houses nor filed a case against the allocations of the suit land.
15. Upon cross-examination by counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, PW2 stated that he has never lived on the land however his grand-father lived there and further that they have nothing to show that they have ever resided on the suit land.
16. PW3 Badi Mohamed Ali also adopted his witness statement dated 1<sup>st</sup> April 2015 and prayed that the orders be granted as prayed as the suit land belongs to them.
17. Upon cross-examination by counsel for the 1<sup>st</sup> Defendant, PW3 stated that he has land in Pate which has no title and that he was shown the same by his father. He stated that the land belonged to the government and that he was not there during adjudication. It was further his testimony that they cultivate the land and do not live on the suit land. PW3 also testified that they reported the 5<sup>th</sup> Defendant at the Land Adjudication Office.
18. PW4 Hassan Mohamed Suthyan adopted his witness statement dated 16<sup>th</sup> October 2019 and testified that he resides in Pate Lamu and that the land belonged to their family which they have occupied for many years.
19. Upon cross-examination by counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, PW4 stated that he went to the land when he was about 12 years but moved to reside there in 2013. It was his testimony that there was a complaint made to the police and they had to leave not because the land was not theirs but due to the Chief's order. He further stated that he was not present during the adjudication.
20. On further cross-examination by counsel for the 1<sup>st</sup> Defendant, PW4 stated that they are claiming land No. 894 together with the 15 Plaintiffs but they have nothing to show that they were present during the adjudication. Further that some of the Plaintiffs got land from the government in different schemes.

#### **Defendants' case**

21. DW1 Rukia Mbwarali Mohamed adopted her witness statement dated 12<sup>th</sup> February 2018 and testified that she lives on the suit land which belongs to her and holds a title to it. She also produced a list of documents dated 12<sup>th</sup> February 2018 as Dex No 1 to 4. DW1 further testified that she was living on the suit land during adjudication.
22. DW2 Salma Mohamed Bwandumia also adopted her witness statement dated 12<sup>th</sup> February 2018 and testified that she was allocated the suit land in 2013 and has a title to it. It was her evidence that she was present on the suit land during the adjudication.
23. DW2 also referred the court to the list of beneficiaries for Pate Settlement Scheme in which she is listed as No. 5 for parcel No. 898 but her identity number is erroneously indicated. DW2 testified that the land belongs to her and not the Plaintiff.
24. DW3 Bakari Mohamed Abdulrahman adopted his witness statement dated 12<sup>th</sup> February 2018 and testified that plot No 897 and 898 belong to DW1 and DW2 who were issued with title deeds in 2013. DW3 stated that he was the Chairman of the District Selection Committee during the adjudication and they were to ascertain the owners of the parcels.



25. It was DW3's evidence that the decisions of the committee were collective and they would go to the parcel and ascertain the persons on the suit land. According to DW3, DW1 and DW2 were on the suit land during the adjudication and there were no complaints on the ascertainment.
26. Upon cross-examination by counsel for the 1<sup>st</sup> Defendant, DW3 stated that their Committee involved the Lands Office and that they went round the suit land. It was DW3's testimony that there were people who were allocated land but were not on the suit parcels. Further that it was the Committee that ascertained the people on the suit parcels and that people were given time to raise complaints but there were no complaints.
27. DW4 Hassan Mohamed a Deputy Director at the Settlement Office Lamu County testified that in 2009 there was a programme to resettle residents who elected a local Committee comprising of 11 officials with the help of the chiefs to ascertain the boundaries and the owners. DW4 testified that the project was completed in 2012, all disputes were resolved, a list was generated and titles issued in 2013.
28. DW4 testified that Plot No. 897 was recorded in DW 1's name measuring 0.77 hectares and Plot No 898 was recorded in DW2's name and identity measuring 0.61 hectares. DW4 testified that he wondered how 15 plaintiffs could fit on 0.61 hectares and produced a list of documents as DEX No. 5 to 11.

### **Plaintiffs' submissions**

29. Counsel for the Plaintiff filed submission on 3<sup>rd</sup> October, 2023 and identified the following issues for determination:
  - a. Whether or not the suit premises belonged to the plaintiffs' forefathers?
  - b. Whether there was fraud and or flaws in the manner in which the suit premises were allocated and titles issued?
30. Counsel relied on Section 26 of the [Land Registration Act](#) and the cases of [Geoffrey Njenga Waitatbu v James Mwaura Njenga & another](#) [2014] eKLR and [Kinyanjui Kamau v George Kamau](#) [2015] eKLR and submitted that the Plaintiffs have proved that the issuance of titles to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants was illegal and unprocedural.
31. Counsel submitted that the purpose of the scheme was to resettle people who for centuries have been occupying the land yet they were still squatters, further that the 5<sup>th</sup> Defendant's wives were not direct descendants and the only plausible explanation for their registration in respect of the suit property was that the 5<sup>th</sup> Defendant did so through a corrupt scheme.
32. Counsel relied on Article 40 of the [Constitution](#) of Kenya, Sections 24, 25 and 26 (1) (a) of the [Land Registration Act](#) 2012 and prayed for a declaration that issuance of titles for Lamu/pate Scheme/ 897 and Lamu/pate Scheme/898 is unlawful and titles to the same be cancelled.

