



**Mwasi v Chai (Environment & Land Case E070 of 2021)
[2024] KEELC 14171 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14171 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E070 OF 2021
FM NJOROGE, J
DECEMBER 17, 2024**

BETWEEN

LUCIA MKANJALA MWASI PLAINTIFF

AND

ABDUL AHMED CHAI DEFENDANT

JUDGMENT

1. Vide a plaint dated 9/8/2021 filed on her behalf by Murimi Ndumia Mbago & Muchela Advocates the plaintiff approached this court seeking the following orders:

A declaration that the plaintiff is the bona fide /legitimate owner/proprietor of the parcel of land fraudulently registered in favour of the defendant vide number Kilifi /Roka/586 & Kilifi/Tezo Roka /586;

The honourable court be pleased to order the immediate cancellation of the illegally/ improperly procured titles aforementioned and that the register be rectified to countermand the entry in favour of the defendant and substitute the plaintiff therewith;

An order of permanent injunction restraining the plaintiff from interfering with the defendant's possession /occupation of the subject property;

Costs of this suit and interest.

2. The plaintiff's claim is that she was at all material times the legal/beneficial owner of a parcel of land situate in Tezo/Roka Settlement Scheme measuring approximate 12.49 acres; that she had purchased it from Salom Omar Thoya in 1983 and paid the consideration in full and took possession and constructed a house thereon and she has been in possession since, living thereon and eking out a subsistence therefrom. Around the year 2016 she learnt that the defendant had fraudulently caused registration of the parcel in his name vide Title Number Kilifi/Roka/586 later on inexplicably



registered or duplicated as Title No Kilifi/Tezo/Roka /586. She alleged that the defendant obtained the registration by way of fraud and misrepresentation. Particulars of misrepresentation are given in the plaint. On that basis, she thus seeks the orders set out earlier herein above.

Defence

3. The defendant filed a memorandum of appearance and statement of defence both dated 26/4/2023. It is pointless to outline the matters raised in that defence in this judgment because the defendant, despite being offered a chance by way of four adjournments, never appeared in court to testify. The evidence of the plaintiff therefore went uncontroverted.

Determination.

4. I have considered the evidence of the plaintiff in the absence of any evidence from the defendant. The statements in the defence remain mere allegations of the defendant in the absence of his evidence as per the holding in Edward Mariga through Stanley Mobisa Mariga v Nathaniel David Schuler & another [1997] eKLR where no defence had been filed and in which the Court of Appeal held as follows:

“The allegation in the defence that the appellant had dashed across the road is not evidence and remains forever an allegation. The learned Judge had reasoned that children being what they are, the appellant could have crossed the road in the course of play, but there was no evidence to support this view of the Judge.”

5. The plaintiff, a woman in her old age, gave oral evidence and adopted her witness statement dated 2/6/2021. She also produced documents including a sale agreement
6. I find that on the strength of the evidence adduced and in the absence of the evidence of the defendant the plaintiff has established her claim on a balance of probabilities and I enter judgment in her favour in terms of prayers no. (a), (b) (c) and (d) in the plaint dated 9/8/2021.

JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 17TH DAY OF DECEMBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

