



Ibrahim (Suing in her Capacity as the Co-Administrator of the Estate of Sebit Abdalla Sebit (Deceased)) v Al Islamiya Estates Limited & another (Environment & Land Case 229 of 2018) [2025] KEELC 4370 (KLR) (10 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4370 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 229 OF 2018**

MAO ODENY, J

JUNE 10, 2025

BETWEEN

ZENA IBRAHIM PLAINTIFF

**SUING IN HER CAPACITY AS THE CO-ADMINISTRATOR OF THE ESTATE
OF SEBIT ABDALLA SEBIT (DECEASED)**

AND

AL ISLAMIYA ESTATES LIMITED 1ST DEFENDANT

SALAT ABDI ALI 2ND DEFENDANT

JUDGMENT

1. By Plaint dated 22nd May, 2009, amended on 10th November 2010 and further amended on 31st July, 2012 the Plaintiff sued the Defendants seeking the following orders:
 - a. A declaration that the Plaintiff's interest over the parcel of land known as TITLE NO. DUNDORI BLOCK 5 (NEW GIKOE) 1260 is an overriding interest within the meaning of Section 30 (g) of the Registered *Land Act* Chapter 300 Laws of Kenya and that the title deed obtained by the 2nd Defendant over the same parcel of land is subject to the said overriding interest.
 - b. A declaration that the title deed for Title No. Dundori Block 5 (New Gakoe) 1260 obtained by the 2nd Defendant was so obtained illegally and wrongfully.
 - c. Arising from prayer (a) and (b) above, an order directing the 2nd defendant to surrender the title deed he is holding for Title No. Dundori Block 5 (NEW GAKOE) 1260 to the district land registrar Nakuru within FOURTEEN (14) DAYS from the date of judgment herein failing



which the title document shall be deemed invalid and the district registrar be directed and ordered to issue a title deed for the land to the plaintiff.

- d. A temporary injunction restraining the defendant by themselves and/or their servants from entering, occupying, disposing off or otherwise dealing in the parcel of land known as Title No. Dundori Blcok 5 (new Gakoe) 1260. (sic)
 - e. A perpetual injunction restraining the defendant by themselves and/or their servants from entering, occupying, disposing off or otherwise dealing in the parcel of land known as TITLE NO. DUNDORI BLCOK 5 (NEW GAKOE) 1260. (sic)
 - f. Mesne profits.
 - g. Costs of this suit and interest.
 - h. Any other or further relief as this
2. The 2nd Defendant filed a Statement of Defence dated 1st July, 2009.

Plaintiff's Case

3. PW1, Zena Ibrahim adopted her witness statement dated 7th February 2022 and testified that she is the wife of the late Sebit Abdalla who was granted Letters of Administration vide Succession Cause No 34 of 2016 which she produced as PExh No. 1 together with a list of documents dated 18th September 2009 as PExhb No. 2 to 10.
4. PW1 further testified that her late husband bought shares of suit land, Dundori Block 5 plot No. 1260 from the 1st Defendant at Kshs 35,000/ and was issued with a Share Certificate No. 130.
5. PW1 testified that they took possession of the plot and cultivated it from 2006 and nobody claimed the plot. PW1 testified that someone called her husband while in Nairobi and informed him that his plot had been fenced. She testified that her husband subsequently filed this case and the person who had fenced the land was the 2nd Defendant.
6. It was PW1's testimony that the 2nd Defendant who was a Directorate of Criminal Investigations Officer (DCIO) in Nakuru then informed them that he already had the title to the suit land. She urged the court to enter judgment as prayed in the plaint together with costs.
7. Upon cross-examination by Mr. Ndichu, PW1 stated that her late husband bought the land from the 1st Defendant. She stated that her husband got a share certificate No. 130 issued on 27th March 1996 which he paid for and was given receipts. PW1 stated that she does not know when the survey was done as her husband is the one who bought and the receipts did not indicate the plot numbers as they were paying by instalments.
8. PW1 testified that if the survey was done in 1998, then they would not have had a plot number by 1996. She further stated that her husband was still following up on the issuance of the title from 1996 and that the defendant fenced their plot while they were still cultivating the same.
9. PW1 confirmed that the court had granted an order of injunction and was not aware that a Director of the 1st Defendant had filed an affidavit stating that the land belonged to the 2nd Defendant. She stated that it is not true that they were given another plot number.
10. Upon re-examination by Mr. Kahiga, PW1 testified that there was no communication from the company in respect of the allocation of a different plot number and they have never been shown any other plot. It was her evidence that they were issued with a share certificate in 1996 and the 2nd



Defendant was issued with another one in 2008. She further stated that it took them long to get a title to the suit property as they were looking for money to process the title. Further, the receipts issued did not have a plot No. as they were still paying by instalments.

