



**Ragen (Suing in the Public Interest) v Safqa Limited & 6 others (Environment & Land
Petition E008 of 2023) [2025] KEELC 1219 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1219 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION E008 OF 2023
SM KIBUNJA, J
MARCH 12, 2025**

BETWEEN

AINEA RAGEN [SUING IN THE PUBLIC INTEREST] PETITIONER

AND

SAFQA LIMITED 1ST RESPONDENT

CHIEF LAND REGISTRAR MOMBASA 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

**MOMBASA COUNTY LAND ADJUDICATION AND SETTLEMENT
OFFICER 4TH RESPONDENT**

COUNTY GOVERNMENT OF MOMBASA 5TH RESPONDENT

**MINISTER [CEC] FOR LAND, HOUSING AND URBAN PLANNING
MOMBASA COUNTY 6TH RESPONDENT**

ATTORNEY GENERAL 7TH RESPONDENT

JUDGMENT

1. The petition dated the 14th September 2023, was filed by Ainea Ragen, in the public interest, against the seven named respondents, averring that around 1998, Mwembelegeza Scheme, Mombasa, was planned, surveyed, plots of mostly 50 feet by 100 feet subdivided and most of them allocated to deserving citizens while some were reserved as public utilities, including plot No. 1580, which was a bus park. That the 4th respondent placed a caveat on plot No. 1580 vide letter addressed to the 2nd respondent and copied to others, reference DLASO/MSA/208VOL111/154 dated 28th February 2007 restricting any dealings on the said plot. That in disregard to the said caveat, the 2nd respondent issued a title certificate over the said plot to Anthony Charo Karisa on 11th April 2014, and on 23rd September 2015, registered a transfer over the same plot to the 1st respondent, who has since constructed a



huge single storied private shopping mall named Safqa Plaza, with several shops rented to private businesses. That the petitioner sought for information from the 2nd respondent on how the public utility plot was converted to private property, and title certificate issued but none was provided except a copy of green card. That the petitioner's effort to contact the said Anthony Charo Karisa has not borne fruits. The petitioner wrote letters to Mombasa County Land Adjudication and Settlement officer, Coast Regional Surveyor, Chief Land Registrar, Chief Officer Lands, Housing and Urban Development, Mombasa County, Mombasa National Land Commission County Coordinator and Coast National Construction Authority Regional Manager, County Secretary, Mombasa County and EACC seeking for information and or intervention on how the suit property reserved for bus park eventually became private property. That responses were received as follows: EACC through its letter dated 16th August 2023; Coast Regional Surveyor through letter dated 17th May 2023 giving acreage of the plot; National Land Commission Mombasa coordinator by letter dated 5th June 2023; Chief Lands Registrar, Mombasa submitting copy of the plot's green card; National Construction Coast Regional coordinator through letter of 5th June 2023; Mombasa County Revenue office issuing land rates statement showing Anthony Charo Karisa had pending rates for the suit plot. That the letter to the Mombasa County Lands, Housing and Urban Development was received with a stamp that did not have the logo or imprints of the County Government of Mombasa. That upon gathering the available information the petitioner filed this petition for the following reliefs:

“(i) A Declaration that:

- a. The suit land No. 1580 Mwembelegeza Scheme in Mombasa County is Public Utility Land reserved for Bus Park only.
- b. The letter Ref. No. DLASO/MSA/208VOLIII/154, dated 28th February 2007, placing Caveat on the suit land No. 1580 Mwembelegeza Scheme is still valid and has never been vacated.
- c. The title Deed/Certificate and all and any subsisting entries registered in the parcel of land No. 1580 Mwembelegeza Scheme in the name of Safqa Limited is invalid, Null and Void ab initio.
- d. The respondents have violated rights of persons with disability under Article 54(1)(c) of the Constitution 2010 that guarantees reasonable access to all places, public transport and information.
- e. The respondents have violated Article 62(4) of 2010 Constitution that governs disposal and usage of Public Utility Land.
- f. The Stamp used at the registry's office of the Department of Lands, Housing and Urban Planning of the 5th Respondent as the official registry stamp is illegal, fraudulent and an abuse of public office by the 5th and 6th respondents.
- g. The 4th and 5th respondents have violated Articles 10, 73, 74, and 75 of the Constitution 2010 by their continued use of fraudulent office registry stamp.
- h. The 6th respondent failed in its advisory mandate.

