



**Mandal & another (Suing as the Administrators/Personal Representatives and on behalf of the estate of Rajinder Kumar Mandal) v Bakran; Mandal & 3 others (Interested Parties) (Environment and Land Case 172 of 2019) [2025] KEELC 5106 (KLR) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5106 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 172 OF 2019**

**SM KIBUNJA, J**

**JULY 9, 2025**

**BETWEEN**

**SHAMMY RAJINDER MANDAL ..... 1<sup>ST</sup> PLAINTIFF**

**NIRMAL DEVI RK MANDAL ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATORS/PERSONAL REPRESENTATIVES AND  
ON BEHALF OF THE ESTATE OF RAJINDER KUMAR MANDAL**

**AND**

**MOHAMED AHMED BAKRAN ..... DEFENDANT**

**AND**

**VED PRAKASH MANDAL ..... INTERESTED PARTY**

**PREM PRAKASH MANDAL ..... INTERESTED PARTY**

**VIJAY KUMAR MANDAL ..... INTERESTED PARTY**

**ANIL KUMAR MANDAL ..... INTERESTED PARTY**

**JUDGMENT**

1. Through the further amended plaint dated 24<sup>th</sup> November 2023, the plaintiffs, who are the administrators of the estate of the late Rajinder Kumar Mandal, sued the defendant seeking for:
  - a. “A declaration that the plaintiffs are entitled to enjoy the right to peaceful and quiet occupation of all that property known as Mombasa/block X/parcel 254A.
  - b. A permanent injunction to restrain the Defendant and/or their agents from proceeding with the said eviction and/or attachment against the plaintiffs, with regard to all that property known as Mombasa/block X/parcel 254A.



- c. Costs of the suit.
- d. Any other relief that the court may deem fit to grant.”

They inter alia averred that the deceased held leasehold interest in common equal shares together with Ved Prakash Mandal, Prem Parkash Mandal and Vijay Kumar Mandal over a parcel of land known as Mombasa/block X/parcel 254A, suit property. They stated that the original lessor was one Kassam Ramji and that the above mentioned individuals, including the deceased had leased the suit property for a term of 99 years from 1951 at the annual rent of Kshs.1,500. Further that the said Kassam Ramji transferred his freehold interest to Alykan Satchu and Jamil Satchu sometime in 1971. The property was further transferred from the above two individuals to one Mohamed Ahmed Bakran sometime on 4th September 1986 who became the eventual lessor. The plaintiffs contend that they have diligently been paying their annual rent of Kshs.1,500 and that where they delayed in paying, the defendant paid and sought a refund from the plaintiffs thereafter. On 20<sup>th</sup> September 2019, the defendant issued a demand that the plaintiffs vacate the suit property by 23<sup>rd</sup> September 2019 and on that date auctioneers served them with warrants of attachment of the same date claiming Kshs.1,141,000, which the plaintiffs averred is illegal and gave particulars of the illegalities. The plaintiffs stated that their lease expires in 2050, and that if the defendant is not restrained from evicting them, they will suffer irreparable loss.

- 2. Through the undated amended statement of defence filed on 17<sup>th</sup> November 2021, the defendant opposed the plaintiffs’ claim. He inter alia averred that the plaintiffs are in breach of the lease agreement. That the suit property was originally owned by one Longino Dimech, and upon his death of the land was transferred on 19th July 1967 to Mansur Satchu as the attorney of Patricia Schaich vide the letters of administration dated 14th February 1966. That through a court order dated 22nd October 1968 in HCCC 102 OF 1966 (O.S), Mansir Sachu was authorized to sell the suit property. He averred that on 29th May 1969 Alykhan Satchu and Jamil Satchu acquired the suit property as joint proprietors, and on 26th November 1974 a land certificate was issued and it cannot therefore be true to claim that Kassam Ramji transferred freehold interest to Alykhan Satchu and Jamil Satchu. The defendant further averred that Kassam Ramji has never been a lessor of the suit property, and Rajinder Kumar Mandal, deceased, has never been a registered lessee of the suit property. He clarified that the only lessees he has dealt with is Premprakash Mandal, Rajendgra Kumar Mandal, Vijay Kumar, Mandal and Vedprakash Mandal through numerous correspondences and even received ground rent. That no lease was ever registered between the plaintiffs and the above named individuals. Furthermore, he states that the plaintiffs were only periodic tenants whose lease was terminable by one-month notice. The defendant claimed that sometime in April 1998 the plaintiffs fraudulently tried to apply for a freehold title over the suit property, when the defendant was out of the country. He stated that the plaintiffs have failed to pay County rates and the arrears cum interest that stand at Kshs.1,470,247 as at April 2021. That the plaintiffs’ failure to pay rates was part of their scheme to grab the suit property, and their suit should be dismissed with costs.
- 3. The plaintiffs filed a reply to their defence dated 25th November 2019 inter alia averring that they have sued Mohamed Ahmed Bakran and not Mohamed Ahmed Bakrani who entered appearance and filed Defence. That they have been paying rates to the County Government of Mombasa periodically and that the last payment was in 2012 and added that the terms of the indenture of lease concerned do not state when such rates are payable. Furthermore, the plaintiffs stated that they are willing and ready to pay the rates and that the County Government has not threatened or given notice of intention to take action over the delayed payment of the said rates. They also stated that as the successors of the deceased, there was no obligation to inform the defendant of the demise of the deceased lessee. They claimed



