



**Msechu v Kamau (Environment & Land Case 46 of 2021)  
[2023] KEELC 17769 (KLR) (8 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 17769 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND CASE 46 OF 2021  
AE DENA, J  
FEBRUARY 8, 2023  
(FORMERLY MSA ELC NO. 251 OF 2017)**

**BETWEEN**

**AGNETA MASHA MSECHU ..... PLAINTIFF**

**AND**

**NAOMI WANJIRU KAMAU ..... DEFENDANT**

**JUDGMENT**

**Introduction**

1. The Plaintiff filed this suit against the Defendant craving for the following reliefs; -
  - a. A permanent injunction restraining the Defendant by herself, her agents and/or servants from trespassing onto the plaintiff's parcel of land known as Kwale/Galu/Kinondo/1258 and Kwale/Galu/Kinondo/1259 measuring 0.13Ha and 0.14Ha respectively.
  - b. A declaration that the Plaintiff is the absolute owner of all that land known as Kwale/Galu/Kinondo/1258 and Kwale/Galu Kinondo/1259 measuring 0.13Ha and 0.14Ha respectively.
  - c. Costs of the suit.
  - d. Any other relief this Honourable Court may deem just and fair to grant.

**Plaintiffs Case**

2. The above arises from the Plaintiffs claim that she was at all material times relevant to this suit the bonafide proprietor of parcel Kwale/Galu Kinondo 1258 and Kwale/Galu Kinondo 1259 measuring 0.13Ha & 0.14 Ha respectively (hereinafter referred to as the suit properties), which she allegedly received from her husband, one Albert Keiser Fredrich as a wedding gift. That she then transferred the suit properties into her name. It is pleaded that she has been living on the suit properties and upon her



husband leaving for Germany to seek treatment, the Defendant using her employees,' agents and/or servants resorted to harassing, threatening and interfering with the Plaintiff's enjoyment therein. That despite notice the Defendant has refused and neglected to stop the said harassment thus the present suit.

### **The Defendants Case**

3. The suit is defended by the Defendants Statement of Defence which was amended on 5<sup>th</sup> May 2021. The Defendant avers the Plaintiff with the help of her boyfriend Christian Lutzner who later became her husband when Albert Friedrich Keiser died (herein Albert), illegally and through fraudulent means transferred the suit properties into her name having contracted her alleged marriage to the said Albert Fredrich Keiser at a time when he had a mental condition. That due to the mental condition the said Albert Fredrich Keiser lacked capacity to contract a marriage and all acts attributed to him at the said time are null and void and of no legal consequence. The particulars of fraud were itemized in paragraph 5 of the amended defence.
4. The suit was heard on 19<sup>th</sup> May 2022 and 18<sup>th</sup> October 2022. Both sides called one witness each. The Plaintiff and Defendant were represented by Mr. Mwawasi and Mr. Kongere respectively.

### **Plaintiffs Case**

5. PW1 is the Plaintiff Agneta Martha Msechu who testified in support of the plaintiff's case. During the hearing she adopted her witness statement dated 29/11/2021 and produced the documents listed in her list of documents of the same date. It is stated she met Albert in 2013 and officially married him on 8/5/2015 and who at the time was the registered owner of the suit properties with cottages built thereon. They lived in one of the cottages. That thereafter Albert decided to transfer the suit properties to the Plaintiff and during the transaction Albert was accompanied by his friend one Christian Lutzner (hereinafter referred to as Christian) to assist in translation since being of Germany nationality Albert was not fluent in English. She gave an account of the details of the conveyancing transaction by M/s J. Thongori & Company Advocates culminating into issuance of two certificates of lease in the Plaintiffs name.
6. PW1 went on to state that in the year 2016 someone claiming to be Alberts brother tried to access the suit properties. She then proceeded to conduct a search of the suit properties where the Registrar required her to furnish proof that Albert had voluntarily transferred the suit properties to her which she complied and presented affidavits by Albert, Christian and herself reiterating the process through which she acquired the Suit Properties. That she was then issued with a search dated 16<sup>th</sup> December 2016 confirming her ownership of the Suit Properties and also obtained copies of certified green cards thereof.
7. PW1 stated further that the Defendant, instituted Tononoka Children's Court Case No. 108 of 2018 and obtained orders to manage the Suit Properties aimed at defeating the Plaintiffs interest in the suit properties. She stated she was shocked by the official search dated 8<sup>th</sup> December 2020 presented by the Defendant showing the suit properties had reverted to Albert on 17<sup>th</sup> March 2016 considering, Alberts affidavit of 15<sup>th</sup> June 2016 and searches issued on 16<sup>th</sup> December 2016 and 3<sup>rd</sup> June 2021 confirming the plaintiff's ownership. She added that her letter to the Land Registrar for an explanation has elicited no response todate.
8. PW1 concluded by stating that it is clear that she acquired the Suit Properties through a lawful process and that Albert conscientiously married her, transferred the Suit Properties to her. She was then cross examined.