(ii) A Permanent Injunction:



- a. Restraining the 1st respondent or any private organization or any person not mentioned in this suit working either individually or by their staff or their agents or their representative from trespassing, constructing, sub-dividing, transferring, developing, selling, or occupying the suit land number 1580 Mwembelegeza Scheme, Mombasa County.
- (iii) An Order:
- (a) Compelling the Chief Land Registrar at Mombasa, the 2nd respondent herein to cancel any existing title deed/certificate and all and any subsisting entries registered in the parcel of land No. 1580 Mwembelegeza Scheme in the name of Safqa Limited.
- (b) Compelling the 1st respondent to remove all their developments and any structure erected and or built within and on the suit land No. 1580 Mwembelegeza Scheme and to restore the said land to the condition it was before the construction thereon was undertaken, within sixty (60) days of the court's judgement.
- (c) That in case the 1st respondent fail to comply with order No.(iii) (b) here above, the 5th respondent be directed to demolish all and every structure and development erected and built on the suit land No. 1580 Mwembelegeza Scheme and the cost incurred in the exercise be met by the 1st respondent.
- (d) Compelling the 2nd, 3rd, and 4th respondents in conjunction with the Director of Survey of Kenya, in conjunction with the National Director of Physical Planning to within sixty (90) [sic] days of the court's judgement demarcate and delimit the exact boundary of the suit land No. 1580 Mwembelegeza Scheme including removal of any individual(s) or person(s) or entity(s) not mentioned in this suit who might have encroached on any part of the suit land.
- (e) Compelling the 4th respondent to within thirty (30) days of the court's judgement, avail to the National Land Commission hard and or soft copy of the list of all public utility lands within Mombasa County in the jurisdiction of the 4th respondent pursuant to Article 67(2) of the Constitution and section 8 of the Land Act of 2012.
- (f) Compelling the 4th respondent to within thirty (30) days of the court's judgement, that in the public interest avail to the petitioner hard and or soft copy of the list of all public utility lands within Mombasa County in the jurisdiction of the 4th respondent pursuant to Article 35(1) of the Constitution, sections 4(1)(2)(3) & (5) of the Access of Information Act and section 8(1)(c) of the Land Act of 2012.



- (g) Compelling the 5th and 6th respondents to immediately produce a new stamp bearing and encrypted with the logo of the 5th respondent and use the new stamp as official registry stamp at the Department of Lands, Housing and Urban Development of the 5th respondent.
- (h) Compelling the Ethics and Anti-Corruption Commission (EACC) to immediately launch investigations into the activities of the 1st, 2nd, and 4th, respondents and activities carried out by other staff at the office of the 2nd and 4th respondents and in particular the activities of Mr. Sammy Mchombo the immediate former officer in charge of Mombasa County Adjudication and Settlement officer [sic] and to also launch immediate investigations into the activities of the Chief Lands Registrar at Mombasa between the period of year December 2012 and December 2017 and commence immediate prosecution should any of the officers be found culpable in reference to this suit and other public utility lands within their jurisdictions.
- (i) Compelling the respondents to bear the costs of this suit.
- (iv) Any other relief the honourable court may deem just to grant.”

2. The 5th & 6th respondents opposed the petition through the four (4) grounds of opposition dated 30th October 2023, and replying affidavit of John Wambua Francis, planner, sworn on the 6th March 2024. It is their case inter alia that the petition violates the doctrine of exhaustion, as there are other methods the petitioner could followed other than filing suit; that the petition is frivolous, vexatious and an abuse of court process; that the 5th respondent confirmed that the suit property was indeed planned as a bus park, and its records shows the plot was still a public utility plot for bus park; that the 5th respondent was not involved in issuing the title over the suit property, and relied on the title document issued by the Registrar of Titles to enrol the private individual as a rate payer for the plot; that the entry of the private individual as a rate payer should not be used to justify ownership of the property that was reserved for public utility, as it remains public property; that the records available show that the 5th respondent did not approve the construction on the suit property, and the 1st respondent’s development thereon was un-procedural and illegal as the plot a public utility; that 1st respondent has not issued the 1st respondent with occupation license to allow individuals inhabit the building constructed on the suit property; that the 1st respondent did not do due diligence before acquiring the plot.
3. The 2nd, 4th, and 7th respondents responded to the petition through the replying affidavit of Benjo Kibet Daniel, County Land Adjudication and Settlement officer, Mombasa County, inter alia deposing that according to their records, the suit property was reserved as one of the public utility plots for a bus park, within Mwembelegeza Scheme, Mombasa.
4. The 1st respondent opposed the petition through the replying affidavit of Abdulaziz Suleiman, director, sworn on the 1st November 2023, inter alia deposing that the 1st respondent is the registered owner of Mombasa/Mwembelegeza/1580, suit property, which it acquired from Antony Charo Karisa on 9th September 2015, upon him proving ownership through the rates statement and clearance certificate from the County Government of Mombasa, that he gave them; that they also did due diligence by visiting the Land office where the Land Registrar gave them the green card for the plot showing the green card was opened on 11th April 2014 with Settlement Fund Trustees as the first registered owner,



