



**Kiambati v Embakasi Ranching Co. Limited (Environment & Land Case E231 of 2024) [2025] KEELC 1272 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1272 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E231 OF 2024**

**JG KEMEI, J  
MARCH 13, 2025**

**BETWEEN**

**MATHEW NDAU KIAMBATI ..... PLAINTIFF**

**AND**

**EMBAKASI RANCHING CO. LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit vide the Plaint dated 5/6/2024 seeking for the following orders that;
  - a. An order of mandatory injunction be issued compelling the defendant by itself, agents, servants, employees or otherwise howsoever to forthwith proceed and show to the Plaintiff the actual physical ground position of the four plots known as Plots Number MA 155, MA 156, MA 157 and MA 158 and grant to the Plaintiff vacant possession of the same.
  - b. An order of Specific Performance compelling the Defendant to forthwith process and issue the Plaintiff with the title documents to the subject plot herein which the Plaintiff lawfully acquired from it being Plots Number MA 155, MA 156, MA 157 and MA 158.
  - c. The Plaintiff be registered as the owner and proprietor of all that property identified as Plots Number MA 155, MA 156, MA 157 and MA 158 all within Ruai Estate, Embakasi within Nairobi County.
  - d. Mesne profits.
  - e. Damages.
  - f. Costs of this suit.



2. Following the filing of the subject suit, the Plaintiff extracted the summons to enter appearance and the Plaintiff, which were then served upon the Defendant, in terms of the affidavit of service of Josephine Lele sworn on the 10/9/2024.
3. Although the Defendant herein was duly served with summons to enter appearance and the Plaintiff, the Defendant failed to enter appearance and/or file a Statement of Defense. The matter thereafter proceeded for hearing as an undefended on 10/2/2025.

#### **Applicants' case**

4. At the hearing of the case on 10/2/2025, the Plaintiff testified as PW 1 in support of his case. He adopted his Witness Statement dated 5/6/2024 as his evidence in chief. He also produced the documents on the Plaintiff's List of Documents of even date.
5. The Plaintiff led evidence and stated that around 1990, he saw an advertisement by Veteran Auctioneers on behalf of the Defendant herein inviting members of the public to apply for purchase and allocation of various plots then owned by the Defendant. Following the advertisement, the Plaintiff applied to purchase 2 Acres of Quarry land from the Defendant vide the Letter dated 20/9/1991 through the Chairman's office as advertised.
6. He avers that on 11/11/1991, he received a confirmation from the Veteran Auctioneers that his application had been approved by the Defendant's Implementation Committee and agreed to sell him the 2 Acres at Kshs. 100,000/=. He states that the said firm further acknowledged receipt of the deposit in the sum of Kshs. 50,000/= vide the Cheque Number 034365.
7. Further it was averred that it was a term of the sale transaction that payment of the full purchase price would entitle the Plaintiff to two additional bonus plots at a cheaper price. That in pursuance to the said agreement, the Defendant asked him to pay for 4 additional plots at Kshs. 10,000/= per plot. After effecting the said payment, the Plaintiff avers that he was issued with the certificate No 5150 for plot Nos. MA 155, MA 156, MA 157 and MA 158.
8. He asserts that the Defendant showed him the parcels of land measuring 2 Acres and granted actual possession thereof. He then put up a temporary fence thus enjoying peaceful possession from the year 1993. However, in the year 2005, one James Gichuki Magondu (Magondu) encroached on the said plots and purported to forcefully occupy thereon which he (the Plaintiff) vehemently opposed. Subsequently, a suit was instituted by the said Magondu against him being Nairobi CMCC No. 12559 of 2005. That the Court held that the plots issued to Magondu were at a different location other than where he had been shown. On appeal to the High Court, the court held that it was not a case of double allocation of the lands but the physical location of the various plots claimed by the Plaintiff and Magondu.
9. The Plaintiff contends that his attempts to pursue the Defendant to resolve the matter has not borne fruits to date despite the Defendant showing him alternative plots for which none has been allocated to him. That despite numerous promises by the Defendant to allocate and grant him vacant possession, the Defendant has not actualised his promises.
10. The Plaintiff maintains that he is the lawful and beneficial owner of the four plots as per the Share Certificates issued to him. That as a result of the Defendant's actions, he has suffered loss and damage. Hence the orders sought above.



## Plaintiff's submissions

11. The Plaintiff identifies three issues for determination. The first issue is whether the Plaintiff has met all the conditions of sale so as to be considered a bona fide purchaser for value of the suit plots to warrant the transfer of the same to him. The Plaintiff reiterates the averments in the Plaintiff and submits that having been registered and issued with the share certificate, he acquired full possession rights over the said plots. He avers that he is therefore vested with the absolute right of the property. The Plaintiff refers to the Torrens principle as well as Section 24 (a) of the *Land Registration Act*, 2012 and submits that as the registered proprietor, he is entitled to the property absolutely to the exclusion of all others.
12. The second issue is whether he has demonstrated the grounds to warrant the court to issue an order for specific performance against the Defendant. Counsel cites the case of *Amina Abdul Kadir Hawa –vs- Rabinder Nath Anad & Another (2012) EKL*R where the court set out the guiding principles for the grant of an order of Specific Performance. It is submitted that the Plaintiff complied with the terms of sale and was issued with the Share Certificate No. 5150 confirming his ownership. That the Defendant initially showed him the plots but it turned out that the plots had already been allocated to someone else. He avers that the Defendant having not disputed his ownership, he is entitled to the order of specific performance. The Plaintiff contends that having complied the terms of the Auction for the parcel of land, he is therefore entitled to an order of Specific Performance. He submits that he has suffered irreparable damage having been denied occupation of his plots hence the prayer for specific performance.
13. The final issue is whether the Plaintiff is entitled to mesne profits and damages. The Plaintiff avers that having been granted actual possession in the year 1993 and the same having taken away in 2005 and granted to a third party, the Defendant allowed the third party to remain in occupation without the Plaintiff's permission and consent. The activities undertaken thereon were therefore averse to the Plaintiff's rights hence amounting to Trespass.
14. The Plaintiff further submits that as a proprietor, having been deprived of possession and use of his property, the Defendant is obligated to pay mesne profits. That mesne profits to be awarded is for the whole duration and /or the period of time which he was deprived of the suit property. That time should accrue from the year 2005, when a third party took over the property, up to date totalling to 21 years.