## Defence Case

9. DW1 is Naomi Wanjiru Kamau the Plaintiff. She told the court she was a business woman in Mtwapa. She adopted her witness statement dated 5/5/21 as her evidence in chief and produced the documents listed the Defendant list of documents dated 5/5/2021. She stated that she knew Albert since the year 2008 and they had a child born in 2010. That they lived with Albert in the suit properties and he left the same for his child. She went on to add that Albert was well until the year 2012 when he suffered dementia and he returned to German where he died. That Albert's brother thereafter handed her the titles to the suit properties to help with the defendants and the child's upkeep. She stated she knew the Plaintiff as the one who chased her away from the house.

## Submissions

10. Parties thereafter filed and exchanged written submissions.

## Plaintiffs Submissions

11. Citing the provisions of Order 7 rule 3 of the [Civil Procedure Rules 2010](#) it was argued on behalf of the Plaintiff that the Defendant cannot impeach the Plaintiffs title without a Counterclaim. To buttress this, point the court was referred to the case of [Francis Pius Omweri & Another vs. Alice Chesire](#) (2013). That the Defendant had no locus to impugn Alberts title in the absence of letters of administration and the case of [Priscilla Jesang Koeh Vs Rebecca Koeh & 3 Others](#) (2018) eKLR was referred to. It was also argued that assuming the grant was obtained, the title could not be impeached on the basis that Albert lacked capacity to transfer the suit properties when he was mentally unsound without proof that the Plaintiff was aware of the same and without sufficient evidence. That a mere doctors report cannot suffice and reliance was placed on the case of [Grace Wanjiru Munyiyi & Ano Vs Gedion Waweru Githunguri & 5 Others](#) (2011)eKLR.
12. Additionally, it was submitted that the power of attorney donated to Alberts brother who was said to have transferred the property back to Albert from the Plaintiff was never produced. That it did not make sense that Albert would donate a power of Attorney to the brother and not just transfer the suit properties to his alleged wife the defendant. That the defendants claim was based on an expectation to be provided for by Albert and such an expectation cannot defeat the Plaintiffs title as the law takes precedence over all other alleged equitable rights of title as was held in [Joseph Arap Ngok V. Justice Moiwo ole Keiwua & 5 others](#) (1997) eKLR
13. It was further submitted that the Plaintiff had demonstrated that they had title to the suit properties by exhibiting the titles and as such were entitled to the protection of the law except where it is proved the same was obtained by fraud and which had not been proved. Consequently, the Defendants should be restrained from interfering with the suit properties. The court is urged to allow the plaintiffs suit with costs.

## Defendants Submissions

14. It was submitted and clarified on behalf of the Defendant that she was sued on her personal capacity and did not appear as Alberts personal representative and the issue of letters of administration was misplaced. That the documents produced by the plaintiff in support of her case were of not of probative value and should be struck out for failing to meet the requirements of section 67 and 68 of the [Evidence Act](#). That the Spousal consent dated 4/09/2015(page 6) since it was sworn in Diani and but Commissioned in Nairobi contrary to section 5 of the [Oaths And Statutory Declarations Act](#). Reliance was placed on the case of [Mary Gathoni & Ano.Vs. Frida Ariri Otolu & Another](#) (2020)eKLR.



Counsel for the defendant gave an analysis of how majority of the documents listed in the Plaintiff's list of documents lacked veracity and thus illegal. It was pointed that the documents were in fact self-incriminating. The efficiency with which the transfer was registered in one day was also questioned. These shall be discussed in detail elsewhere in this judgement.