### **1st Defendant's Submissions**

33. Counsel for the 1<sup>st</sup> Defendant filed submissions on 25<sup>th</sup> January, 2024 and identified the following issues for determination:
  - a. Whether the Plaintiff has any interest in the suit property?
  - b. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted unlawfully and unprocedurally by issuing title of land parcel Lamu/pate Scheme/897 and Lamu/pate Scheme/898 to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants?



34. On the first issue whether the Plaintiff has any interest in the suit property, counsel submitted that the Plaintiff has not provided any evidence to show their interest in the suit property therefore they lack *locus standi* to institute legal proceeding and relied on the cases of *Julian Adoyo Ongunga v Francis Kiberenge Abano* Migori Civil Appeal No 119 of 2015, *Alfred Njau and Others v City Council of Nairobi* (1982) KAR 229 and *National Environmental Tribunal v Overlook Management Limited and 5 others* (2019) eKLR.
35. Counsel submitted that the Plaintiff has alluded to having interest over the suit property and from the documents filed in court it is not in doubt that the suit property is registered to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as per the title deed No. Lamu/pate Scheme/897.
36. On the second issue as to whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted unlawfully and unprocedurally by issuing title deeds of the suit parcels to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, counsel submitted that the land parcel in dispute was Pate Scheme covered under the squatter regularization programme in Lamu and as such the law relating to it was Section 3 (1) (b) of the Land Adjudication Act which states that the Minister has powers to administer the application of this Act to any area of community land. Counsel submitted that through a sensitization process led by the District Settler Selection Committee, the County Land Surveyors demarcated the plots and the beneficiaries of the same were identified. Counsel submitted that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were listed as beneficiaries of Plot Nos. 897 and 898 respectively.
37. Counsel relied on Section 25 (1) of the *Land Registration Act* and Section 107, 108 and 109 of the *Evidence Act* and submitted that it is not enough to simply infer fraud on the part of the 5<sup>th</sup> Defendant causing the suit parcels to be registered in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as the same must be proved.
38. Counsel went on to rely on the cases of *Githinga Kibutha v Caroline Nduku* ELCA No 16 of 2007, *Koinange & 13 others v Charles Karuga Koinange* [1986] KLR and *Kinyanjui Kamau v George Kamau* [2015] eKLR and submitted that the Plaintiffs have failed to prove how the 5<sup>th</sup> Defendant's actions amount to fraud.

### **3RD, 4TH And 5TH Defendants' Submissions**

39. Counsel for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants filed submissions on 14<sup>th</sup> July, 2023 and relied on Sections 26, 26 A, 27 and 29 of the *Adjudication Act* and submitted that for any dispute arising from an adjudication exercise, the same is to be reported as an objection to the Lands Committee and an appeal instituted as provided for. Counsel submitted that this process was not followed hence the jurisdiction of this court is therefore ousted by the Land Adjudication Act which provides that the decision of the minister shall be final. Counsel submitted that the only provision that can invite the jurisdiction of the court is if there was a claim of fraud.
40. Counsel relied on Section 26 of the *Land Registration Act* and submitted that there being no claim of fraud, the Plaintiffs failed to prove their case and the same should be dismissed with costs.

### **Analysis And Determination**

41. The issues for determination are as follows:
  - a. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted unlawfully and unprocedurally in allocating Land parcel Nos. Lamu/pate Scheme/897 and Lamu/pate Scheme/898 to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants?