## Analysis and Determination

15. Having considered the Pleadings, the evidence adduced during the hearing and the written submissions the issues that commend themselves for determination are;
  - a. Whether the Plaintiff is the lawful and bona fide owner of the suit property.
  - b. Costs of the suit.

Whether the Plaintiff is the lawful and bona fide owner of the suit property

16. Although the suit is undefended, it was incumbent upon the Plaintiff to produce documentary evidence to prove his case. This is the gist of the provisions of Section 107(i) of the *Evidence Act* which state that whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
17. 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 is 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.

18. In the case of *Caroline Awinja Ochieng & Another –vs- Jane Anne Mbithe Gitau & 2 Others* (2015) eKLR the Court stated as follows:

“In determining the above issue, it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.

The simple reason is that unregistered titles exist only in the form of chains of documentary records. The court has to perform the delicate task of ascertaining that the documents availed by the parties are not only genuine but also lead to a good root of title minus any break in the chain. 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’: per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.”

19. From the documents tendered by the Plaintiff, it is common ground that the suit property fell within the Embakasi Ranching scheme, belonging to and registered in the name of the Defendant. The Plaintiff tendered evidence that he purchased the subject plots after seeing an advertisement by Veteran Auctioneers on behalf of the Defendant inviting members of the public to apply for purchase and allocation of various plots then owned by the Defendant. That he applied to purchase 2 Acres of Quarry land vide the Letter dated 20/9/1991. He adduced the Letter dated 11/11/1991 from Veteran Auctioneers confirming that his application had been approved by the Defendant’s Implementation Committee. That the Letter further stated that the 2 Acres would be sold to him at Kshs. 100,000/= . They also acknowledged receipt of his deposit in the sum of Kshs. 50,000/=.
20. The Plaintiff further avers that he was entitled to two additional bonus plots at a cheaper price after payment of the purchase. He states that after effecting the said payment, he was issued with four certificates MA 155, MA 156, MA 157 and MA 158. Thereafter, he was issued with Share Certificate No. 5150 confirming his ownership of the property after completing the payment of the purchase price for the plots.
21. The Plaintiff adduced non-member Certificates Number 003313 and 003314 for Plots MA 156 and MA 157 respectively. He also produced Police Abstract for the loss of Share Certificate No. 5150. The Plaintiff further produced the Letter dated 15/11/ 2005 from the Defendant addressed to the Chief, Ruai Location confirming and authenticating that the Plaintiff is the legitimate Owner of Plots No. MA 156 and MA 157 vide the Letter dated 15/11/ 2005 addressed to the Chief, Ruai Location.



22. In the absence of any evidence to the contrary I find that on the basis of evidence before the court and on a balance of probabilities, the Plaintiff has proven that he was allocated the plots as alleged.
23. On the question of mesne profits, although the Plaintiff claims that mesne profits should be should accrue from the year 2005, when a third party took over the property, up to date totalling to 21 years, the Plaintiff did not furnish the court with any evidence on the extent of encroachment and the loss he had suffered. In any event the Plaintiff is yet to be shown the land on the ground. He cannot ascertain the profits, if any, that the Defendant has made therefrom. I rely on the decision of the Court in Peter Mwangi Mbutia & Another -vs- Samow Edin Osman [2014] eKLR, where the Court of Appeal while dealing with the issue of mesne profits held as follows:

“We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”

24. Similarly, mesne profits being special damages must not only be pleaded but proven. This was the holding in the case of Karanja Mbugua & another -vs- Marybin Holding Co. Ltd [2014] eKLR where the Court stated

“This court is alive to the legal requirement that mesne profits, being special damages must not only be pleaded but also proved, as shown by the provisions of Order 21, Rule 13 of *Civil Procedure Act*.”

25. Having not been shown the location of the plots it follows that the plaintiff is yet to take possession of the same and therefore the court is unable to find for damages in his favour.
26. Since the suit is undefended I make no orders as to costs.

#### **Final orders for disposal**

27. Ultimately, I enter judgment in favour of the Plaintiff as against the Defendant in the following terms;
- a. An order be and is hereby issued compelling the defendant by itself, agents, servants, employees or otherwise howsoever to forthwith proceed and show to the Plaintiff the actual physical ground position of the four plots known as Plots Number MA 155, MA 156, MA 157 and MA 158 and grant to the Plaintiff vacant possession of the same.
  - b. The Defendant be and is hereby ordered to forthwith process documents to facilitate the issuance of title to the Plaintiff with respect to the subject plots Nos. MA 155, MA 156, MA 157 and MA 158.
  - c. No orders as to costs.
25. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:



Mr Kamande HB for Mr Agwara

N/A for the Defendant

CA- Ms Cheronno

