



REPUBLIC OF KENYA



Pegi Company Limited v Wangui & 3 others (Environment & Land Case E017 of 2023) [2025] KEELC 251 (KLR) (29 January 2025) (Judgment)

Neutral citation: [2025] KEELC 251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E017 OF 2023
EK MAKORI, J
JANUARY 29, 2025**

BETWEEN

PEGI COMPANY LIMITED PLAINTIFF

AND

GEORGE GITHAIGA WANGUI 1ST DEFENDANT

AMOS MBUTHIA WAWERU 2ND DEFENDANT

SAMUEL WACHIRA MUGO 3RD DEFENDANT

CHIEF LANDS REGISTRAR OF COAST LANDS REGISTRY . 4TH DEFENDANT

JUDGMENT

1. The Plaintiff brought this matter before the Court on the 1st of September 2023 by filing a plaint and seeking the following prayers:
 - a. A Declaration 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 (hereinafter referred to as the ‘suit property.’
 - b. An order 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 identified as CR.75754 measuring Two Point Eight One Five hectares (2.815 Ha).
 - c. An order for a permanent injunction restraining the Defendants by themselves, their agents, servants, or whoever else acting on their behalf or instructions from entering, trespassing, moving into, seeking to occupy, alienating, charging, selling, disposing of and/or in any other manner whatsoever interfering with the Plaintiffs’ rights of ownership, possession, occupation or use of Land Parcel identified 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.

- d. An Order that the Officer Commanding Station and the Officer Commanding Police Division, Malindi Police Station, ensure compliance with the orders to be issued by this Court.
 - e. General Damages for trespass.
 - f. Costs of this suit and interest thereon.
2. The Plaintiff failed to trace the physical location and contacts of the 1st, 2nd, and 3rd Defendants. On the 22nd of September, 2023, orders of substituted service were issued by this Court, to which the plaintiff duly complied. The matter proceeded ex parte as the Defendants could not enter appearance nor place defence.
 3. The brief background of the matter is that Plaintiff is, at all times, material to this suit was the registered owner of the suit property 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. The plaintiff enjoyed quiet possession up to 2020 when they were notified of fraudulent interferences with the company's directorship status. Shortly after the fraudulent interference, the Plaintiff, through the help of the Company Secretary, had the same resolved and restored to normalcy. However, no charges were preferred against the fraudulent perpetrators.
 4. The Plaintiff learned that the 1st, 2nd, and 3rd Defendants were behind the company's fraudulent interference and that the 3rd Defendant had procured an illegal, fraudulent, and parallel title document to a portion of the suit property identified as CR 75754, measuring Two Points Eight One Five hectares (2.815 Ha).
 5. The Plaintiff, with foresight and caution, is apprehensive that unless the Defendants are restrained by granting the appropriate orders sought herein, the Defendants will most likely continue to illegally interrupt and/or threaten the Plaintiff's quiet, peaceful possession and enjoyment of the suit property and/or unlawfully and permanently usurp the Plaintiff of their lawful property.
 6. After hearing the matter, the Court directed that the Plaintiff canvass the issues emerging through written submissions. From the materials and submissions placed before me, the issues I frame for the determination of this Court are whether Plaintiff established ownership over the parcel property identified as Portion Number 6833-Malindi of Title Number CR. 34274, whether the Plaintiff is entitled to the orders sought in the plaint and who should bear the costs of the suit.
 7. 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.
 8. The Land Registrar's testimony was that the Plaintiff's parcel of land, identified as Portion Number 6833-Malindi, was registered first on the 2nd April 2001, whilst the alleged fraudulent title of the 3rd Defendant, identified as CR 75754, was erroneously registered on 23rd October 2020, in his opinion:

“In case of a conflict of two titles over the same parcel of land, then the title that precedes the other is a valid title, as the secondary one tends to be classified as an erroneous entry to the records.”



9. The Plaintiff avers that their title was registered almost 19 years before the 3rd Defendant's title. To buttress that argument that the title issued earlier supersedes the one issued later, the Plaintiff cites the case of *Hubert L. Martin & 2 others v Margaret J. Kamar & 5 others* [2016] eKLR where the Court held:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny, and they need to demonstrate how they got their title starting with its roots.”

10. The Director of survey testified that from the records, they possess:

“The survey records on Portion Number 6833- Malindi, contained in cadastral plan number F/R No 233/30- survey comps. Number 28220 are records that the Director of Surveys compiled on the 17th November 1992, from the approved and authenticated survey records of Portion Number 6814 and 6815- Malindi contained in cadastral Plan Number F/R No 233/10- survey Comps Number 28220.

The survey records of portion number 6833 Malindi contained in cadastral plan number F/R No 233/30 survey comps number 28220 were approved and authenticated by the director of surveys on the 18th November 1992, following which Deed plan number 168242 dated 18th November 1992 was issued by the directors of survey in support of the registration of the title to portion number 6833 Malindi.”

11. The assertions by the Plaintiff remain uncontroverted. Therefore, the Court believes that the Plaintiff has proved their case on a balance of probabilities that the subsequent registration of the suit property to the 3rd Defendant was unprocedural, unlawful, and fraudulent. Therefore, the orders sought in the plaint will succeed in the following manner to protect the sanctity of title as enacted in Sections 24 and 25 of the *Land Registration Act*:

- 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 in the nature of a permanent injunction restraining the Defendants by themselves, their agents, servants, or whoever else acting on their behalf or instructions from entering, trespassing, moving into, seeking to occupy, alienating, charging, selling, disposing of and/or in any other manner whatsoever interfering with the Plaintiffs' rights of ownership, possession, occupation or use of Land Parcel identified 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.

- d. 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.
- e. General Damages for trespass - declined - not prosecuted and proved.
- f. There will be no order as to costs since the claim was undefended.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 29TH DAY OF JANUARY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Bujra, for the Plaintiff

Happy: Court Assistant

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