



**Thomas v Jilani & another (Environment & Land Case 4 of 2019)
[2024] KEELC 13676 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13676 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 4 OF 2019
EK MAKORI, J
DECEMBER 9, 2024**

BETWEEN

ERICA ANN THOMAS PLAINTIFF

AND

JOEL NGALA JILANI 1ST DEFENDANT

MATSANGONI LIMITED 2ND DEFENDANT

JUDGMENT

1. The Plaintiff vide a Plaint dated 21st June 2019, is seeking, among other orders, that:
 - a. A declaration that the Plaintiff is the lawful and registered owner of the parcel of land known as Kilifi/Madeteni/450.
 - b. An order directed at the Land Registrar. Kilifi for a rectification of the registrar in respect of Kilifi/Madeteni/450 by reinstating the Plaintiff therein as the duly registered owner.
 - c. A permanent injunction restraining the Defendants their servants and or agents from selling, charging, leasing, transferring or in any other way whatsoever and howsoever dealing with the parcel of land known as Kilifi/Madeteni/450.
 - d. Costs and interest.
2. The Plaintiff, Erica Ann Thomas, testified and relied entirely on her witness statement dated 21st June 2019. She said her husband, Captain Andy Thomas, purchased the suit property, Plot Number 450 Madeteni Settlement Scheme, from Kelvin Mwamuye Jilani at the agreed sum of Kshs.10,000,000/-. Notably, when the Agreement was entered, the suit property was without a title document. It was comprised in the Letter of Offer dated 27th March 1997 in the name of Rogders Mwadonga Mwamuye. The Agreement for Sale provided, inter alia, the following special conditions.



- a. That the Vendor shall obtain at his cost all relevant consents required to register the transfer in favor of the Purchaser.
 - b. The Vendor shall obtain the title document from the Department of Land Adjudication and Settlements at his cost.
 - c. Special Condition No.4 in the Agreement for Sale specifically provided that the Vendor, Kelvin Mwamuye Jilani, was selling the suit property as the Administrator of the Estate of Rodgers Mwandonga Mwamuye (Deceased).
3. In her testimony, the Plaintiff confirmed having done the requisite due diligence, including a survey and ground report over the suit property. She satisfied herself with the transaction's genuineness, sanctioned, and gave the go-ahead for its completion.
 4. The survey report and survey map dated 19th April 2008 points out that Plot No.450 has a makuti thatched structure built on it and belongs to the buyer, the Plaintiff herein. The Survey Map drawn in 2008 shows an outlay of Plot No.450.
 5. According to the Plaintiff, the documents the vendor, Kelvin Mwamuye Jilani, presented to her gave her great assurance about the genuineness of the transaction. The following are some of the documents presented to the Plaintiff by Kelvin Mwamuye Jilani: Discharge of Charge dated 8th of August 2007, Letter of Offer dated 27th March 1997, Grant of Letters of Administration issued on 24th December 2001 in Kilifi SRMCC Succ. Cause No. 24 of 2001, request for Discharge of Charge dated 21st June 2007, Outright purchase receipt dated 5th June 2007, Discharge of Charge & Transfer document dated 9th August 2007, and Transfer of Land of Plot No. 450 dated 8th of August 2007.
 6. According to the Plaintiff, the Vendor's presentation of the aforesaid documents approved the transaction and caused the Plaintiff to pay the Vendor the entire purchase price.
 7. Upon purchase price payment, the Plaintiff executed the transfer. Kelvin Mwamuye Jilani volunteered to handle the registration of the transfer at the Kilifi Lands Registry, which he did successfully. He also delivered the title deed in the Plaintiff's name.
 8. In a letter dated 26th May 2016, the 1st Defendant, through his advocates Mwashunga Mtana and Company, raised issues about the transaction over the suit property. While acknowledging that Plaintiff purchased the property from Kelvin Mwamuye Jilani, the 1st Defendant alleged that the transaction had been breached for non-compliance and was null and void. The aforesaid letter was responded to via letter dated 11th July 2016. Plaintiff made it clear to Defendant that she was the registered owner of the suit property, having lawfully purchased the same from Kelvin Mwamuye Jilani. The said letter also pointed out that the property was transferred to the Plaintiff by Kelvin Mwamuye Jilani before his demise.
 9. The 1st Defendant, through his advocates, issued a letter dated 28th June 2016 which stated in part:

“The alleged sale if there was got frustrated and or became null and void after his brother's death”.