11. PW 2 Mugambo Al Hassan adopted his witness statement dated 7th February 2022 and stated that he is an Imam of the 1st Defendant in Lanet Nakuru. It was his testimony that he was an Assistant Treasurer of the 1st Defendant from 1994 and he knew the late Sebit Abdalla Sebit as one of the 1st Defendant company shareholders who was allocated plot number 1260 and was following up on the issuance of the title.
12. PW2 testified that there are people who claimed the plot and fenced. Further that he does not know the 2nd Defendant. PW2 testified that the 2nd Defendant was not their member.
13. Upon cross-examination by Mr. Ndichu, PW2 stated that he was the Assistant Treasurer and has a plot in the 1st Defendant's company. PW2 stated that he did not produce any document to show that he was the 1st Defendant's Assistant Treasurer. It was his evidence that the plot numbers were issued in phases and cannot remember when the survey was done.
14. According to PW2, the first survey was done in 1995 and had not seen the survey report by Mr. Farah. He further stated that the plots had already been surveyed when they were allocated the plots. PW2 informed the court that a person would be issued with a share certificate upon completion of payment of the shares and does not know whether Sebit Abdalla Sebit got his title.
15. Upon re-examination, PW2 testified that the survey was done in three phases and the board is the one that supervised the survey and were to process the title deeds.

2nd Defendant's Case

16. DW1 Salat Abdi Ali adopted his witness statements dated 1st July 2009 and 15th October 2020, respectively as part of his evidence. He stated that he lives in Marsabit County but is a Civil Servant working in Nairobi. DW1 produced a list of documents dated 30th October, 2020 as DExhb 1 to 6 and stated that the suit land Dundori Block 5 (New Gakoe) 1260 is registered in his name.
17. DW1 testified that he acquired the suit land in November 2008 after conducting a search dated 21st November 2008 and was issued with a title on 19th December, 2008 which was initially registered in the name of the 1st Defendant. DW1 testified that he is a member of the 1st Defendant and was issued with ownership certificate number 0111 dated 20th November, 2008 for one share worth Ksh 125,000/= which he paid vide a receipt dated 20th November 2008 for Dundori Block 5 (1260).
18. It was DW1's testimony that he visited the suit land together with the officials who showed him the parcel of land which was empty, took possession in December 2008 and did a perimeter wall, a toilet block and planted trees. He testified that the plot is within a gated community and has not seen any documents produced by the plaintiff claiming ownership.
19. DW1 further stated that the officials told him that his plot was number 130 and he has been unable to develop the plot due to this case that has been pending in court. He urged the court to uphold his title and dismiss the Plaintiff's suit with costs.
20. Upon cross-examination by Mr. Kibet, DW 1 stated that the suit parcel was initially owned by the 1st Defendant and the majority of the members of the Estate were members. He stated that he is not aware when the 1st Defendant Company was incorporated and that he joined it in 2008 but does not know when Sebit Abdalla joined the company.



21. DW1 was referred to the Plaintiff's share certificate and stated that the identity number is 7156576 for one share worth Ksh 35,000/= issued on 27th March, 1996 which was issued before his share certificate.
22. DW 1 stated that the Plaintiff's plot is number 130 and the certificate is number 130, further that the plot number according to the certificate is number 1260. He further testified that his share certificate number is 0111 (DExhb No 1) plot No 0111 and from the receipt it tallies but from the certificate, it does not tally.
23. DW1 informed the court that his plot is 1260 shown to him by the officials and that the numbers in the certificate were not the plot numbers. It was his evidence that there were other members present but Sebit Abdalla Sebit was not present. He told the court that it is not true that he was shown the wrong plot as he was shown the map and the surveyors also confirmed that his plot was number 1260.
24. According to DW1 there was a transfer from the 1st Defendant and at the time of his purchase, PW2 was an official of the 1st Defendant Company being a member and a director.
25. Upon re-examination by Mr. Ndichu, DW1 testified that the certificate is not a title document and according to the map, a certificate of plot number 1260 corresponds with the receipt which indicates the plot number as 1260.