- b. Whether the 5<sup>th</sup> Defendant acted corruptly and fraudulently in allocating the suit parcels to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants,
  - c. Whether the Plaintiffs are entitled to an order for annulment and cancellation of the suit parcels of land.
  - d. Who pays the costs of the consolidated suits?
42. The background of this case is that the plaintiffs claim the land to have belonged to their ancestors. The evidence on record is that this land was set aside by the government to settle the residents/squatters of Pate, in Lamu County. The Plaintiff's evidence is that the land belongs to their ancestors and that they should have been allocated the land during adjudication.
43. Section 13 (1) of the [Land Adjudication Act](#) provides for the pointing out of boundaries for persons claiming an interest in land as follows:
- “Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the notice published under section 5 of this this [Act](#).
44. The Plaintiffs gave evidence and confirmed that they were not present when the process took place. They further confirmed that they do not reside on the suit land. There was no evidence of what interest the Plaintiffs have on the suit land. If they had an interest, then they should have been there or sent their representatives during the adjudication and demarcation of the boundaries as required by law.
45. It was the Plaintiffs further evidence that they are the ones who elected the 5<sup>th</sup> Defendant as a Committee Chair and the other members who were literate and were to represent their interests. They have accused the 5<sup>th</sup> Defendant for acting corruptly by registering the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as owners of the suit land.
46. Land adjudication is an elaborate process which involves persons who have an interest in land within the adjudication section. This process involves the local residents, an elected Committee by the locals and Land Adjudication Officers.
47. Section 9(1) of the [Land Adjudication Act](#) stipulates the duties of the Adjudication Officer as follows:
1. The adjudication officer shall be in charge of and shall exercise general supervision and control over the adjudication.
  2. The adjudication officer shall hear and determine—
    - a. any petition respecting any act done, omission made or decision given by a survey officer, demarcation officer or recording officer; and
    - b. any objection to the adjudication register which is submitted in accordance with section 26 of this Act.
48. The Plaintiffs were at all times aware that the area had been declared as an adjudication area and notices were given for persons who had an interest to appear and record the same. The Plaintiffs did not take any interest in the demarcation and recording of interest after they had elected their representatives in the committee.



49. There is a procedure for filing complaints to the Adjudication Officer who has the power to hear and determine the objections as per Section 26 of the Act which provides as follows:

“Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.

The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”

50. Similarly Section 29 of the *Land Adjudication Act* provides that:

1. Any person who is aggrieved by the determination of an objection under section 26 (1) & (2) of this *Act* may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
  - a. delivering to the Minister an appeal in writing specifying the grounds of appeal; and
  - b. sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
2. The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar”.

51. The Plaintiffs did not register their displeasure or concern on the omission or lack of being considered as beneficiaries in the adjudication scheme. There was nothing on record to show that they were beneficiaries or entitled to be allocated land in the scheme apart from claiming that the land belonged to their ancestors who were mentioned neither by name nor by explanation of their connection given. The reason that prevented the plaintiffs from appearing during the adjudication was also not tabled before the court. Therefore, the plaintiffs have not proved any wrongdoing by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

52. On the issue as to whether the 5<sup>th</sup> Defendant acted corruptly and fraudulently in allocating the 3<sup>rd</sup> and 4<sup>th</sup> defendants the suit parcels of land, it should be noted that the 5<sup>th</sup> defendant was one of the committee members and were working together with other members including the recording officers from the Land Adjudication Office. He could not have been allowed to act as an individual as there are checks and balances by the Committee members and the land Adjudication office. That is why there is a dispute resolution mechanism in place for any omission, commission or wrongdoing by the committee members of the recording officer.

53. Similarly, the Plaintiffs pleaded that the 5<sup>th</sup> defendant breached his trust as the chairman of the land adjudication committee and fraudulently caused the suit land to be registered in the name of the 3<sup>rd</sup> and 4<sup>th</sup> defendants. Fraud must be specifically pleaded and proved. The plaintiffs apart from generally pleading fraud did not prove how the 5<sup>th</sup> defendant had fraudulently caused the land to be registered in the name of the defendants.

54. The Plaintiffs admitted that they were not present during the adjudication and demarcation. They also stated that they neither have houses nor reside on the suit parcels of land. There was no evidence to connect them with the suit land.



55. The 3<sup>rd</sup> and 4<sup>th</sup> defendants however gave evidence on how they were allocated the suit parcels of land, were present during the adjudication and that their names are in the list of beneficiaries of the scheme which they produced in court. They also attached copies of titles to the suit properties in their names
56. Section 24 of the *Land Registration Act* provides as follows:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”
57. I find that the plaintiffs have not proved that the 3<sup>rd</sup> and 4<sup>th</sup> defendants’ titles were procured fraudulently. The plaintiffs therefore are not entitled to an order of cancellation of the titles.
58. I have considered the two consolidated suits and find that the Plaintiffs have not proved their case against the defendants and is therefore dismissed with costs. The 3<sup>rd</sup> and 4<sup>th</sup> defendants’ titles therefore remain intact and unimpeached.
59. A permanent injunction is hereby issued restraining the plaintiffs by themselves, their agents, assigns and/or employees or anyone claiming through them or otherwise howsoever from intruding, entering into, occupying interfering and/or adversely dealing or in any manner interfering with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants’ ownership, quiet possession and enjoyment of the suit property known as Title Number Lamu/pate Scheme/897.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. A. ODENY**

**JUDGE**

