



**Mundu & 3 others v Chishenga & 5 others (Environment & Land Case  
37 of 2023) [2024] KEELC 13948 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13948 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 37 OF 2023  
FM NJOROGE, J  
DECEMBER 18, 2024**

**BETWEEN**

**GILBERT CHIBO MUNDU ..... 1<sup>ST</sup> PLAINTIFF  
LUTU CHIBO MUNDU ..... 2<sup>ND</sup> PLAINTIFF  
SALIM CHIBO MUNDU ..... 3<sup>RD</sup> PLAINTIFF  
GEORGE MUNGA JANJI ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**JANJI LEWA CHISHENGA ..... 1<sup>ST</sup> DEFENDANT  
JUMBALE JANJI MUNGA ..... 2<sup>ND</sup> DEFENDANT  
RODGERS MZUNGU PEKESHE ..... 3<sup>RD</sup> DEFENDANT  
BOSCO LUGWE MBAGA ..... 4<sup>TH</sup> DEFENDANT  
JANJI NYALE MBARU ..... 5<sup>TH</sup> DEFENDANT  
REGISTRAR OF LANDS KILIFI ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted this suit by way of a Plaint dated 26/10/2023 seeking the following reliefs: -
  - a. A declaration that the registration of Parcel No. Chonyi/Bedzombo/Kitsoeni/729 in the Defendants' names by the 6<sup>th</sup> Defendant was erroneous;
  - b. A declaration that the Plaintiffs are the lawful beneficial owners of Parcel No. Chonyi/Bedzombo/Kitsoeni/729;



- c. An order directing the District Land Registrar, Kilifi the 6<sup>th</sup> Defendant herein to rectify the Land Register by deleting and cancelling the registration of the Defendants severally as the proprietors and restoring the property in the Plaintiffs' names;
  - d. An order of permanent injunction do issue barring the Defendants or any other person claiming through them from interfering with the Plaintiffs' right over parcel No Chonyi/Bedzombo/Kitsoeni/729;
  - e. Further or other reliefs as this Honourable court may deem fit to grant.
2. The Plaintiffs' claim over parcel No Chonyi/Bedzombo/Kitsoeni/729 measuring approximately 3.07Ha (the suit property) is based on ancestral interest. They aver that they have continuously occupied and utilized the suit property with no interference from the Defendants but were surprised to learn on 26/6/2023 that the suit property had been registered in the names of the Defendants. The Plaintiffs aver that the 4<sup>th</sup> and 5<sup>th</sup> Defendants, in affidavits dated 28/9/2023, admitted that registration of the suit property in favour of the Defendants was erroneously done due to an error that happened during the demarcation process. The Plaintiffs further averred that the parties herein are all members of one clan hence aware of the history of the suit property.
  3. Interlocutory judgment was entered against the 1<sup>st</sup> -5<sup>th</sup> Defendants for failure to enter appearance or file a defence. The 6<sup>th</sup> Defendant entered appearance through the office of the Attorney General. It filed a statement of defence dated 30/10/2023, wherein it denied the contents of the Plaint save for the jurisdiction of this court.

## **Evidence**

4. The Plaintiffs' case was anchored on the testimonies of three witnesses.
5. Gilbert Chibo Mundu (PW1), the 1<sup>st</sup> Plaintiff herein, adopted his written statement dated 26/10/2023 as part of his evidence-in-chief. He produced a copy of the certificate of official search as PEXH-1. He told the court that the Defendants were mistakenly registered as the owners of the suit property in the year 1989; that the Defendants have their land elsewhere and have never been to the suit property. He told the court that neither the Plaintiffs nor the Defendants have the title to the suit property. Upon cross-examination by the State Counsel, Mr. Munga, PW1 told the court that the Plaintiffs inherited the suit property from their parents who were born thereon.
6. Similarly, George Munga Janji (PW2), the 4<sup>th</sup> Plaintiff herein, adopted his written statement dated 26/10/2023 as part of his evidence-in-chief. He added that he inherited the suit property from his father who had purchased the same. He explained that the Defendants live in a different area named Katikirieni, while the Plaintiffs in Kitsoeni where the suit property is located. PW2 also produced as exhibits, the affidavits sworn by the Defendants, together with copies of their identification cards.
7. Zulfa Nyadzua Yawa (PW3) told the court that she is a village head woman of Chasimba location, Kitsoeni sub-location. She identified the Plaintiffs as her neighbors and the owners of the suit property. She asserted that the Plaintiffs have always utilized the suit property together with their parents.
8. She added on cross-examination that she was born within the local area where the suit property is located and that since the 1980s, she saw the Plaintiffs in occupation of the suit property. She asserted that there was a meeting held by the elders where it was agreed that the Defendants' names be expunged from the title.
9. The 6<sup>th</sup> Defendant did not call any witnesses. Parties were directed to file closing submissions, which they did.