Plaintiff's Submissions

26. Counsel for the Plaintiff filed submissions dated 10th March 2006 and identified the following issues for determination:
 - a. Whether the Plaintiff is the rightful owner of the suit property?
 - b. Whether the title held by the 1st Defendant was acquired lawfully and procedurally?
 - c. Whether the Plaintiff is entitled to orders sought?
 - d. Who is to bear the costs of this suit?
27. On the first issue, counsel submitted that the Plaintiff has demonstrated that they were the original allottees of the suit land and therefore hold a superior claim by virtue of the first in time principle and relied on the case of Osoro (Holding Specific Power of Attorney suing on behalf of Pius Matunda Onganga & Christine Momba Ongondo) vs Mwangi & Another [2023] KEELC 18639 (KLR). Counsel submitted that it is a well-established principle that priority in time prevails and cited the case of Gitau vs County Government of Nairobi; Awinga (Interested Party) [2022] KEELC 12836 (KLR).
28. Mr. Kibet submitted that the Plaintiff's proprietary interest in the suit land crystallized upon obtaining a valid share certificate which explicitly designated the corresponding plot number and any purported reallocation of the same land to the 2nd Defendant was void ab initio, rendering their claim legally untenable.
29. On the second issue for determination, counsel submitted that an analysis of the evidence reveals that the Plaintiff was allotted the suit property long before the 2nd Defendant's alleged acquisition. Counsel submitted that the original subdivision and land consolidation process had already been completed and the Plaintiff's entitlement was never revoked or cancelled.
30. It was counsel's further submission that by the time the 2nd Defendant purportedly acquired the property, it was not legally available for allocation and relied on Section 26 (1) of the [Land Registration Act](#), No 3 of 2012 and the case of Njuru vs Rwara (Suing as the Administrator of the Estate of Rwara Kimaru alias Benson Rwaba Kimaru) [2023] KEELC 18826 (KLR).



31. Counsel further submitted that the Defendants failed to provide credible evidence showing: how two distinct plot numbers (111 and 1260) were issued under the same serial number (214986) and how the 2nd Defendant, who joined the company more than a decade after the original allocations was issued a share certificate for Plot No 111 yet somehow ended up holding the title for Plot No 1260. Counsel relied on the cases of Daudi Kiptugen vs Commissioner of Lands Nairobi Lands and Others and Joseph Njogu Kamunge vs Charles Muriuki Gachari [2016] eKLR.
32. On the third issue, counsel submitted that the Plaintiff has successfully established his claim against the Defendants on a balance of probabilities and relied on the case of Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others [2015] KEELC 151 (KLR).
33. On the fourth issue, counsel urged the court to exercise its discretion in favor of awarding costs to the Plaintiff and relied on the case of Republic vs Rosemary Wairimu Munene, Ex- Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd.

2nd Defendant's Submissions

34. Counsel for the 2nd Defendant filed submissions dated 14th April, 2025 and identified the following issues for determination:
 - a. Whether the Plaintiff has established an overriding interest over the suit land?
 - b. Whether the 2nd Defendant's acquisition of the suit land was illegal?
 - c. Whether the Plaintiff is entitled to the orders sought?
35. On the first issue, counsel submitted that indeed the Plaintiff is entitled to a plot being a member of the 1st Defendant even though it is not the plot he wants. Counsel submitted that the plot ownership certificate No. 130 issued before sub-division is not enough to create an overriding interest over DUNDORI BLOCK 5 (NEW GAKOE) 1260.
36. Mr. Ndichu submitted that the Plaintiff did not prove that he was ever cleared by the 1st Defendant to take possession or that he was ever in possession. Counsel submitted that the 1st Defendant has always maintained that the Plaintiff's plot is DUNDORI BLOCK 5 (NEW GAKOE) 1279 so there is no chance that the company was ever going to transfer the suit land to him.
37. Counsel further submitted that the Plaintiff has not established an overriding interest over the suit land and he is free to ask the 1st Defendant to transfer plot No. 1279 which is still available to him and relied on the case of Edward Warutere Murungaru vs Ezekiel Kinyua Warungu & 5 others [2011] KEHC 297 (KLR).
38. On the second issue, counsel submitted that no evidence has been brought forth to prove that the 2nd Defendant's title was acquired illegally as he properly acquired it from the land buying company with approval. Counsel relied on the cases of Kinyanjui Kamau vs George Kamau Njoroge [2015] eKLR, Njonjo vs Nyambura & 2 others [2022] KEELC 12614 (KLR) and Thuku vs Kimani & 2 others [2023] KEELC 21323 (KLR) and urged the court to dismiss the Plaintiff's suit with costs.

