



REPUBLIC OF KENYA



Risa Investments Ltd v Akran & 2 others (Environment & Land Case E048 of 2024) [2025] KEELC 3513 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3513 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E048 OF 2024**

**EK MAKORI, J
APRIL 30, 2025**

BETWEEN

RISA INVESTMENTS LTD PLAINTIFF

AND

ETORE JOHN AKRAN 1ST DEFENDANT

JUMBA LA MTWANA CBC 2ND DEFENDANT

JANE MAIKI KAMTO 3RD DEFENDANT

JUDGMENT

1. In its pleadings, the Plaintiff in the primary lawsuit, dated May 13, 2024, sought, among other things, to establish its ownership of the Suit Properties and to prevent any further trespassing or demolition:
 - a. A declaration that the Plaintiff is entitled and is the legal owner of the Suit Properties formerly known as Plots No. MN/III/1091 and resultant subdivision No. MN/111/3171 to MM/III/3180.
 - b. The Plaintiff sought a mandatory Injunction to prevent the Defendants from further trespassing, demolishing, or pulling down the Plaintiff's perimeter wall or structures, and to vacate the Properties immediately.
 - c. The Officer in Charge of the Mtwapa Police Station be instructed to oversee the eviction and demolition of all unlawful structures while ensuring the protection of legitimate structures located on the Suit Properties, specifically Plots No. MN/III/1091 and the resultant subdivision No. MN/III/3171 to MN/III/3180.
 - d. The Plaintiff also sought a permanent injunction to protect its property rights, restraining the Defendants from further demolition or construction on the Suit Properties.



- e. The costs associated with the suit and applicable interest at court rates.
 - f. Any further relief, or additional measures, that this court deems appropriate and fitting to grant.
2. The suit was pursued ex parte, as the Defendants did not enter an appearance or file any Defence.
 3. The Plaintiff presented one (1) witness, its Director, Gideon Sitelu Konchella, who testified by adopting his witness statement dated 13th May, 2024. Additionally, he submitted the documents in the Plaintiff's list dated 13th May, 2024, which were entered as Plaintiff's Exhibits 1 to 5.
 4. In succinct terms, the Plaintiff contended that it is the registered owner of a plot formerly designated as MN/III/1091-Mtwapa, which has subsequently been subdivided into subdivisions known as Plots Nos. MN/III/3171 to MN/III/3180. The Title Deeds of the Plots, Deed Plans, and Certificates of official searches were presented as Plaintiff's Exhibit No. 1.
 5. The Directors and agents of the Plaintiff possess and utilize the plots. In February 2024, the Defendants and their agents commenced encroaching upon the Plaintiff's parcels of land in a clear act of trespass. They also demolished and destroyed the Plaintiff's perimeter wall and associated structures, which warrants attention. The court is directed to examine the Surveyors and Valuers Reports, which have been submitted as Exhibits 2 and 3.
 6. A complaint was filed at Mtwapa Police Station; the first Defendant (whose name was removed from the proceedings by consent) was charged with a criminal offence - Exhibit 5.
 7. Consequently, owing to the actions of the Defendants and their representatives, the Plaintiff respectfully submits that the court urgently needs to grant the requested Orders; otherwise, the Defendants may dispose of these properties, resulting in their loss and potential destruction.
 8. Despite being duly served, the testimony and documentary evidence presented by the Plaintiff were not challenged by any evidence from the Defendants.
 9. It is undisputed that the Plaintiff holds ownership of the suit parcels of land according to the titles presented in evidence.
 10. The Plaintiff respectfully submits that it has established its case on a balance of probabilities; therefore, the orders or prayers sought in the complaint dated 13th May, 2024, should be granted as requested.
 11. The Plaintiff relies on the decisions from the following case law relevant to this case, which I have found to be persuasive: Pegi Company Limited and George Githangi Wangui & 3 others [2023] eKLR, in which it was held that:

“The plaintiff's case is that they are the owners of the suit property, having been allocated the said land by following the proper legal channels. The Plaintiff presented the title documents through their bundle dated 1st September 2023.

- a. A Declaration be and is hereby issued that the Plaintiff is the duly registered proprietor of a parcel of land known as Portion Number 6833-Malindi of Title Number CR. Thirty-four thousand two hundred seventy-four situated in Malindi within Malindi Sub-County in Kilifi County, measuring (7.998 Ha) Seven Point Nine Nine Eight Hectares.
- b. An order be and is hereby issued directing the Chief Land Registrar of Titles at Mombasa to expunge, cancel, or revoke the illegal and/or fraudulent, and



parallel title to the Plaintiff's title identified as CR.75754 measuring Two Point Eight One Five hectares (2.815 Ha) in the name of the 3rd Defendant.

- c. An Order be and is hereby issued directing that the Officer Commanding Station and the Officer Commanding Police Division, Malindi Police Station, ensure compliance with the abovementioned orders.”

12. Edwin Gitau Kinyuru and Mutua Githome & 3 others [2022] eKLR, in which it was determined inter alia that:

“The Plaintiff's claim relates to plot Numbers MN/III/11897, MN/III/11901, MN/III/11902, and MN/III/11905, Maweni – Kilifi County. He seeks a permanent injunction restraining the defendants from entering on or erecting or causing to be erected thereon any structures or in any way interfering with the plaintiff's quiet enjoyment of the suit properties, and any structures placed on the suit properties are to be demolished, and an eviction is to issue. The plaintiff further seeks damages with costs.

It is not in dispute that the plaintiff is the registered owner of all that land described as plot Numbers MN/III/11897, MN/III/11901, MN/III/11902, and MN/III/11905, Maweni – Kilifi County. The plaintiff acquired the said land by way of purchase from one Susan Walowe Dena. It is also not disputed that the defendants do not have titles to the land they are occupying, hence the issue of adverse possession. To me, settling the issue of adverse possession will resolve the matter herein.

The upshot is that the plaintiff's claim will succeed in the manner I will propose below, with costs, and the counterclaim will be dismissed with costs:

- a. A permanent injunction be and is hereby issued restraining the defendants and agents or servants from encroaching unto land parcels plot Numbers MN/III/11897, MN/III/11901, MN/III/11902, and MN/III/11905 Maweni – Kilifi County.
- b. An order be and is hereby issued that the defendants and agents or servants do within 90 days from today voluntarily remove themselves and the structures placed on parcels plot Numbers MN/III/11897, MN/III/11901, MN/III/11902, and MN/III/11905 Maweni – Kilifi County. Failure to do so the plaintiff to evict.”

13. In light of the compelling evidence, particulars, cited legislation, and pertinent case law, the Plaintiff is hereby granted the orders articulated in the plaint dated May 13, 2024, and costs of the suit.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 30TH DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Omwenga for the Plaintiff

Happy: Court Assistant