10. According to Plaintiff, the correspondence clearly shows that the 1st Defendant was aware of the transaction between Kelvin Mwamuye Jilani and Plaintiff. The 1st Defendant was, in fact, on a fishing expedition and thus stated:

“Kindly let us have the same or we shall treat it as lost and proceed as our client deems fit”.

11. Indeed, the 1st Defendant reported the title to the suit property as lost and fraudulently obtained another title, which they then unlawfully sold the suit property to the 2nd Defendant.

12. The plaintiff believes the sale transaction regarding the suit property was completed well before Kelvin Mwamuye Jilani's demise. Indeed, the full purchase price of Kshs.10,000,000/—was paid to Kelvin Mwamuye Jilani as per the Bundle of Cheques and acknowledgment slips, evidence of the Plaintiff's payment to Kelvin Mwamuye Jilani. Therefore, it shocked the Plaintiff when a search conducted in August 2008 showed that the property was registered in the name of Kelvin Mwamuye.

13. The Plaintiff took possession of the suit property and commenced payment of the County Land Rates as required by law, as shown by a Bundle of receipts for rate payment and a Rates Clearance Certificate. The County Government issued all these documents to the Plaintiff concerning her Kilifi/Madeteni/450 property.

14. According to the Plaintiff, the Survey Report dated 9th January 2024 by Nadir Survey and Consultants Limited is evident on the layout, beacon, and boundaries of Kilifi/Madeteni/450. The Survey Report speaks for itself. Plaintiff avers that this is a reflection and confirmation of the evidence by the Plaintiff. The Plaintiff's developments and structures are within her property.

15. 1st Defendant Joel Ngala Jilani testified that at all material times herein, Plot No. Kilifi/Madeteni/450, measuring approximately 2.6 Ha. or thereabouts, was initially registered in the name of the 1st Defendant's late father, Mwandonga Mwamuye Rodgers, on the 19th of September, 2006. Upon his demise, the same was transferred to his late brother Kelvin Mwamuye Jilani through Succession cause No. 24 of 2001.

16. Upon the demise of the first Defendant's brother, Kelvin Mwamuye Jilani, the 1st Defendant, together with her sister, obtained a grant of administration over the estate, which grant was confirmed by the court on 20th December 2012, to have the suit property transmitted to his sister Josephine Munyazi Jilani and himself.

17. 1st Defendant and his sister, Josephine Munyazi Jilani, in the exercise of their proprietorship rights thereof, lawfully transferred Plot Kilifi/Madeteni/450 to the 2nd Defendant Company, which had already purchased the property from the 1st Defendant vide an agreement for sale dated 18th February 2019, a title deed issued to that effect

18. On the 29th March 2019, the duly executed transfer by the 1st Defendant, together with her sister and the director of the 2nd Defendant Company, was registered, and a title deed was issued in the name of the 2nd Defendant Company herein on the same date. The 2nd Defendant, having acquired the suit property in 2019, was vacant and had no development. That was in 2019 when the 1st Defendant became aware that Plaintiff was also claiming ownership of the suit property after she filed this suit against him.