Analysis and Determination

39. The issues for determination are who is the rightful owner of the suit land between the Plaintiff and the defendant, whether the Plaintiff has proved her case on balance of probability and who is to bear the costs of the suit.



40. It is the Plaintiff's case that the deceased became the proprietor of the suit land as he was a member of the 1st Defendant Company following a balloting and allocation exercise. It is her case that the deceased took possession of the suit property and around February 2009, the 2nd Defendant accompanied by police officers illegally invaded the Plaintiff's suit parcel.
41. It is the Plaintiff's case that the deceased established that the 2nd Defendant has since illegally obtained a title deed of the suit land without regard to the Plaintiff's interest over the same. In the further amended Plaintiff, the Plaintiff lists the particulars of fraud on the part of the 1st Defendant as:
- a. Sanctioning the processing of a title document for the suit and in the name of the 2nd Defendant when the land had been allocated to and belonged to the deceased.
 - b. Working together with the 2nd Defendant in a bid to dispossess the deceased of his land.
 - c. Failing to disclose to the deceased that it was in the process of having the suit land transferred to the 2nd Defendant.
 - d. Dealing in the deceased land without informing him.
 - e. Compromising the deceased's interest as a shareholder entitled to land without having regard to the Plaintiff's position.
 - f. Taking advantage of the deceased's situation and depriving him off his land.
 - g. Purporting to transfer the deceased's land to the 2nd Defendant who was not a shareholder in the 1st Defendant company.
 - h. Working in bad faith with the 2nd Defendant in a bid to defeat the deceased's interest in the suit land.
 - i. Allowing itself to be used by the 2nd Defendant to dispossess the deceased of his land.
42. The Plaintiff lists the particulars of fraud on the part of the 2nd Defendant as follows:
- a. Illegally acquiring the deceased's parcel of land.
 - b. Falsifying documents as to enable him acquire the deceased's parcel of land.
 - c. Using his position of influence as the DCIO Nakuru to have the land transferred to him when he knew that it belonged to the deceased.
 - d. Working together with the 1st Defendant in a bid to defeat the deceased's interest over the land.
 - e. Using his influence and the resources and facilities available to him as a police officer to invade and seize land from the deceased and forcefully evict him from the land.
 - f. Deliberately, knowing and blatantly taking the deceased's land when he knew who the owner was and that he (the 2nd Defendant) had no legitimate claim over the land.
 - g. Obtaining a title document for land that belonged to the deceased.
43. It is the 2nd Defendant's case that he was lawfully allocated Dundori Block 5 (New Gakoe) 1260 and that the Plaintiff is entitled to another parcel of land being DUNDORI/LANET BLOCK 5 (NEW GAKOE) 1279.
44. These are two parties claiming the same parcel of land. In such a scenario the court has to go deeper and check the root of the title or how the suit parcel was acquired by both parties. The Plaintiff gave



- evidence on how the late husband acquired the suit land. It was her evidence that the late husband was a shareholder of the 1st Defendant Company who was issued with a Share Certificate. This evidence was corroborated by PW2 who testified and told the court that he was an Assistant Treasurer of the 1st Defendant Company from 1994 and knew the late Sebit Abdalla Sebit.
45. It was PW2's testimony that Abdala was one of the 1st Defendant company's shareholders and was allocated plot number 1260 and they were following up on the issuance of the title. DW2 also confirmed during cross examination that the PW2 was the 1st Defendant's Assistant Treasurer.
 46. It is on record that the Plaintiff's name appeared in the membership register which indicated that he had been allocated plot No 1260, also produced ownership certificate which was confirmed by PW2 an official of the 1st Defendant who testified that share certificate issued by the company served as proof of ownership specifying the corresponding plot number at the bottom.
 47. Further, from the evidence on record, the Plaintiff's ownership records were issued way back in 1995 while the 2nd defendant was allocated in November 2008. By this time it is further on record that the survey had already been carried out and the Plaintiff was just awaiting processing of his title deed. The 2nd Defendant admits that the Plaintiff was a shareholder of the 1st Defendant, he only disputes that the suit land was allocated to him.
 48. The 2nd Defendant on the other hand had to prove that he was member of the 1st Defendant Company of which PW2 and Official of the 1st Defendant testified that he does not recognize the 2nd Defendant as a member of the 1st Defendant Company.
 49. DW1 testified that he was issued with a title on 19th December, 2008 and acquired the parcel of land in November after conducting a search in 2008. The defendant also stated that the Plaintiff's plot as per the 1st defendant's records was originally plot No 130 matching the membership number and that after the subdivision it allegedly became Dundori/Lanet Block 5/1279(New Gakoe) instead of Block 5/1260. There was no evidence adduced to prove that this was the position
 50. In the case of *Bandi –Vs- Dzomo & 76 others (Civil Appeal 16 of 2020) (2022) KECA 584 KLR (24th June, 2022)(Judgment)* the Court of Appeal cited the case of *Munyu Maina –vs- Hiram Gathia Maina (2013) EKLR* where it was stated as follows:

