



**Maalim v Ahamed & 2 others (Environment & Land Case E001 of 2022)
[2022] KEELC 15617 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E001 OF 2022
LN MBUGUA, J
DECEMBER 8, 2022**

BETWEEN

MOHAMMED DAHIR MAALIM PLAINTIFF

AND

FATUMA AHAMED 1ST DEFENDANT

COLONEL FARAH 2ND DEFENDANT

GULED ALIAS PS 3RD DEFENDANT

JUDGMENT

1. By a plaint dated January 3, 2022, the plaintiff prays for judgement against the defendants for; A permanent injunction to restrain the defendants whether by themselves or by their servants or agents or any of them or otherwise howsoever dealing with the property known as Land Reference Number 36/1/50 in any manner whatsoever by trespassing, occupying, constructing, selling, alienating, disposing, charging, mortgaging or creating a lien, charge, caveat or any other illegal encumbrance on the said property, plus costs of this suit.
2. The defendants did not enter appearance nor file their respective statements of defences despite being served with summons herein. The matter hence proceeded as an undefended claim.
3. PW1 is the plaintiff. His witness statement dated January 3, 2022 was adopted as his evidence and a bundle of documents of even date was produced as plaintiff Exhibits 1-3.
4. In his written statement, PW1 avers that he is the registered proprietor of property Known as Land Reference No. 36/1/50 situated in Eastleigh within Nairobi having purchased that land from Rajesh Chotalal Pabari and Kaushik Chotalal Pabari for valuable consideration on January 18, 2007. He states that he did a search prior to the purchase of the suit property and that he also checked the mutation and confirmed its extent.



5. He further states that the defendants are laying claim to his property by virtue of a sale agreement of which they have used police to harass his workers in trying to forcefully take possession of his property. He points out that his worker Sham Abdisalam Galgalo was arrested and booked under Occurrence Book Number, 62/1/1/22 at Pangani police Station on allegations of trespass to the defendant's property. He states that the said arrest was unwarranted as he is the lawfully registered owner of the suit property.
6. The sole issue for determination is whether the plaintiff has established ownership of the suit property. While his claim was unopposed, he had the burden to prove his case. In *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the court held that;

“It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
7. The plaintiff led evidence that he purchased the suit property from Rajesh Chhotalal Pabari and Kaushik Chhotalal Pabari, and to this end, he produced the indenture registered on January 18, 2007. He also produced an official search certificate dated February 4, 2022 which indicates that the suit land was transferred to him on January 18, 2007. He then produced demand for rates from Nairobi City Council as well as a receipt for rates over the suit property dated June 15, 2010 paid to Nairobi City Council. That evidence was not controverted. In the circumstances, I find that the plaintiff has given plausible evidence to indicate that he is the owner of the suit property.
8. In the final analysis, the claim of the plaintiff is allowed as set out in the plaint with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Chelangat for Plaintiff

Court assistant: Eddel/Vanilla

ELC CASE NO. E001 OF 2022 (JUDGMENT) Page 2 of 2