19. The 2nd Defendant, through its director, Dansan Majanja, testified as PW3 and stated that currently, the 2nd Defendant is the actual registered owner of the suit property, having purchased the same from the 1st Defendant and his sister, Josephine Munyazi Jilani, as, of Kelvin Mwamuye Jilani for value without notice of any impropriety, which position was asserted and corroborated by the Land Registrar



- Josephine Munyasia Rama who testified as DW2 and produced the entire file in respect to the suit property and stated that through the entries on the record – the title or interests as alleged by the Plaintiff do not subsist. She traced the history of the subject property from the title allotted to the father of the 1st Defendant under the SFT program, registration in the name of his late brother Mwamuye, and subsequent transfer to the 2nd Defendant, the current holder of the title.
20. The Court directed parties to file written submissions. They did comply.
21. The issues I frame for the decision of this Court – which I condense into a straightforward issue – who should be the rightful title holder of the suit property since the parties, the Plaintiff and the 2nd Defendant, seem to suggest that each has a better title than the other. Who should bear the costs of the suit?
22. This will mean tracing the title's root based on the parties' evidence of acquiring the same.
23. I agree with all the parties in their respective submissions that Article 40 of *the Constitution* of Kenya 2010 offers protection of the property right. However, Article 40(6) provides as follows:
- “The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”
24. This should be read together with Section 26(1) of the *Land Registration Act*, which provides that:
- “The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all court as prima facie evidence that the person named as the proprietor of land is absolute and indefeasible owner, subject to the encumbrances, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except;
- On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- Where the certificate of title has been acquired illegally, procedurally of, through a corrupt scheme.”
25. In tracing the root of title as correctly submitted by the parties, the decision highlighted to me In *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR is relevant where this Court has held that where a registered proprietor's root of title is under challenge, the registered proprietor had to go beyond the instrument of the title and prove legality of how he acquired the title when it stated as follows:
- “We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellants' testimony”
26. See also *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR where Munyao J. held as follows:
10. ...I do not think it necessary to belabour the point that the title of the 1st respondent was improperly acquired. It does not need space science to bring one to the conclusion that the 1st respondent must have acquired registration of the suit property by way of fraud. He obviously



could not have perpetrated the fraud on his own and he must have colluded with corrupt and morally deficient fellows in the land registry.

13. ...It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme.
14. Where one intends to impeach 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. 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, my view has been, and still remains, that it is not necessary for one to demonstrate that the title holder is guilty of any immoral conduct on his part. I had occasion to interpret the above provisions in the case of Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another, Eldoret ELC Case No. 609 B of 2012 where I stated as follows:-

"...it needs to be appreciated that for Section 26(1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions."

I stand by the above words and I am unable to put it better than I did in the said dictum.

24. Having considered all arguments, I frankly do not see how the title of the 1st respondent, the star fraudster, can be upheld"
27. On the sequence of the acquisition of the title, and in tracing the root of the title, Plaintiff submits that she is the undisputed owner of the suit property. The documentary evidence presented by the Plaintiff confirms a lawful conveyancing transaction grounded on an Agreement for Sale entered willingly between the Plaintiff and the Vendor, Kelvin Mwamuye Jilani. The evidence also shows that Plaintiff paid the Vendor the sum of Kshs.10,000,000/-, which was the agreed purchase price.
28. Plaintiff asserts that the 1st Defendant's application of another title to the suit property, when aware that Plaintiff was holding a title having purchased the same from the Vendor, was purely a scheme to sell the property to the 2nd Defendant fraudulently. Olola J. accurately captured the fraudulent acts of the 1st Defendant in the Ruling in the issuance of an injunction as follows:
 10. As fate would have it, the said Kelvin Mwamuye Jilani passed away on 23rd September 2010. The Defendant herein who is his brother avers that shortly after his death, they realized that number of documents that were in Kelvin's possession could not be traced. Having heard "rumours" that his brother had sold the suit property to the Plaintiff, the Defendant confronted the Plaintiff who confirmed that indeed the property had been transferred to her name during Kelvin's lifetime.
 11. Despite such knowledge, it is apparent that the Defendant swore an affidavit alleging that the title documents for the suit property were lost. On that account, on 13th September 2017 some



seven years after his brother passed away, a new title was issued in his brother's name. On 11th March 2019, the said title was transferred, and another fresh title deed was issued for the suit property in the name of the Defendant and his sister Josephine Munyazi Jilani”.

