



**Kimaru v Land Registrar Kilifi & 2 others (Environment & Land Case E032 of 2023) [2024] KEELC 14055 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14055 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E032 OF 2023  
EK MAKORI, J  
DECEMBER 16, 2024**

**BETWEEN**

**PETER MUREITHI KIMARU ..... PLAINTIFF**

**AND**

**LAND REGISTRAR KILIFI ..... 1<sup>ST</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION.....1<sup>ST</sup> DEFENDANT LAND REGISTRAR KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**NAOMI MWERI ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. In this case, the Plaintiff – Peter Mureithi Kimaru, seeks to be issued a green card, a crucial document that serves as proof of property ownership. He avers that he is the rightful owner of the property, but he cannot enjoy it as the documents at the Land Registry are entirely Kilifi and unavailable.
2. He states that he bought this land from the 3<sup>rd</sup> Defendant in 1980 by agreeing to pay all the land rates as she was not in a position to pay the land rates. They decided upon settling the land rates, and the land would be transferred to the Plaintiff. The Plaintiff paid Kshs 27,922.87 as the land rates. Consequently, the settlement fund trustees discharged the charge and transferred the land into the plaintiff’s name. In 2019, the National Land Commission (NLC) settled disputes in the area of Kilifi/Jimba, and it was this time that they did a Gazette Notice VOL. CXX I -N021 1 549/15/2/19 in favor of Naomi Mweri – the 3<sup>rd</sup> Defendant, the Plaintiff was never heard on the same. This is what brought the issue of the missing green card. There has been no dispute between the Plaintiff and the 3<sup>rd</sup> Defendant. There is further no occupation on the land by either party as the Plaintiff has been away in Nairobi.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants, who are the Land Registrar Kilifi and the National Land Commission (NLC), respectively, relied on what was filed on record. The Land Registrar Kilifi - Juma Boaz Oketch produced the entire parcel record of the suit property, confirming the entries and confirming that the



land was transferred to the Plaintiff by Trio Footwear Ltd in 1982 and that the record shows it was allocated to the Plaintiff by the Commissioner of Lands in 1986. However, the document has not been signed by the Land Registrar. The Lands Registry cannot authenticate the actual owner as the green card for the parcel cannot be located.

4. Despite being served even through substituted service, the 3rd Defendant never entered an appearance nor placed a defense.

I then frame the issue for this Court's decision as whether the Plaintiff has proved ownership of the suit property to merit the orders sought in the plaint and who should bear the costs of the suit. If we follow the sequence of the documents produced from the time the suit property was not registered adopting the Dictum of Onguto J., in *Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR while relying on *Nourse L.J. in Sen v Headley* [1991] Ch. 425 at 437 pronounced himself thus:

“...It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title paramount certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’.”

5. See also the decision in the case of *Danson Kimani Gacina and another v. Embakasi Ranching Company Ltd* [2014] eKLR where the Court held that:

“The law on unregistered land, unlike on registered land, is slightly unclear. Proof of ownership in the case of the former is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents showing the entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities, but the court must be left in no doubt that the holder of the documents proved is entitled to the property.”

6. From the records in the Land Registry, it is evident that Plaintiff has been the lawful owner of the suit property since 1980, and the 1<sup>st</sup> Defendant erroneously re-allocated the land to the 3<sup>rd</sup> Defendant. Yet, the 3<sup>rd</sup> Defendant had already sold her interests to the Plaintiff. The Plaintiff had already settled any dues to the land and obtained titles in his name. The defense by the 2<sup>nd</sup> defendant, paragraph 4, confirms that this was an error in allocating the land to the 3<sup>rd</sup> Defendant. Further, these transactions occurred in the 1980s, and the Plaintiff followed all the requisite laws in obtaining the land title. The land is registered to the Plaintiff, and there is no contention. The Plaintiff has provided all the documents and receipts showing the payment of the land rates, which puts him in a position of the privilege of owning the land. The plaintiff obtained title to the land in 2000 before the National Land Commission decided to reallocate it to the 3<sup>rd</sup> Defendant. A certificate of title had already been issued in 1982.
7. Therefore, as the rightful and lawful owner of the land, the Plaintiff should be allowed to enjoy it fully, as is his entitlement.
8. Having proved that he is the lawful owner of the land, the next step would be to regularize the documents to ensure his rights and protect the plaintiff. The 1<sup>st</sup> Defendant has no contention that it erroneously re-allocated Kilifi/Jimba/174 to Naomi Mweri. After this reallocation, the green card



seems to be missing from the Land Registry. From the defendant's list of documents, this land was allocated to Naomi Mweri on 12<sup>th</sup> May 1979. Later, in 1980, it was transferred to the Plaintiff, and in 1982, a certificate of title was issued in favor of the Plaintiff. The records provided are enough to reconstruct the green card and correct any mistakes made by the 1<sup>st</sup> Defendant.

9. This Court, therefore, directs the Land Registrar Kilifi to amend the registrar appropriately, reconstruct the green card, and insert the name of the Plaintiff as the proprietor of the suit property in place of the 3<sup>rd</sup> Defendant, who long relinquished her rights to the Plaintiff as enumerated above.
10. The Plaintiff's suit succeeds as prayed in the Plaint—no orders as to costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON 16<sup>TH</sup> DECEMBER 2024.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Ms. Kagori, for the Plaintiff

Mr. Wakhungu for the 2<sup>nd</sup> Defendant

Happy: Court Assistant

In the Absence of:

Mr. Kiilu, for the 1<sup>st</sup> Defendant

The 3<sup>rd</sup> Defendant (in person)