## Submissions

10. The Plaintiffs' submissions filed by the firm of Marinda & Company Advocates are dated 4/11/2024. Counsel submitted that Section 79 of the [Land Registration Act](#) allows the Registrar to rectify the register of any instrument presented for registration in certain cases, while Section 80 thereafter allows the court to direct the Registrar to rectify the register by cancellation or amendment is satisfied that the registration was obtained, made or omitted by fraud or mistake. To buttress this point, counsel cited the case of Esther Ndegi Njiru & another v Leonard Gatei [2014] eKLR and two other cases.
11. Counsel relied on the evidence on court and urged the court to grant the reliefs sought.
12. The 6<sup>th</sup> Defendant's submissions are equally dated 4/11/2024, wherein Mr. Munga guided by Section 26 of the [Land Registration Act](#), discussed that where one intends to impeach a title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation and that however, where a person intends to indict a title on the ground that the title has been acquired illegally, unprocedurally, or through a corrupt scheme, it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part.
13. Therefore, having produced the affidavits sworn by the Defendants, it was evident that the process of allocation was erroneous hence the titles erroneously issued to the Defendants. Counsel urged the court to dismiss the suit against the 6<sup>th</sup> Defendant but also order rectification of the register in favour of the Plaintiffs.

## Determination

14. Having reviewed and examined the pleadings, evidence and the brief submissions rendered by Counsel for the Plaintiffs and the 6<sup>th</sup> Defendant, it is my humble view that the following issues suffice for Determination: -
  - i. Whether there is any basis to order for the rectification of the register in respect of the suit property.
  - ii. Who is entitled to costs?
15. The power to rectify any register or title is vested in the Land Registrar under Section 79 of the [Land Registration Act](#) No. 3 of 2012. Section 79 (1) provides thus: -
  - 79(1) The registrar may rectify the register or any instrument presented for registration in the following cases; -
    - (a) In formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
    - (b) In any case and at any time with the consent of all affected parties; or
    - (c) Upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.”



16. The court also has powers under the provisions of Section 80 (1) of the [Land Registration Act](#), 2012 to order rectification of title or register. That section provides:

- (1) 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.”

17. In the case of *Mary Ruguru Njoroge v John Samuel Gachuma Mbugua & 4 Others* [2014] eKLR Onguto, J. held:

In my view, the mistake referred to under section 80 (1) includes both a slip like a typographical error and a substantive mistake like the registration of a wrong or erroneous name. In short, the court wields powers equivalent to those donated by statute to the registrar under Section 79 of the [Land Registration Act](#). A party seeking rectification may therefore elect to attend before the registrar or appear before the court and prompt the process of rectification of a title or a register.”

18. In the present case, the Plaintiffs contend that the Defendants were erroneously registered as the proprietors of the suit property. The plaintiffs’ evidence points to there being a problem on the ground. The Plaintiffs produced as part of their evidence, copies of statutory declarations sworn by the 4<sup>th</sup> and 5<sup>th</sup> Defendants. I have perused the said affidavits, and I am satisfied that the 1<sup>st</sup> -5<sup>th</sup> Defendants were indeed erroneously registered as the owners of the suit property.

19. On a balance of probability, I am satisfied the plaintiffs have proved there is a case for rectification of the register of the suit property. I accordingly enter judgment in favour of the plaintiffs in the following terms: -

- a. A declaration is hereby issued that the registration of Parcel No. Chonyi/Bedzombo/Kitsoeni/729 in the Defendants’ names by the 6<sup>th</sup> Defendant was erroneous;
- b. A declaration is hereby issued that the Plaintiffs are the lawful beneficial owners of Parcel No. Chonyi/Bedzombo/Kitsoeni/729;
- c. The 6<sup>th</sup> Defendant is hereby directed to rectify the Land Register by deleting and cancelling the registration of the Defendants severally as the proprietors and register the Plaintiffs herein;
- d. An order of permanent injunction is hereby issued barring the Defendants or any other person claiming through them from interfering with the Plaintiffs’ right over parcel No Chonyi/Bedzombo/Kitsoeni/729;
- e. Each party shall bear its own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 18<sup>TH</sup> DAY OF DECEMBER 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