“ when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was, legal formal and free from any encumbrances including any and all interests which would not be noted in the register.”
 51. The 2nd Defendant (DW1) on cross-examination stated that at the time of his purchase, PW2 was an official of the 1st Defendant Company being a member and a director. DW1 informed the court that his share certificate number is 0111 (DExhb No 1) plot No 0111 and which tallies with the receipts but does not with the certificate. The 2nd Defendant however asked the court to believe that the Plaintiff's plot is number 130 and the certificate is number 130. The 2nd Defendant failed to provide credible evidence showing: how two distinct plot numbers (111 and 1260) were issued under the same serial number (214986) and how the 2nd Defendant, who joined the company more than a decade after the original allocations was issued a share certificate for Plot No. 111 yet somehow ended up holding the title for Plot No 1260.



52. Section 26 of the *Land Registration Act* comes to the aid of innocent proprietors whose properties have been fraudulently transferred in an unscrupulous individual's name. The court cannot allow such injustice to hold root as rightful owners are protected under the law.
53. In the case of Chemei Investments Limited –vs- The Attorney General & Others Nairobi Petition No. 94 of 2005 which was cited by Kiage JA as follows:
- “*The Constitution* protects a higher value, that of integrity and the rule of law. These values cannot be sidestepped by imposing legal blinders based on indefeasibility. I therefore adopt the sentiments of the court in the case of Milan Kumar Shah & 2 Others – vs – City Council of Nairobi & Another (supra) where the court stated as follows, “ we hold that the registration of title to land is absolute and indefeasible to the extent, firstly, that the creation of such title was in accordance with the applicable law and secondly, where it is demonstrated to a degree higher than the balance of probability that such registration was procured through persons or body which claims and relies on that principal has not himself or itself been part of a cartel which schemed to disregard the applicable law and the public interest.
54. This court finds that the Plaintiff's evidence was corroborated by the testimony of PW2 and the documents produced. The Plaintiff has thus proved her case to the required threshold.
55. In respect of the prayer for mesne profits, Section 2 of the *Civil Procedure Act* defines mesne profits as follows:
- “Mesne profits in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession.”
56. In the case of Luva v Kimbio & 3 others [2023] KEELC 16462 (KLR) pronounced as follows at paragraph 43:
- “The Court has considered the pleadings and the evidence on record. Mesne profits are in the category of special damages. They must be specifically pleaded and proved. The 1st Defendant did not set out the particulars of mesne profits in her Counter Claim. She did not furnish the Court with any evidence on the period the Plaintiff has been on the suit property and the loss she has suffered. I therefore find that she is not entitled to mesne profits.”
57. Mesne profits are special damages, which must be specifically pleaded and proved. The plaintiff did not lead any evidence to prove mesne profits and therefore the same fails.
58. Section 80 of the *Land Registration Act* gives the Court the power to order rectification of the register and the 2nd Defendant's title having been issued in a manner where the root was questionable, the same must be rectified by cancellation.
59. I have considered the pleadings, the evidence on record, the submissions by counsel and find that the plaintiff has proved her case to the required standard. I therefore issue the following orders:
- a. A declaration is hereby made that the title deed for Title No. Dundori Block 5 (New Gakoe) 1260 obtained by the 2nd Defendant was obtained illegally.



- b. The 2nd defendant shall surrender the title deed he is holding for Title No. Dundori Block 5 (New Gakoe) 1260 to the Land Registrar Nakuru within twenty one (21) days from the date of judgment herein failure to which the title document shall be deemed invalid and the Land Registrar is hereby ordered to issue a title deed of the suit land to the Plaintiff upon payment of registration fees.
- c. A perpetual injunction is hereby issued restraining the Defendants by themselves and/or their servants from entering, occupying, disposing off or otherwise dealing in the parcel of land known as Title No. Dundori Block 5 (New Gakoe) 1260.
- d. Costs of this suit are awarded to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 10TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