15. In rejoinder to the Plaintiffs submission that the Defendant has no locus to impeach the title of the deceased for want of grant of letters of administration it was submitted the substantive applicable law is the [Land Registration Act, 2012](#) which guards the sanctity of title provided that it was not acquired through fraud or misrepresentation. Section 26 (1)(a)(b) was cited in this regard. Counsel argued that the title bearing the plaintiffs names do not meet the test of indefeasibility since the original titles were being held by the Defendant and therefore the transfer was done illegally and fraudulently through a corrupt scheme.
16. Additionally, it was submitted that the existence of two sets of titles over the suit properties was not only contrary to the provisions of Section 30 (2)(a) of the [Land Act, 2012](#) but *ipso facto* supported the defendants position that the plaintiffs titles were procured fraudulently and ought to be impeached in favor of the original titles. The court was referred to the case of [Hubert L. Martin & 2 Others Vs. Margaret J. Kamar & 5 Others](#) (2016)eKLR. That in any event the first title in time should prevail. The court was further invited to invoke the provisions of Section 80 (1) of the [Land Act](#) to order rectification of the register.
17. It was further submitted that a literal interpretation of section 26 of the [Land Act](#) allows anyone to challenge a title that is obtained fraudulently provided there produce cogent evidence. The section was not qualified. Counsel further distinguished the authorities cited in the Plaintiffs submissions citing them as inapplicable to the present case.
18. On whether the Plaintiff is entitled to the reliefs sought against the Defendant it was submitted on behalf of the Defendant that they were not. That a court cannot issue orders in vacuo as trespass was not pleaded neither was it raised during the hearing. That a court cannot enforce and sanitize an illegal process meant to unjustly enrich the Plaintiff. The court was also invited to invoke the doctrine of 'Ex turpi causa non ortur actio' as expounded in the case of Michael Mwaura Njoroge Vs Peter Kamau Munene & Beatrice Kori (interested party) (2019)eKLR as the evidence paraded by the plaintiff proved illegality and the court ought not to assist the plaintiff. it was also argued that the Plaintiff had not come to equity with clean hands and should not find favor in the equitable eyes of the court.

### **Analysis and Determination**

19. Having considered the foregoing, the following issues stand out for determination by this court; -
  - a. Whether the Defendant has capacity to impeach the titles herein
  - b. Whether the Plaintiff is the lawful registered owner of the suit properties.
  - c. Whether the plaintiff is entitled to the reliefs sought
  - d. Who should bear the costs of this suit.
20. I find it necessary at this early stage of this judgement to lay to rest the controversy on locus raised against the Defendant based on want of grant of letters of administration in respect of the estate of the late Albert Keiser Fredrich. It was stated that the Defendant in her evidence was agitating that the title is reverted to the deceased. That the Defendant cannot fight a battle reserved for Alberts legal representative. I have read the authorities cited in support of this argument. These were distinguished by Counsel for the Defendant where it was pointed that in [Francis Pius Omweri & Another Vs.](#)



*Alice Chesire* (2013) both parties were claiming to be registered owners while in the present suit the Defendant does not claim to be the registered owner of the suit properties thus the requirement for counterclaim would not stand. Further that the basis for requirement of Limited grant for letters of administration was that the widow of the deceased filed the suit on behalf of the deceased. This court respectfully agrees with Counsel for the Defendant on this. My understanding of the substratum of this suit lies in the pleadings. The Plaintiff has sued the Defendant in her personal capacity as a rival whom she states was hell bent to deny the Plaintiff her interests in the suit properties. It is stated in her witness statement that the Defendant in her quest to deny this interest obtained orders from the Tononoka Children's Court to manage the suit properties. It is not Albert who is being accused of this. This also applies in respect of the averment for a counterclaim on the part of the Defendant since she has not been sued on behalf of Albert or his estate neither does she desire to counterclaim as will become clearer elsewhere in this judgement. Respectfully I think the defendant's submissions on these aspects are completely misplaced and were calculated at deviating the courts attention from the real issues.

