



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCC/E049/2023

ETHICS AND ANTI-CORRUPTION COMMISSION VS COUNTY GOVERNMENT OF MOMBASA AND
JAMES MICHAEL LUYALI(SUING AS ADMINISTRATOR OF THE ESTATE OF EZEKIEL LUYALI
LIYAI) AND 3 OTHERS

JUDGMENT

BEFORE HON. JUSTICE Y.M. ANGIMA

1. Vide a plaint dated 29.05.2023 the Plaintiff sued the Defendants seeking the following reliefs:

- a) *A declaration that the lease dated 1st September 1994 and registered on 2nd September, 1994 in favour of the 1st defendant over parcel described as Mombasa Municipality/Block XIX/305 was issued ultravires the 2nd and 3rd defendant's powers hence null and void and incapable of conferring any interest to 1st defendant and/or any other person whatsoever.*
- b) *An order directing the Chief Land Registrar to rectify the register by cancellation of the entries relating to the issuance of lease dated 1st September 1994 and registered on 2nd September, 1994 in favour of the 1st defendant over parcel described as Mombasa Municipality/Block XIX/305.*
- c) *A declaration that the Survey Plan Folio Register (F/R) No. 264/37 creating parcel known as Mombasa Municipality/Block XXI/305 is null and void and incapable of conferring any interest to the 1st defendant or any other person.*



- d) *An order directing the Director of Survey, to cancel and expunge Survey Plan Folio Register (F/R) No. 264/37 re-survey the land and prepare new survey plan and amend the Registry Index Map (RIM).*
- e) *An order of permanent injunction restraining the 1st defendant, his servants, agents and/or assigns from alienating, selling charging or further charging, leasing, transferring, wasting, disposing or in any other manner dealing with Mombasa Municipality /Block XIX/305.*
- f) *An order for vacant possession directing the 1st Defendant, his servants, agents or assigns to vacate Mombasa Municipality/ Block XIX/ 305 forthwith.*
- g) *General damages for trespass.*
- h) *Costs of and incidental to the suit.*
- i) *Any other or further reliefs that the court may deem just and fit to grant.*

2. The plaintiff pleaded that at all material times prior to 1994 Parcel No. Mombasa Municipality Block XIX/305 (*the suit property*) was part of a road reserve which was vested in the defunct Municipal Council of Mombasa (*the Council*) for public use. It was pleaded that in the year 1994 the 2nd and 3rd defendants who were then serving at the Council illegally and fraudulently caused the suit property to be alienated for private purposes. The Plaintiff further pleaded that the 2nd and 3rd defendants had acted in abuse of office and in breach of their fiduciary duties by causing the suit property be allocated to one Ezekiel Liyai (*now deceased*) in violation of the applicable law.

3. The plaintiff enumerated the following particulars of fraud, abuse of office and breach of statutory duty in paragraph 25 of the plaint:

- a) *Allocating alienated public land for private use by the 1st defendant in blatant disregard of the publicly available land records.*
- b) *Illegally allocating public land for private use with knowledge that the same was already alienated.*
- c) *Acting in concert to convert public land alienated for public*



use to the exclusive ownership, possession and use by the 1st defendant.

- d) Conniving to allocate the suit property to 1st defendant without any legal authority and/ or in abuse of the position of trust.*
- e) Engaging in systematic perversion of established procedures intended to protect public interest to divert public land for the unjust enrichment of the 1st defendant.*
- f) Alienating public land without regard to the Physical Planning Laws, Local Government Act and Regulations.*
- g) Arbitrarily alienating the suit property to the detriment of the intended and subsisting public interest.*
- h) Colluding to defeat the public interest in the suit property.*
- i) Failing to have regard to public interest in alienating the suit property.*
- j) Unlawfully disposing of public property.*

4. The 2nd defendant filed a statement of defence dated 27.02.2024 denying liability for the plaintiff's claim. The 2nd defendant denied the allegations and particulars of fraud, illegality, abuse of office or breach of statutory duty levelled against him. He pleaded that although he worked as the Town Clerk to the Council at the material time he was not the one responsible for allocation of plots and that the relevant technical officer who had the mandate to advise the council on such matters was the Municipal Engineer. It was his defence that he executed the lease documents as he had a statutory obligation under the Local Government Act (now repealed) to give effect to the decision of the council.
5. There is no indication on record of 1st and 3rd defendants having filed any defence to the action. They did not tender any evidence at the trial of the action.
6. On their part, the 1st and 2nd Interested Parties supported the plaintiff's suit for recovery of the suit property which they contended was a road reserve which was illegally and irregularly alienated.
7. At the trial hereof, the plaintiff called 7 witnesses in support of its claim for recovery of the suit property. Among the witnesses it called were an investigator, the head of survey records, a planner, an assistant director of