and on the same date the plot was transferred to Antony Charo Karisa, and title deed issued in his name; that he obtained a copy of the Revised Part Development Plan for Mwembegeza Settlement Scheme reference number 12.5.CT.13.97 which does not indicate the plot as a bus park; that the green card is prima facie on the history of the plot and supersedes the letter the petitioner is relying on; that upon confirming ownership of the plot they proceeded with the transaction upon obtaining the spousal consent of the vendor's wife; that the 1st respondent acted above board, and has since developed and invested on the plot, and has been paying land rates.

5. During the hearing, the petitioner testified as PW1, and told the court how the Government of Kenya planned Mwembegeza Settlement Scheme in 1988 and allocated plots to deserving citizens while reserving others, including plot 1580 for public utilities. He produced the letter marked BP-10 attached to his affidavit by the Mombasa Land Adjudication and Settlement officer to the Mombasa Land Registrar to place caveats on the public utility plots including plot 1580. He added that the same letter is the one the Attorney General has filed confirming that the said plot was reserved for a bus park. He testified that later, a mall was built on the said plot and when he made enquiries, he confirmed from the green card that the plot was initially registered with Settlement Fund Trustees, but on the 11th April 2014, it was transferred to Antony Charo Karisa, who then on 23rd September 2015, transferred it to the 1st respondent. On further enquiries, he established the procedure of converting plot 1580, from public land to private land was not followed; that no letter of allotment was issued to the said Antony Charo Karisa, that he could have registered and then transferred to the 1st respondent. That as the plot was not available for alienation having been reserved for a bus park, he filed this petition and sought for the reliefs prayed for. During cross-examination PW1 stated that he had had no personal interest on the plot and had brought the petition in public interest. That he had did not know the 1st respondent's directors, and though he had engaged the respondents through whatsapp, the 1st respondent did not reply. He disputed that all public utility plots are indicated as such on the survey maps.
6. John Wambua Francis, Physical Planning officer with the County Government of Mombasa, 5th respondent, testified as DW1, adopting the contents of his replying affidavit. During cross-examination, the witness indicated that the 5th respondent was not involved in issuing the title deed on the suit property, but used the titles issued by the Land Registrar to register rate payers. That the 1st respondent has been paying rates for plot 1580 even though their records indicated it had been set aside for a bus park. That the 5th respondent had neither approved the construction erected on the suit property nor issued the occupation certificate and only got to know of the building after being served with the suit papers. That where a construction was without prior approval the 5th respondent issues stoppage of works notices to the developer.
7. Abdilaziz Suleiman, a director to the 1st respondent testified as DW2 adopting his depositions in the replying affidavit of 1st November 2023. He told the court that plot 1580 belongs to the 1st respondent after it bought it from one Charo, on 9th September 2015 after doing due diligence. That the plot was vacant and the certificate of search he did not show it was reserved for a bus park. That the plot was transferred to the 1st respondent and they have been paying rates. Answering questions during cross-examination, DW2 stated that they did the search on 28th September 2015. He agreed that the copy of the green card that 1st respondent has relied has entries that starts from 11th April 2014. That he could not recall who did due diligence for 1st respondent and that he does not know what a letter of offer was and none was given to them by Charo. That he could not tell whether Charo had paid the Settlement Fund Trustees' fees before selling the plot to 1st respondent. That their development of the suit property was approved, but had not brought the approval documents to court. That Charo had given him a copy of the title to the plot in his name but had not brought it to court. That he did not know who was registered with the plot between 1999, when the RIM he had produced was published,



to 2014 when the plot was first registered. That he did not know the plot had been set aside as a bus park when buying it. That his development on the plot had been registered with Nation Construction Authority as shown in the letter dated 5th June 2023 and that no government office had told him that the title issued to 1st respondent was a forgery.

