



**Mekunde v Sanga (Environment and Land Case Civil Suit 56 of 2017)
[2024] KEELC 13729 (KLR) (10 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13729 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE CIVIL SUIT 56 OF 2017
EK MAKORI, J
DECEMBER 10, 2024**

BETWEEN

KWEKWE JEMBE MEKUNDE PLAINTIFF

AND

GLADYS DZAME SANGA DEFENDANT

JUDGMENT

1. The Plaintiff seeks:
 - a. A finding or declaration that she is the lawful owner of suit property Plot Membership No./118, also known as 173, measuring 33 ft by 100 ft, situated at Ukombozi-Kilifi County.
 - b. A permanent injunction restraining the Defendant and agents from interfering with the suit property to the detriment of the plaintiff.
 - c. Costs.
2. The claim is contested, and a defense is on record. The matter proceeded to a full hearing on merit. The Court directed the parties to file written submissions, which they complied with.
3. After a meticulous review of the evidence on record and the parties' submissions, I present the issues for this Court's decision. The key question is who among the warring parties has the lawful or beneficial ownership of the suit property—initially described as Plot No. 188, but later as Plot No. 173—Ukombozi Kilifi County. The decision also addresses who is to bear the costs for this suit.
4. The Plaintiff called a total of 4 witnesses, including herself. She testified on 29th May 2023 as PW1 and adopted her Statement dated 14th March 2017 and her statement dated 20th April 2023. The witness also adopted the documents that appear in her list dated 14th March 2017, which she produced as Pex-1 to Pex-3. An additional exhibit in the form of an affidavit by Vilet Sada Shems alias Violet Saada Shems (PW4), sworn and filed on 22nd November 2022, was produced as Pex-4.



5. The Plaintiff Kwekwe Jembe Mekunde's evidence was that she was amongst the first people to take possession of the suit premises, which is part of Ukombozi Residential Area, which was in the year 1999 and produced as Pex-1 a List of the Committee Members who had acquired possession of portions of the land within the residential area. Her initial membership and Plot No. was 188, but later on, it became Plot No. 173.
6. She proceeded to state that after her transfer to Kaloleni Law Courts as a Clerical Officer in 2000, she continued possessing the suit land until 2016 when the Defendant laid a claim over the suit premises. This prompted the issuance of a letter dated 21st April 2016 by the Assistant County Commissioner of Bahari Division, which was produced as Pex-2
7. Notwithstanding the intervention by the Provincial Administration to resolve the ownership wrangles of the Ukombozi Self Help Group, Defendant intended to construct a structure on the suit premises in 2017, as evidenced by the scanned photographs produced as Pex-3.
8. Robert Mwatando Mwangambo testified as PW2, supporting the Plaintiff's case. He adopted his witness statement dated and filed on 20th April 2023 and 24th April 2023, respectively. His evidence was that he was the Chairman of Ukombozi Residence from 2008 to 2013 and knew that the Plaintiff owned the suit premises. He questioned why the Plaintiff's name was removed from the List of beneficiaries of the Ukombozi Residence after his office tenure had lapsed in 2013.
9. Jimmy Charo Karisa testified to support the Plaintiff's case as PW3. He adopted his witness statement dated and filed on 20th April 2023 and 24th April 2023, respectively. The witness's evidence was that in 1992, Plaintiff hired him to clear a bush within the residential project. The witness told the court that he had received information from Elina Ningome Jembe (PW5) that Defendant had bought Plaintiff's parcel of land from Mtawali - Julius Karisa Jefwa (DW2). Based on this information, he and the Plaintiff approached the said Mtawali, whom they could not find at home, but his wife and mother confirmed that the suit property belongs to the Plaintiff.
10. One Saada Violet alias, Violet Sada Shems, testified in favour of the Plaintiffs on 31st October 2023 as PW4. She adopted her witness statement dated and filed on 20th April 2023 and 24th April 2023, respectively. This witness, who was the Secretary of the Ukombozi committee from 2005 to 2013, confirmed that the suit property belongs to the Plaintiff. She also confirmed that any Minutes of a meeting or documents without certification from the office were not genuine.
11. The last witness in the Plaintiff's case was Elina Ningome Jembe, who testified on 31st October 2023 by adopting her Statement dated and filed on 20th April 2023 and 24th April 2023, respectively. Her evidence was that the said Mtawali sold the suit premises to the Defendant with the belief that the lawful owner of the land was deceased.
12. The Defendant, Gladys Dzame Sanga, testified as DW1 and adopted her statement dated 3rd April 2017. She said the Plaintiff never produced a single document or payment receipt showing ownership of the suit property. The minutes produced show membership No. 118 has never been plot No. 173. She said she bought plot No. 173, allotted as No. 157, by one of the beneficiaries, Julius Karisa Jefwa, who also testified as DW2 and confirmed the same. DW2 further stated that the plaintiff attempted to grab the plot through provincial administration but failed. The Defendant further stated that upon payment of the purchase monies to DW2, she was duly entered into the register as a beneficial owner of the plot as witnessed by Fredrick Dzengo, who testified as DW3 and confirmed through his statement dated 26th April 2023 that he was the Chairman of Ukombozi Self-Help Group and witnessed the change over of plot No.173 from Julius Karisa Jefwa (DW2) to Gladys Sanga - the Defendant herein. A receipt was issued to that effect. He further confirmed that the Plaintiff had never owned a plot in



that area. He further said that when an audit was done, and members were asked to be physically on their plots, Plaintiff never attended nor sent any representative to confirm her plot.

13. Looking at the evidence I have, and this being unregistered land, at the hearing hereof, it emerged that the suit property, according to the Plaintiff (the one the plaintiff claims was allocated in 1999 as Plot No. 118/Ukombozi Scheme), was later allegedly changed to Plot No. 173. According to her, in 2016, the Defendant invaded it and erected structures but was stopped by the Government.
14. On the part of Defendant, the Plot never belonged to Plaintiff but to Julius Karisa Jefwa (DW3), who sold it to her in 2017. The record held by the group shows that.
15. I will agree with the Defendant's submissions that in determining rights over an unregistered land, the dictum by Onguto J.in *Coroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others* [2015] eKLR citing *Nourse LJ. in Sen v Headley* [1991] Ch. 425 at 437 is relevant:

“... It is the delivery of deeds documents that assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to 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 prove ownership. It is such documents which are basically the essential indicia of title of unregistered land.”

16. See also the decision in the case in *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 the one entitled to the property.”

17. Apart from the Plaintiff showing that she was among the founders of Ukombozi- Self Help Group that acquired land for its members, the records held by the said group do not show her ownership of the plot. She did not demonstrate how she acquired the land in question by documents or chain of documents. The records held by the officials are conflicting. There are various cancellations, and members are in multiple Courts over the allocations. In my view, those members are wrong. Instead of getting titles for their members in court, the officials give warring lists of who is a member and who is entitled to what plot. Based on the documents produced and the officials' poor record-keeping, the Defendant could also not show the property's chain of ownership because of the officials' poor records.
18. The Plaintiff's suit is hereby dismissed. As I have said, since the officials of the Ukombozi Self-Help Group are keeping fault records of its membership, each party will bear own costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 10TH DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:



Ms. Kenga, for the Plaintiff

Mr. Magiya, for the Defendant

Happy: Court Assistant