21. Back to the real issues. I agree with counsel for the Plaintiff that the contest is whether the Plaintiff is entitled to the orders sought having proved her case to the required standard. Key among these prayers is for a declaration that the Plaintiff is the absolute owner of the suit properties herein. However, to arrive at an informed answer an analysis of how the Plaintiff acquired the suit properties will be inevitable and thus the issues as framed by this court guided by the reliefs sought and the emerging issues during the hearing of the suit. This will also speak to the issue whether the two certificates of lease held and produced by the Plaintiff and bearing her name pass the sanctity and indefeasibility test.

#### **Whether The Plaintiff is the Lawful Registered Owner of the Suit Properties.**

22. The Plaintiff seeks to be declared by this court the absolute owner of the suit properties herein. She produced in support of her claim Certificates of Lease for Title No.1258 and 1259 issued on September 15, 2015. The same reveal that Agneta Masha Msechu, the Plaintiff is the registered proprietor of the leasehold interest for a period of 99 years from the Government of Kenya. The Defendants however seeks to impugn these two titles on the grounds of fraud particularized verbatim as follows; -
  1. The Plaintiff preparing counterfeits of certificate of Lease for pieces of land known as Kwale/ Galu Kinondo/1258 and Kwale/Galu Kinlndo/1249 belonging to Albert Fredrich Keiser.
  2. The plaintiff uttering the counterfeit documents to the Ministry of Lands officials in Kwale for registration in her name.
  3. The Plaintiff registering the counterfeit Certificates of Lease for pieces of land known as Kwale/Galu Kinondo/1258 and Kwale/galu Kinondo/1259 in her name well aware that they were not the original certificates of Lease as issued by the Ministry of Lands in Kwale.
  4. The plaintiff uttering that counterfeit Certificates of Lease for pieces of land known as Kwale/galu Kinondo/1258 and Kwale/Galu Kinondo/1259 before the court order to obtain favourable orders against the Defendants.
23. Section 26(1) of the *Land Registration Act, 2012* provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except;



- a. On the ground of fraud or misrepresentation to which the person is proved to be a party or;
  - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
24. From the above legal provisions a title therefore can be impeached as stated in (a) and (b) and this is what the Defendant seeks to do in the present case. The certificates of title having been called into question, it was incumbent upon the Plaintiff to prove otherwise. The Plaintiff wants a declaration that she is the absolute owner of the suit properties herein and this has opened her title to scrutiny by this court before such order can be issued or not. The Plaintiff presented the entire conveyancing documents by the firm of M/s J. Thongori & Company Advocates involving the transfer of the suit properties in proof of the claim that the same was transferred to her by Albert as her wedding gift and that it was above board. Produced were copies all dated 15/9/2015 of two Transfers of Lease in respect of the suit properties, Affidavit of spousal consent for the suit properties, application for Commissioners consent and commissioners’ consent, Stamp Duty Declaration form, Customer transaction receipt, receipt for transfer fees and the certificate of leases already mentioned.
25. The Plaintiff was then cross examined on the Affidavit of Consent by Spouse for Kwale/Galu Kinondo/1258 and it was her evidence that their lawyer herein prepared and signed all the documents to effect the transfer into her name. That she knew Caroline Njogu the Commissioner for oaths as an employee of the firm of J. Thongori & Company Advocates. That the said Ms. Njogu prepared and commissioned the Affidavit of Consent of Spouse in her presence on 15/9/2015. This affidavit was impugned for failing to meet the requirements of Section 5 of the *Oaths And Statutory Declarations Act* since the stamp bears a Nairobi address meaning it was signed in Nairobi contrary to the Plaintiff allegations that the advocate was present in Diani on the day it was commissioned. Section 5 of the *Oaths And Statutory Declarations Act* Chapter 15 of the Laws Kenya provides that; -
- Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
26. I have noted that the affidavit is stated as sworn at Diani as required by the law. However, it is in the certificate that the commissioner does not state where the deponent appeared before her whether Diani or Nairobi. Again, I observed that indeed Ms. Njogu’s stamp reads Nairobi. This was further compounded by the fact that the affidavit is not shown as having been drafted/prepared by the firm of J. Thongori & Company Advocates. Curiously Mr. Kongere never made any attempt to have the Plaintiff clarify the position. There was no reexamination for the Plaintiff neither did he submit in response to the issue. I have read the ruling in *Mary Gathoni & Ano.Vs. Frida Ariri Otolu & Another (supra)*. The court in the said ruling also referred to the case of *Regina Munyiva Ndunge Vs. Kenya Commercial Bank Limited* (2005)eKLR referring to similar circumstances with regard to the disparities on the stamp cited herein struck out the replying affidavit. This court is persuaded this affidavit cannot stand for there was no oath taken before the Commissioner for Oaths. The same fate shall therefore befall the Affidavit of consent in respect of Kwale/Galu Kinondo/1259, Affidavit sworn by Albert Keiser Fredrich on 15/06/2016 (which I also observed curiously bears a thumbprint yet the Transfer of Lease dated 15/09/2015 bears his signature), Affidavit sworn by Christian Lutzner on 15/06/2016 and the one sworn by the Plaintiff on 15/06/2016. They have no probative value.
27. The Application for Commissioners Consent to Transfer Title Kwale/Galu Kinondo/1259 and the Commissioners’ consent thereof both dated 4/9/2015 were impugned. The former for being not



