



**Mohamed & 10 others (Suing through and Attorney and/or Administrator of AbulRehman Abdillahi Omar) v Hamisi & 11 others (Environment & Land Case E016 of 2024) [2025] KEELC 1288 (KLR) (18 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1288 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E016 OF 2024  
FM NJOROGE, J  
MARCH 18, 2025**

**BETWEEN**

**OMAR ABDALLA MOHAMED ..... 1<sup>ST</sup> PLAINTIFF  
FATMA ABDALLA MOHAMED ..... 2<sup>ND</sup> PLAINTIFF  
AISHA ABDALLA MOHAMED ..... 3<sup>RD</sup> PLAINTIFF  
ASMA ABDALLA MOHAMED ..... 4<sup>TH</sup> PLAINTIFF  
REHEMA ABDALLA MOHAMED ..... 5<sup>TH</sup> PLAINTIFF  
ATHMAN ABDALLA MOHAMED ..... 6<sup>TH</sup> PLAINTIFF  
MOHAMED ABDALLA MOHAMED ..... 7<sup>TH</sup> PLAINTIFF  
JAHU ABDALLA MOHAMED ..... 8<sup>TH</sup> PLAINTIFF  
KHADIJA ABDALLA MOHAMED ..... 9<sup>TH</sup> PLAINTIFF  
AMINA ABDALLA MOHAMED ..... 10<sup>TH</sup> PLAINTIFF  
SHEIKHA ABDALLA MOHAMED ..... 11<sup>TH</sup> PLAINTIFF  
SUING THROUGH AND ATTORNEY AND/OR ADMINISTRATOR OF  
ABULREHMAN ABDILLAHI OMAR**

**AND**

**ABDALLA HAMISI ..... 1<sup>ST</sup> DEFENDANT  
ALI SAHAL ..... 2<sup>ND</sup> DEFENDANT  
KHALID HASSAN ..... 3<sup>RD</sup> DEFENDANT  
KASSIM BALAGHA ..... 4<sup>TH</sup> DEFENDANT  
FAIZ AHMAD SHEE ..... 5<sup>TH</sup> DEFENDANT**



<b>ALI ABDALLA .....</b>	<b>6<sup>TH</sup> DEFENDANT</b>
<b>ALI OMAR .....</b>	<b>7<sup>TH</sup> DEFENDANT</b>
<b>OMAR KOFA .....</b>	<b>8<sup>TH</sup> DEFENDANT</b>
<b>HAMIS OMAR .....</b>	<b>9<sup>TH</sup> DEFENDANT</b>
<b>BALAN MOHAMED .....</b>	<b>10<sup>TH</sup> DEFENDANT</b>
<b>RICHARD MOHAMED .....</b>	<b>11<sup>TH</sup> DEFENDANT</b>
<b>ADASSAM KAI .....</b>	<b>12<sup>TH</sup> DEFENDANT</b>

## JUDGMENT

1. The suit herein was instituted by the Plaintiffs on 5/2/2024 vide a Plaint dated 30/1/2024. The Plaintiffs sought the following reliefs against the Defendants: -
  - a. A declaration that the Plaintiffs are the lawful owners of the parcel of land known as Title No. Lamu/Block IV/39 situate at Lamu Island in Lamu County measuring 6.4 Hectares;
  - b. An order directing the Defendants to vacate the land comprised in Title No. Lamu/Block IV/39 and deliver vacant possession to the Plaintiffs;
  - c. A permanent injunction be issued jointly and severally against the Defendants restraining them whether by themselves, their servants, agents, relatives or otherwise howsoever, from remaining on or continuing to occupy any part of or in any other manner dealing with the property known as Title No. Lamu/Block IV/39;
  - d. General damages for trespass;
  - e. Costs of the suit.
2. The Defendants despite being served with all the court process did not enter appearance. Neither did they file a defence. In consequence and pursuant to Order 10 Rule 9 of the Civil Procedure Rules, the case was set down for a formal proof hearing on 24/2/2025.
3. In a nutshell, the Plaintiffs' case from the pleadings is that at all material times, they are the legal registered proprietors of all that parcel of land known as Title No. Lamu/Block IV/39 situate at Lamu Island in Lamu County measuring approximately 6.4 Hectares (the suit property); that they have over the years enjoyed quiet possession of the suit property until recently when the Defendants trespassed thereon claiming ownership of some sections of the suit property. The Plaintiffs averred that the Defendants continue to put up illegal structures and blocking them from accessing the suit property, thus occasioning them irreparable loss and damage.