8. The 2nd defendant testified on his behalf as the sole witness. There was no evidence tendered at the trial on behalf of the 1st and the 3rd defendants. On its part, the 2nd interested party called one witness who was a valuer by profession.
9. At the conclusion of the trial, the parties who participated at the trial were given timelines within which to file and exchange their respective submissions. The record shows that the plaintiff filed submissions dated 30.06.2025 whereas the 2nd defendant's submissions were dated 17.09.2025. The 1st and 2nd interested parties filed submissions dated 26.09.2025 and 12.09.2025 respectively.
10. The court has perused the pleadings, evidence and documents on record in this matter. The court is of the view that the following are the main issues for determination herein:
 - a) *Whether parcel no. Mombasa Municipality/ Block XIX/305 was part of a road reserve.*
 - b) *Whether the alienation of the said property was undertaken fraudulently and illegally.*
 - c) *Whether the Plaintiff is entitled to the reliefs sought in the suit.*
11. The court has considered the material and submissions on record. In particular, the court has considered the documentary evidence on record on the status of the suit property before its alienation. The head of survey records testified that the suit property was part of a road reserve and referred to the relevant survey plans F/R No. 95/72 in that regard. The planner similarly testified that the suit property was part of a road reserve and pointed out that even the disputed Part Development Plan (PDP) indicated that it was a road reserve. The 2nd interested party indicated that it has all along been a road reserve and that it is still being used as a parking lot.
12. There was no serious contest even among the defendants that the suit property was part of a road reserve. Even the 2nd defendant who was the Town Clerk at the material time twice conceded as much save that he disclaimed responsibility for its alienation and blamed the Municipal Engineer under whose docket roads and road reserves fell. The court is thus satisfied that the suit property was part of a road reserved at all material times.



13. The court has considered the material on record on the 2nd issue. The material on record shows that the legal process to be followed in closing a road under the Local Government Act which was then in force in 1994 was not followed. There was no evidence of any gazette notices being published of the intention to close the road. The Council did not even keep a proper record of any objections raised by the owners of the adjoining plots.
14. The material on record shows that there was no valid and approved PDP prior to the alienation of the road reserve. The evidence or pw2 was that the did not prepare the impugned PDP which was attributed to him. The evidence of the assistant director of Physical Planning was that the department had no record of an approved PDP relating to the suit property and that the copy which was produced in the instant suit had no approved PDP number assigned to it.
15. There was even no evidence that the purported allocation of the suit property was approved by a resolution of the Council or any of its committees. There was no evidence that the minister for local government had approved the said alienation for a term of 99 years with effect from 01.06.1994.
16. The court is further of the view that, in any event, the allocating authority had no legal authority to allocate part of a public road (Machakos street) for commercial cum residential purposes under the legal regime in force at the material time. The court is thus satisfied that the alienation of the suit property in 1994 was both illegal and fraudulent.
17. In view of the court's finding and holding on the preceding issues, the court is satisfied that the Plaintiff is entitled to succeed in its claim for recovery of the suit property and to have it restored to its intended purpose. As a result, the court is inclined to grant the prayers listed as (a), (b), (c), (d) and (e) of the plaint. The Court is not inclined to order the 1st defendant to hand vacant possession of the suit property since the evidence at the trial indicated that the suit property was not developed and that it was still being used as a public parking lot.
18. Although costs of an action or proceeding are the discretion of the court the general rule is that costs shall follow the event in accordance with the proviso to section 27 of the Civil Procedure Act. As such, the Plaintiff shall be awarded costs of the suit to be borne by the 1st and 2nd Defendants only since the 3rd defendant was said to be deceased.
19. The upshot of the foregoing is that the court finds and holds that the Plaintiff has adequately demonstrated its claim for recovery of the suit property



and the consequential reliefs. As a consequence the court makes the following orders for disposal of the suit:

- a) A declaration is hereby made that the lease dated 1st September 1994 and registered on 2nd September, 1994 in favour of the 1st defendant over parcel described as Mombasa Municipality/Block XIX/305 was issued ultravires the 2nd and 3rd defendant's powers hence null and void and incapable of conferring any interest to 1st defendant and/or any other person whatsoever.**
- b) An order is hereby made directing the Chief Land Registrar to rectify the register by cancellation of the entries relating to the issuance of lease dated 1st September 1994 and registered on 2nd September, 1994 in favour of the 1st defendant over parcel described as Mombasa Municipality/Block XIX/305.**
- c) A declaration is hereby made that the Survey Plan Folio Register (F/R) No. 264/37 creating parcel known as Mombasa Municipality/Block XIX/305 is null and void and incapable of conferring any interest to the 1st defendant or any other person.**
- d) An order is hereby made directing the Director of Survey, to cancel and expunge Survey Plan Folio Register (F/R) No. 264/37.**
- e) An order of permanent injunction is hereby made restraining the 1st defendant, his servants, agents and/or assigns from alienating, selling, charging or further charging, leasing, transferring, wasting, disposing or in any other manner dealing with Mombasa Municipality /Block XIX/305.**
- f) The plaintiff is hereby awarded costs of the suit to be borne by the 1st and 2nd defendants only.**

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24TH DAY OF SEPTEMBER 2026

Y. M. ANGIMA



JUDGE

In the presence of:

Ms. Songole for the Plaintiff

No appearance for 1st Defendant

Mr Lenjo for 2nd Defendant

No appearance for 3rd Defendant

Ms. Muema for 1st Interested Party

Mr Omondi for 2nd Interested Party

Court Assistant: Hinga

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SIGNED BY:

HON. JUSTICE Y.M. ANGIMA



THE JUDICIARY OF KENYA.
MOMBASA ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT
DATE: 2026-09-25 13:50:18+03