authentic as it was not on the law firm's letterhead which is standard practice. On this PW1 conceded it was not on letterhead though it bore the lawyers signature. Again there was no reexamination. My review of the said exhibit agrees with these observations I also agree with defence counsel observation that consent was sought for only Kwale/Galu Kinondo/1259, however consent was issued for both Kwale/Galu Kinondo/1259 and Kwale/Galu Kinondo/1258. PW1 yet again admitted upon cross examination that though she was sure she applied for consents for both suit properties she could not produce the application for consent for Kwale/Galu Kinondo/1258.

28. It was further alleged that the origin of the Stamp Duty Declaration Form dated 15/09/2015 cannot be ascertained though it bore a Kenya Revenue Authority Logo, the same was superimposed against other documents reading 'okao & Company Advocates To Be Served: Naomi Wanjiru Kamau'. With two different amounts paid of KShs. 14,089 and 14,190. PW1 on being shown the same confirmed she could see them but had no explanation to offer neither did counsel take advantage of reexamination to have this clarified. It was not controverted. This points to fraud.
29. The Plaintiff produced copies of Green card for the suit properties. This is the parcel file and shows the history of the parcels from when the register was opened. It is her evidence that Albert had transferred back the properties to her. On being shown PART B of the register for Kwale/Galu Kinondo/1258 she confirmed that entry No. 4 & 5 thereon were cancelled. I note that the former is an entry made on 15/09/2015 to Agneta Masha Msechu and the later is an entry made on the same date showing issue of certificate of lease both are struck through meaning they were cancelled. There is entry No. 6 which PW1 on being shown during cross examination stated it was a re-issue to her but conceded it had no dates of when this was effected. Indeed I noted that all the preceding entries 1,2,3,4,5 had dates depicting when the registrar made them and which is the normal practice, except this entry which to me is inconsistent and irregular. The entry in itself looks suspicious with very untidy cancelations never have I seen such untidy registers presented before me in cases I have so far handled in my court. My suspicions were given credence by PW1 evidence when in cross examination she conceded she had no evidence to show if Albert once again registered the properties into her name. To me there is nothing for audit trail in this regard because there was no such transfer.
30. As to the entries in the green card for Kwale/Galu Kinondo/1259, PW1 conceded on being shown the same during cross examination that she could not see her name in the 6 entries in PART B of the parcel file register. This court perused the same and also confirmed this to be true. I found it strange how an official search (see page 34 of the Plaintiffs bundle) could issue in respect of Kwale/Galu Kinondo/1259 indicating that on 15/9/15 the plaintiff was the proprietor and certificate of lease issued when there was no such entry as conceded by the Plaintiff here before. Clearly this is very unprocedural and reeks of fraud.
31. the process of acquisition of a title is as good as the title itself. After what has come out of the above analysis of the documents can the title above stand. Can it be said to have been properly acquired? Justice Sila Munyao J in *Daudi Kiptugen Vs. Commissioner of Lands & 4 Others* (2015) eKLR had this to say and which I'm persuaded; -

In order to determine the question whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof, must demonstrate, through evidence, that the Lease or Certificate of Lease that he holds, was properly acquired. The acquisition of title cannot be construed only in the end result, the process of acquisition is material. It follows that if a document of title was not acquired through the proper process,



the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein. It is therefore necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name, and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land.’