### Evidence

4. The suit proceeded as an undefended case. Only Abdulrehman Abdillahi Omar testified as PW1 on 24/2/25. He gave evidence that the named Plaintiffs are his grandfathers and that the 6<sup>th</sup> -11<sup>th</sup> Plaintiffs are deceased. He produced a copy of Power of Attorney dated 8/1/2024 (PEXh-2) given to him by the Plaintiffs who are still alive, and a grant ad-litem (PEXh-3) on behalf of the deceased Plaintiffs. He further produced a copy of the suit property's title as PEXh-4 and a copy of a search certificate as PEXh-5. He told the court that the Defendants have invaded a portion of the suit property, put up



temporary structures and refused to vacate despite being asked to. PW1 testified that the Plaintiffs have been unable to do any work on the suit property and that the Defendants have occasioned destruction on the suit property.

5. No submissions were filed on behalf of the parties at the end of the hearing despite a court order to that effect.

### **Analysis And Determination**

6. The main issue for determination is whether the plaintiffs have proved their case against the Defendant to the required standard. It is trite that although the suit was undefended, the Plaintiffs have a duty to formally prove their case on a balance of probabilities as is required by law. In the case of *Kirugi and Another -v- Kabiya & 3 others* (1987) KLR 347 the Court of Appeal held that:

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

7. Similarly, in the case of *Gichinga Kibutha -v- Caroline Nduku* (2018) eKLR the Court held that:

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”

8. PW1 stated that the Plaintiffs were the registered owners of the suit property. From the documentary evidence presented - the copy of the title deed for suit property produced as PEXH-4 - it is evident that the plaintiffs were registered as the proprietors of the suit land on 18/12/1995. The title document was issued on the same day.

9. The law is very clear on the position of a holder of a title in respect to land. Section 24(a) of the [Land Registration Act](#), 2012 provides for the interest conferred by registration. It provides: -

“Subject to this act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.”

10. Section 26(1) of the same Act further provides: -

“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.”

11. The Plaintiffs have proved that they are indeed the registered owners of the suit property and therefore the rightful owners. The Defendants have no right whatsoever being on the suit property and their continued occupation thereof constitutes trespass. The Plaintiffs have a right to enjoy quiet and



peaceful possession of their land, the suit property herein free from any inconvenience or nuisance from the defendants.

12. The Plaintiffs sought general damages for trespass. In the case of *Duncan Nderitu Ndegwa -v- KP& LC Limited & Another* (2013) eKLR where P. Nyamweya J. held that: -

“...once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants trespass”

13. To determine the measure of it or the amount to award as general damages for trespass, reference is hereby made to the case of *Philip Ayaya Aluchio -v- Crispinus Ngayo* [2014] eKLR (Obaga J) where it was held as follows:

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff’s property immediately after the trespass or the costs of restoration, whichever is less See *Hostler – VS – Green Park Development Co.* 986 S. W 2d 500 (No. App. 1999).”

14. While the Plaintiffs herein have proved trespass, there is nothing in their evidence that can be used to enable this court determine the actual damage or loss that the plaintiffs have suffered for them to be compensated for the loss. However, in relying on the above case law and the principles laid out, I find the Plaintiff indeed have suffered damage as a result of the Defendants’ continued acts of trespass. I will proceed and award them Kshs. 100,000/= as general damages.

15. From the foregoing, I find that the Plaintiffs have proved their case on a balance of probabilities and in this regard, this Court makes the following final orders:

- a. A declaration is hereby issued that the Plaintiffs are the lawful owners of the parcel of land known as Title No. Lamu/Block IV/39 situate at Lamu Island in Lamu County measuring 6.4 Hectares;
- b. The defendants shall remove themselves from Title No. Lamu/Block IV/39 situate at Lamu Island in Lamu County measuring 6.4 Hectares in default of which their forcible eviction shall issue at the plaintiff’s instance;
- c. A permanent injunction is hereby issued against the Defendants jointly and severally restraining them whether by themselves, their servants, agents, relatives or otherwise howsoever, from remaining on or continuing to occupy any part of or in any other manner dealing with the property known as Title No. Lamu/Block IV/39;
- d. The defendants shall, jointly and severally, pay the plaintiffs Kshs. 100,000/- being general damages for trespass;
- e. The Plaintiffs are hereby awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 18TH DAY OF MARCH 2025.**

**MWANGI NJOROGE**  
**JUDGE, ELC, MALINDI**