8. Benjo Kibet Daniel, the County Land and Settlement officer, Mombasa, testified as DW3, adopting his depositions in the replying affidavit sworn on 7th December 2023. He told the court that from the accountability list that is kept under lock and key at their office, plot number 1580, Mwembelegeza Settlement Scheme was reserved as a bus park in 1998. During cross-examination, DW3 testified that the said plot is still a bus park and not for personal use. That the accountability list contains details of all plots in the scheme, their use and allocation, and has attached an extract of it to his affidavit. That the letter dated 28th February 2007 attached to the petitioner's affidavit contains the plots in the settlement that had been reserved for public utilities.
9. The petitioner filed their submissions dated the 26th October 2024, while counsel for the 1st respondent filed theirs dated the 28th January 2025, respectively, which the court has considered.
10. The issues for the court's determinations in this petition are as follows:
 - a. Whether the suit property was reserved as a public utility plot for bus park, a public land.
 - b. Whether it was available for alienation when it was registered with Antony Charo Karisa, and whether 1st respondent acquired good title thereof
 - c. Whether the petitioner is entitled to any of the declaratory orders, injunction and other orders sought through the petition
 - d. What orders to issue.
11. The court has carefully considered the facts set out in the petition, affidavit, documentary and oral evidence presented by and for the parties, submissions by the petitioner and 1st respondent, superior courts decisions cited thereon and come to the following determinations:
 - a. The petitioner's case is primarily that plot number 1580, Mwembelegeza Settlement Scheme, was reserved for a public utility plot, specifically a bus park. He has among other evidence produced a letter from the District Land Adjudication & Settlement officer, Mombasa, dated 28th February 2007 to the District Lands Officer, Mombasa, that states as inter alia reproduced herein below:

“ Re; Public Utility Plots – Mwembelegeza Settlement Scheme.

Please note that the following Public Utility Plots were set aside in the above mentioned settlement scheme:

Plot No. Name of Puplic Utility

1466 Nursery School

1467 Primary School

1469 Health Centre

1471 Nursery School

1472 Survey Camp

1473 Post Office



1475 Swamp
1476 Nursery School
167 Public Cemetery
168 Secondary School
955 Bore Hole
1581 Open Space
1584 Administration
1582 Bore Hole
1583 Bore Hole
1584 Administration
1585 Social Hall
1586 Open Space
1587 Open Space
1588 Open Space
1589 Open Space
956 Petrol Station
1580 Bus Park [emphasizes mine]

This is therefore to request you to place a caveat on these public utility plots as they are meant for public purpose only.”

The petitioner’s contention has been confirmed by the 5th & 6th respondents through their affidavit and oral evidence adduced by DW1, and by the 2nd, 4th, & 7th respondents through their affidavit and oral evidence adduced by DW3. That put in another way, among the respondents who participated in this petition, it is only the 1st respondent who disputed the petitioner’s claim that the suit property, plot number 1580, was a set aside as a bus park, and claimed to have bought it and acquired good title.

- b. The 1st respondent deposed through its director, DW2, and testified that they did due diligence before buying the suit property from the vendor, Anthony Charo Karisa. From his testimony, the 1st respondent did the search on 28th September 2015. I have perused the certificate of official search dated the 28th September 2015 and has two entries numbers 4 & 5 of 24th September 2015 showing the 1st respondent was registered as owner and title deed was issued. That search having occurred after the 1st respondent registration as proprietor of the suit property cannot be taken to have been part of the due diligence process, but rather confirmation that it had been duly registered as proprietor.
- c. Indeed, DW2 in his testimony told the court that he could not recall who did due diligence for 1st respondent. He also told the court that he does not know what a letter of offer was and no such letter was given to them by the vendor, Anthony Charo Karisa. He agreed that the copy of the green card that 1st respondent has relied on has entries that starts from 11th April 2014. That he could not tell whether Anthony Charo Karisa, the vendor, had paid the Settlement Fund Trustees’ fees before selling the plot to 1st respondent. That Charo had given him a copy



of the title to the plot in his name but had not brought it to court. That he did not know who was registered with the plot between 1999, when the RIM he had produced was published, to 2014 when the plot was first registered. That he did not know the plot had been set aside as a bus park when buying it. The foregoing answers by DW2 to questions put to him were rather surprising, as he is a director for the 1st respondent, whose title to the suit property is under challenge in this petition. The defence put forward by the 1st respondent is more or less that of a bona fide purchaser for value without notice of any illegality.

- d. Section 26 of *Land Registration Act* No.3 of 2012 obligates the court to take the certificate of title issued by the Land Registrar to be prima facie evidence of “absolute and indefeasible ownership of the land described thereon subject to encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-
- (a) on the ground of 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.”

The superior courts, including the Supreme Court of Kenya, in the case of *Dina Management Limited versus County Government of Mombasa & 5 Others* Petition No. 8 (E010) of 2021, have held that where a certificate of title/title deed is under challenge in a legal proceeding, the responsibility of proving the legality of the same shifts to the purchaser, that is the party claiming ownership of the title/certificate being impugned.