29. Plaintiff proceeds to state that in an explicit confirmation of Plaintiff's acquisition of the suit property, Plaintiff took possession of the suit property and commenced payment of the County Land Rates as required by law—as per the Bundle of receipts for payment of rates, and a Rates Clearance Certificate - documents issued by the County Government to the Plaintiff regarding her property known as Kilifi/Madeteni/450.
30. The plaintiff further states that this is supported by the Survey Report dated 9th January 2024 by Nadir Survey and Consultants Limited, which is evident on the layout, beacon, and boundaries of Kilifi/Madeteni/450.
31. Plaintiff questions the removal of the caution to pave the way for the sale and issuance of title held by the 2nd Defendant.
32. The first Defendant contends that the purported title issued to Plaintiff in 2002 was illegal and fraudulent, as this involved intermeddling with the estate of a deceased person.
33. 1st Defendant further states that the suit property being in the Kilifi/Jimba settlement scheme, which is agricultural land, was therefore subject to controlled transactions under the provisions of Sections 6 (1) (a) (b) of the *Land Control Act* Cap 302 laws of Kenya which require consent from the Land Control Board to enable transfer or subdivision of the land. The Board did not sanction the same. The alleged consent, which the Plaintiff exhibited, is dated 4th March 2002, while they alleged to have obtained a title to the suit property on 8th May 2002 and then received a discharge on 8th August 2007. The 1st Defendant believes this is legally impossible as consent is obtained after a discharge of charge has been issued. It demonstrates that the Plaintiff's alleged title is a fraud and illegal. Therefore, the alleged transfer of the suit property to Plaintiff was illegal as it failed to meet the mandatory requirements of Section 6 (1)(b) of the *Land Control Act* Cap 302 Laws of Kenya. See *Kahia v Nganga* [2004] 1ea 75 and *BTB Insurance Agencies Limited v Nitin Shah & others* [2006] 2EA 26.
34. Regarding fraud in acquiring the suit property, the 1st Defendant avers that none has been proved against him. The 1st Defendant has cited several cases as the yardstick for proving fraud when alleged and concluded that none has been proved against him in transferring the suit property to the 2nd Defendant.
35. The 2nd Defendant submits that due diligence was done before the purchase of the suit property, a visit was made on the ground, and it was discovered that this was a bushy area with nobody on site. The search showed the property's registered proprietor and that the Plaintiff's interest was never recorded in the green card. Therefore, the 2nd Defendant purchased the suit property as an innocent purchaser for value without notice, and good title was passed to it.
36. The 2nd Defendant continued to state that it is the Plaintiff's case that the suit property at the time of sale (29th August 2007) was unregistered. The alleged Vendor, Kelvin Mwamuye Jilani, only had a Letter of Offer dated 27th March 1997, which was in his father's name, Rogders Mwadonga Mwamuye. In the said Agreement, Kelvin Mwamuye Jilani was selling the suit property as the Administrator of Rogders Mwadonga Mwamuye as per the Grant and Certificate of Confirmation of Grant in the Plaintiff's List of Documents.
37. The Grant of Letters of Administration was issued on 24th December 2001 at the Senior Resident Magistrate's Court at Kilifi in Succession Cause No. 24 of 2001 by the Deputy Registrar, and the



Certificate of Confirmation was issued on 14th August 2002 at the High Court at Nairobi - showing inconsistencies in the said documents:

- i. The succession matters are said to have been handled in different Courts (the Senior Resident Magistrate's Court and the High Court) and counties (Kilifi and Nairobi).
 - ii. Despite being done in different Courts, the Grant of Letters of Administration and the Certificate of Confirmation are signed by the same Deputy Registrar, P. M. Mutani.
 - iii. Kilifi Law Court is a subordinate Court, and no Subordinate Court in the country is presided over by a Deputy Registrar.
 - iv. The Certificate of Confirmation of Grant lists Shamba/No. 466 as the only property forming the Estate and not the suit property herein.
38. 2nd Defendant avers that prima facie, it is clear that the said Kelvin Mwamuye Jilani lacked locus in entering into a Sale Agreement with regards to the suit property as the same did not form part of the Estate as per the Certificate of Confirmation of Grant produced by the Plaintiff: And if anything the alleged sale of the suit property by Kelvin Mwamuye Jilani was unlawful as he had no good title to the suit property and his acts amounted to intermeddling by virtue of Section 45 of the [Law of Succession Act](#).
39. The Plaintiff produced a Letter dated 21st June 2007 by the Land Adjudication and Settlement requesting for Discharge of Charge and transfer of the suit property to Rogders Mwadonga Mwamuye. In essence, this means that the suit property was first transferred to Rogers Mwadonga Mwamuye in the year 2007 before being transferred to Kelvin Mwamuye Jilani, then to the 1st Defendant and her sister, Josephine Munyazi Jilani, as Administrator and later to the 2nd Defendant.
40. The Plaintiff also produced a Transfer from the Land Settlement Scheme, which was not executed nor registered, and a Discharge of Charge, which was not registered. As for the Land Control Board Consent and Transfer document, the 2nd Defendant submits that the same was fraudulently obtained as the Consent was issued and dated 4th March 2002, and the Transfer was registered on 8th May 2002, five years before the Agreement for Sale was entered into.
41. 2nd Defendant believes that Plaintiff did not carry out due diligence as held by 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’.”
42. The 2nd Defendant believes Plaintiff did not attain this. At the same time, Plaintiff alleges that the Defendants’ title was acquired fraudulently, and she has based her allegations on the letters dated 26th May 2016, 11th July 2016, and 14th July 2016, among others exchanged between her and the 1st Defendant. The 2nd Defendant avers that the information was meant to clarify whether she had purchased the land since the title was still in his name, as shown in the land Registry.
43. Citing several authorities, the 2nd Defendant has refuted all allegations of fraud, which were never specifically pleaded and proved, and instead avers that Plaintiff fraudulently obtained the title.



44. According to the record held at the land's office, per the evidence of the Land Registrar, one Josephine Munyasia Rama - It is not disputed that the suit property herein was a Settlement Scheme; however, the first allottee in the Green Card is Rodgers Mwadonga Mwamuye, the father of the 1st Defendant and the deceased Kelvin Mwamuye whose title deed was issued on 19th September 2006. The 2nd Defendant is the current registered owner of the suit property as of 25th March 2019. As stated, the original owner of the suit property was Rodgers Mwadonga Mwamuye. After that, succession was done, and the suit property was transferred by transmission on 21st September 2006 to Kelvin Mwamuye Jilani. Subsequently, the 1st Defendant applied for a title replacement, issued on 13th September 2017 in Kelvin Mwamuye Jilani's name after the gazettment. On 30th August 2018, a restriction was registered against the suit property by the Plaintiff's Advocates in favor of the Plaintiff, which was subsequently lifted on 8th March 2019. On 11th March 2019, the 1st Defendant and Josephine Munyazi Jilani were registered as owners, and a new title was issued. On 25th March 2019, the 1st Defendant and Josephine Munyazi Jilani transferred the suit property to the 2nd Defendant.
45. I have reviewed the documents produced by the parties, significantly the Green Card produced by the Land Registrar and that produced by the Plaintiff. Under the Torrens system, the Record held by the Land office should mirror that held by the parties and be a true reflection of the register, but because of underhand deals, the system does not work well for us; see this Court's view in *Republic v Chief Land Registrar; Kamau (Exparte Applicant); Guyo & 4 others (Interested Parties) (Judicial Review 2 of 2022)* [2023] KEELC 21242 (KLR) (2 November 2023) (Judgment) Neutral citation: [2023] KEELC 21242 (KLR), cited in *Denman Properties Limited & 4 others v Attorney General & 5 others; Kazomba & 28 Others (Interested Party); Furaha & another (Intended Interested Party)* [2024] KEHC 13319 (KLR):