32. There were many gaps that the Plaintiff could not offer an explanation and I begin to state with respect that I do think the firm of J. Thongori handled this conveyance otherwise the plaintiff would have found a way of convincing them to appear as their witness in court to help in clarifying some of the gaps, irregularities and suspicions which PW1 kept on insisting during cross examination that her lawyer did everything. It is my finding that the Defendant has proved that the titles held by the Plaintiff were obtained fraudulently and therefore she cannot be the lawful registered owner of the Suit Properties. The titles herein are like the proverbial builder who built his house on quick sand for when the storm came it could not withstand the gale and its fall was so great and such are the certificates of Lease allegedly issued to the plaintiff on 15/09/2015.
33. The Defendant produced a copies of Certificates of official Search for Kwale/Galu Kinondo/1258 and 1259 both dated 8<sup>th</sup> December, 2020, Copy of certificate of Lease for Kwale/Galu Kinondo/1259 and 1258. I will be very brief on these documents. The first search (page 20) reflects Albert Friedrich Keiser as the proprietor of the leasehold interest for Kwale/Galu Kinondo1259 for 99 years effective from 2/6/2010. The entries were made on 16/6/2010. The second search is for Kwale/Galu Kinondo/1258 whose certificate of title was issued on 17/03/2016 and this delay was explained by DW1 during cross examination. These searches are in tandem with the entries 2 & 3 of green cards. In any event it is not in dispute that the suit properties belonged to Albert ab initio before they were allegedly transferred to the Plaintiff. It is therefore my finding that the lawful registered owner of the suit properties herein is Albert Friedrich Keiser and not the Plaintiff.
34. I will not dwell on the allegations raised by the Defendant that Albert did not have capacity to transfer the suit properties since it was admitted in submissions on behalf of the Defendant that they did not present sufficient evidence to sustain the plea of insanity. However, let me be quick to state that this cannot legitimize the irregularities that are highlighted herein with regard to the titles dated 15/09/2015.
35. So then is the Plaintiff entitled to the prayers sought in this suit? Firstly, in view of the foregoing discussions and findings this court declines the invitation to make a declaration that the Plaintiff is the absolute owner of the suit properties herein. She is not. The Plaintiff also craves permanent injunction restraining the Defendant by herself, her agents and/or servants from trespassing onto the plaintiff’s suit properties herein. This order cannot issue because the suit properties do not belong to the Plaintiff but to Albert Friedrich Keiser neither is she an occupier for purposes of the Trespass Act Chapter 294.
36. The upshot of the discussions and findings herein is that the Plaintiff has failed to prove to the required standard that she is the lawful registered owner of the suit properties herein. But in view of this finding what orders can issue to dispose of this suit noting that there is no counterclaim clearly its legality would have been questionable. The Defendant stated in cross examination that she had no problem the suit property being in Alberts name but that her issue was the plaintiff being the registered proprietor. It was also submitted by the Defendant all she wanted was access for purposes of enforcement of the court order mentioned elsewhere with regard to the child allegedly sired by the Defendant and Albert. For me this court has powers conferred under Section 80 (1) of the Land Act, 2012 to rectify the register
37. In my view the foregoing the following orders shall issue to dispose of this case.



- i. The Plaintiff suit is dismissed with costs to the Defendant.
- ii. That the Plaintiff shall within 30 days of the date of this judgement, surrender to the Deputy Registrar Environment and Land Court Kwale the original Certificates of Lease dated and issued on September 15, 2015 for onward transmission to the Land Registrar Kwale for cancellation.
- iii. That Land Registrar Kwale shall upon receipt of this order accordingly enforce the cancelation and rectify the register for Kwale/Galu Kinondo/1258 and 1259 by removing the fraudulent entries related to ii) above in tandem with the findings of this judgement that Albert Keiser Fredrich is the proprietor of the leasehold interest in Kwale/Galu Kinondo/1258 and 1259.
- iv. That the cancellation and rectification exercise shall be done within 45 days of receipt of this order.

Orders accordingly

**DELIVERED AND DATED AT KWALE THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2023**

**A.E. DENA**

**JUDGE**

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Kongere for the Plaintiff

Mr. Mwawasi for the Defendant

Mr. Daniel Disii- Court Assistant.