- e. The copy of the green card in respect of the suit property that was relied on by the parties herein clearly show that the plot was first registered on 11th April 2014 in the name of The Settlement Fund Trustees under entry number 1. On the same date, the plot was transferred to Antony Charo Karisa under entry number 2, and a title deed was issued under entry number 3. The fact that the first registered owner was indicated to be the Settlement Fund Trustees is evidence enough that the plot emanated from public or government land. It was therefore incumbent upon the 1st respondent to satisfy itself that Antony Charo Karisa had obtained a good title over the suit property before actualizing the sale transaction from him but it failed to do so. The 1st respondent even failed to avail the said Antony Charo Karisa as a witness to come and tell the court how the Settlement Fund Trustees transferred the plot to him, without first issuing him with an allotment letter and the requisite fees being paid. In case the said Antony Charo Karisa was not reasonably available as a witness, the 1st respondent should have sought assistance from Settlement Fund Trustees to come to court and confirm that it had indeed lawfully and regularly transferred the property to Antony Charo Karisa.
- f. In the face of the strong evidence presented by the petitioner and supported by all the respondents except one, the court finds that the 1st respondent has failed to prove that it was a bona fide purchaser for value without notice of the illegality and fraud in the acquisition and conversion of a public utility plot, being a bus park plot to private property. It follows therefore that as the said Antony Charo Karisa did not have a good title to the suit property, he had no title to pass to the 1st respondent. The said plot was set aside as a bus park and should remain as such. Prayers (i) (a), (b), (c), (ii), & (iii) (a) are therefore granted. The petitioner also sought for various orders to compel the named respondents under prayers (iii) (b) to (i) to do specified things. I find prayer (iii) (b) to (e) reasonable and necessary to give effect to the preceding prayers that I have allowed, and they are equally granted in the manner directed herein below. All the other prayers are declined for reasons that they were not properly particularized, lack of



evidence in support and the court is of the view the petitioner can still pursue the issues therein with the relevant public agencies, including the investigative and prosecution bodies.

- g. That though this petition was pursued by a public interest/spirited person and is for the public interest as it involves recovery of a public utility plot reserved for a bus park, the court finds the 1st respondent should pay the petitioner's costs.
12. Flowing from the foregoing determinations, the court finds the petitioner has substantially succeeded in proving his petition and enters judgement in the following terms:
- a. That a declaration is hereby issued that plot No. 1580 Mwembelegeza Settlement Scheme, Mombasa County, suit property, is a Public Utility Land reserved for Bus Park only.
 - b. That a declaration is hereby issued that the letter Ref. No. DLASO/MSA/208VOLIII/154, dated 28th February 2007, placing Caveat on the suit land No. 1580 Mwembelegeza Settlement Scheme, suit property, is still valid and has never been vacated.
 - c. That it is hereby declared that the title Deed/Certificate and all and any subsisting entries registered in the register of parcel of land No. 1580 Mwembelegeza Settlement Scheme, suit property, in the name of Safqa Limited is invalid, null, and void ab initio.
 - d. An order is hereby issued directing the Chief Land Registrar Mombasa, the 2nd respondent, to cancel any existing title deed/certificate and all and any subsisting entries registered on the register of parcel of land No. 1580 Mwembelegeza Settlement Scheme in the name of Safqa Limited and Anthony Charo Karisa.
 - e. A permanent injunction is hereby issued restraining the 1st respondent, by itself, servants and or agents from trespassing, constructing, sub-dividing, transferring, developing, selling, or occupying the suit land number 1580 Mwembelegeza Scheme, Mombasa County.
 - f. An order is hereby issued directing the 1st respondent to remove all their developments and structures erected and or built on the suit land No. 1580 Mwembelegeza Settlement Scheme, and to restore the said land to the condition it was before the construction thereon was undertaken, within ninety (90) days from today, and in default, the 5th respondent to demolish all and every structure and development erected thereon and restore the plot and the cost incurred in the exercise be met by the 1st respondent.
 - g. An order is hereby issued directing the 2nd respondent in conjunction with the Director of Survey of Kenya, to re-establish the exact boundary of the suit land No. 1580 Mwembelegeza Settlement Scheme, within one hundred twenty (120) days from today.
 - h. That it is hereby declared that the 1st, and 2nd, respondents who played the primary role in transacting over plot No. 1580 Mwembelegeza Settlement Scheme, a public utility plot, violated Article 62(4) of 2010 Constitution.
 - i. That the 1st respondent to bear the costs of this petition.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 12TH DAY OF MARCH 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:



Petitioner : Present in person

Respondents : M/s Saru for 2nd, 4th and 7th Respondents

Mr Mugambi for 1st Respondent

Shitemi- Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