“The dealings in the Chembe /Kibabamshe Adjudication Section (also read Kilifi/Jimba Adjudication Section) leave a bitter taste in the mouths of the landowners and are so convoluted that the titles issued do not reflect the true spirit and principles of the Torrens System:

- a. Mirror principle – the register reflects (mirrors) accurately and completely the current facts about the title of each registered lot. This means that each dealing affecting a lot (such as a transfer of title, a mortgage or discharge of same, a lease, an easement, or a covenant) must be entered on the register, and so be viewable by anyone.
- b. Curtain principle—one does not need to go behind the certificate of Title as it contains all the information about the title. This means that ownership need not be proved by long, complicated documents kept by the owner, as in the private conveyancing system. All of the necessary information regarding ownership is on the Certificate of Title.
- c. Indemnity principle – provides for compensation of loss caused by private fraud or by errors made by the Registrar of Titles.

The titles issued are no longer indefeasible; the Land registers do not mirror the proper disposition and ownership, and the officials at the adjudication and allocation (registration sections) missed it. Perhaps they will need to account for (indemnify) in the future. There is this current slang going around in social media that for you to buy land in Kenya, you will need a good lawyer, a surveyor (a good land agent or broker), and a drunkard from that local area to tell you whether you will be purchasing “air.” The latter person will likely mirror the title better than the Land Registries! The titles from the Chembe/Kibabamshe



Adjudication Section (also read Kilifi/Jimba Adjudication Section) are worse! This will be a discussion in another forum” - [emphasis supplied].

46. I have reviewed the two sets of Green Cards—the one by the Land Register, which captures the dispositions and dealings concerning the suit property sequentially and the way the suit property has been moving hands—from the time it was under the SFT program to the time it passed to the second Defendants—and that produced by the Plaintiff. The only significant convergence I see between the two is that the parties relied on the entries that gave the deceased Kelvin Mwamuye Jilani was Succession case No.24. of 2001.
47. The Green Card produced by Plaintiff does not capture the Succession Cause but is supplied as part of the documents relied on in the conveyance between Plaintiff and the deceased and captured. However, the Green Card produced by the Land Registrar is the Succession Cause and is captured as entry No.3, resulting in the deceased's registration as the proprietor. It was not part of the documents in the parcel file produced by the Land Registrar.
48. Looking at the sequence of events, the two green cards are then based on forged Succession documents by the deceased. In my view, the Green Card held by Plaintiff is fake in this respect - and does not reflect the true dispositions and dealings over the suit property. When the Plaintiff's agreement for sale agreement was being crafted between the Plaintiff and the late Mwamuye on 29th August 2007, the title deed had already been issued on 8th May 2002 to the Plaintiff, which implies that the purported sale was entered into five (5) years after the title deed was issued. This indicates that the documents were not legally procured. In a conveyance transaction, executing an agreement for sale comes first before a title deed can be issued.
49. The copies of the grant of letters of Administration intestate dated 24th December 2001 and Certificate of Confirmation of grant dated 14th August 2002 as Plaintiff's exhibits No.4 and 5 produced by Plaintiff are not authenticated. A look at the said documents shows that the grant of letters of administration was issued on 24th December 2001 at the SRM's Court at Kilifi in Succession Cause Number 24 of 2001 by P.M Mutani, Deputy Registrar. The grant was confirmed, and a Certificate of Confirmation was issued on 14th August 2002 at the High Court of Kenya at Nairobi in Succession Cause 24 of 2001 by the same P.M Mutani, Deputy Registrar. There could be no Deputy Registrar at Kilifi Law Court; it is a Subordinate Court to the High Court and does not have a Deputy Registrar among its ranks.
50. The property listed in the Certificate of Confirmation of Grant was described as Shamba/No. 466, yet the property sold to the Plaintiff under the Agreement for sale dated 29th August 2007 was described as Kilifi/Madeteni/450. The Vendor had no permission to purport to sell and transfer the suit property as it did not form part of the deceased estate as per the Certificate of Confirmation of Grant produced by the Plaintiff herein. A close perusal of the said Certificate of the grant was issued on 14th August 2002; after the certificate of grant was issued to the administrator, transmission took effect. However, in this case, the Plaintiff processed her title deed of the suit property on the 8th of May 2002, even before the certificate of grant was issued by the court. Therefore, the sale allegedly conducted by Kelvin Mwamuye Jilani to the Plaintiff of Plot No Kilifi/Madeteni/450 is null and void ab initio and amounts to intermeddling as per the provisions of Section 45 of the Law of Succession Act, Cap 160 Laws of Kenya which provides that:

“Section 45 (1)



Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

51. The sale of a parcel of land number Kilifi/Madeteni/450 to the Plaintiff amounts to the intermeddling of the estate of Mwandonga Mwamuye Rodger.
52. The letter dated 21st June 2007 by the Land Adjudication and Settlement addressed to the Director of Land Adjudication/Settlement requested for the discharge of charge and transfer of Plot No. 450 Madeteni in the favour of Mwandonga Mwamuye Rodgers. This implies that the suit property was discharged and transferred to Mwandonga Mwamuye Rodgers in 2007. Therefore, the Plaintiff's title obtained in 2002 is irregular. The discharge of Charge was also not registered.
53. The Land Control Board consent dated 4th March 2002 does not reflect what is in the purported sale agreement, as the same was issued in 2002, even before the agreement for sale was entered into. It was registered on 8th May 2002, five (5) years before the agreement for sale was drafted and executed.
54. The green card on record produced by Plaintiff is irregular as it does not reflect the correct sequence of transactions relating to a parcel of land No. Kilifi/Madeteni/450, the suit property herein. Given that the suit land was a settlement scheme, the first entry would have favored the Government of Kenya. The original allottee's name would then be entry No. 2. The green card on record by Plaintiff does not show registration in favor of Mwandonga Mwamuye Rodgers, the initial allottee of the suit property. The Green Card instead lists Kelvin Mwamuye Jilani as the first allottee to the suit property; this indicates that the sequence of transactions is not followed in the Green Card produced by Plaintiff herein.
55. The official search produced by the Plaintiff, conducted on 10th August 2018, shows that Kelvin Mwamuye Jilani is the registered proprietor of Parcel of Land Number Kilifi/Madeteni/450, and the title deed to the said parcel of land was issued on 21st September 2006.
56. The 1st Defendant and her sister knew quite well from the Plaintiff's lawyer's correspondences that their brother had sold this land to the Plaintiff but proceeded to advertise that the title was lost. The Plaintiff has been in the suit property since 2002. It is not true that when the sale was being done, it was a bushy area.
57. Going by the argument that the registration of the deceased in 2006 was based on Succession Cause No. 24 of 2001, in the same breath – this succession was obtained by fraud. It does not exist. In the same spirit, they could not pass a good title to the 2nd Defendant, knowing that the Plaintiff was on the ground and their late brother's title was obtained through fraud.
58. Based on the materials I have, my conclusion is that neither the Plaintiff nor the 2nd Defendant has a good title, as the root of the title takes us back to the registration of one Mwandonga Mwamuye Rodgers. No lawful Succession has been done on the suit property for other transactions to follow.



59. Consequently, the Plaintiff's suit is dismissed. As can be seen, the intrigues in this matter were caused by the late Kelvin Jilani Mwamuye; each party will bear its own costs.
60. Parties will square their respective rights in a proper Succession Cause tracing back to Mwandonga Mwamuye Rodgers – the original allottee of the suit property from the SFT.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 9TH DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Waweru, for the Plaintiff

Ms. Oloo, for the 1st Defendant

Mr. Hamza for the 2nd Defendant

Happy: Court Assistant