- that under clause 2 (5) of the said Indenture of lease dated 11<sup>th</sup> January 1955 the construction, even without consent of the defendant, cannot be the basis for the attempted eviction. On the provisional certificate, they averred it was necessary to apply as the original certificate of lease was lost, and their only concern was that they be reflected as proprietors of the leasehold interest. Further, that they could not have known who the registered lessor at the time when the certificate of lease was issued on 7<sup>th</sup> August 1998 was. That they had indicated Kassam Ramji as the lessor as he was the lessor by 1971 and thus they could not have committed fraud.
4. The 1<sup>st</sup> to 3<sup>rd</sup> interested parties were joined in the suit vide a ruling of 23<sup>rd</sup> September 2020, while the 4<sup>th</sup> interested party entered appearance on 28<sup>th</sup> November 2022. Though all the interested parties entered appearance, none participated in any other way in the hearing of the suit.
  5. The 1<sup>st</sup> plaintiff testified as PW1, and relied on his statement dated 25<sup>th</sup> September 2019 and the list of documents of even date, further list of documents dated 14<sup>th</sup> July 2022, 5<sup>th</sup> December 2022 and a list of documents filed on 13<sup>th</sup> November 2021. He inter alia testified that he acquired the suit property through his deceased father and his brothers who purchased the same on 5<sup>th</sup> July 1971 under leasehold interest, which started running in 1951, and has the transfer of lease, which was registered in the land registry. He further stated that his title is a sub-lease and the lessor is Kassam Kanji, and did not dispute the ownership of the property by the defendant. That he has been paying the defendant in his capacity as a landlord ground rent of Khs.1,500 since 1987. PW1 stated did not know the original lessor and agreed that the land certificate he produced does not contain a lease. That according to him the suit property is Mombasa/Block X/254A, though the said certificate reads Mombasa/Block X/254. That he was not aware that the original lessor was Longino Dimech, and that Mansur Satchu obtained letters of administration and was authorised to sell the suit property, and that he sold it to two others who in turn sold it to the defendant. He admitted knowing of a gazette notice that indicated the title had been lost, and that he wanted to be issued with freehold interest title. He defended himself stating that it was done by an advocate on instruction of his late father and uncles without his involvement. He stated that the said Kassam Ramji does not appear in the register produced by the defendant, and that in the register produced as PEX13, the names of the lessor had been cancelled, without countersigning, and Kassam Ramji's name was entered. Further, that the transfer was signed by Magnan, advocate, although it was prepared by Pandya & Talati Advocates. That Mr. Magnan was not working with the firm that prepared the transfer at the time. Further that there was no stamp affixed on Magnan's signature. He defended himself saying that he has the original transfer which has it. On re-examination he insisted that his title documents are for Mombasa/Block X/254A, and not Mombasa/Block/254, and that on the ground the properties described as 254A and 254 are on the same position. That his title is leasehold while the Defendant's title is freehold, which he did not dispute. On the stamp issue missing on the transfer, he stated that he was not party to the Transfer in 1971 and that the Transfer was certified by the Land Registry.
  6. The defendant testified as DW1, and relied on his statement dated 20<sup>th</sup> January 2021 and list of documents dated 21<sup>st</sup> January 2022, and further list of documents dated 30<sup>th</sup> January 2024. He clarified that his title is for Mombasa/Block X/254, and not Mombasa/Block X /254A. Further that the aforementioned gazette notice by plaintiffs was for parcel 254A and not parcel 254. That when he discovered about the gazette notice, he submitted his title documents through his estate agent at the Land Registry which caused the cancellation of the gazette notice. He told the court that he had bought the suit property from Alykhan Satchu and Jamil Satchu, and that the plaintiffs were never involved. That he was issued with a title for parcel 254 which indicates an encumbrance of a lease of 99 years from 1<sup>st</sup> January 1951, and the names of the plaintiffs do not appear on the title or lease. He admitted that when he bought the suit property, the plaintiffs were on it, but after the gazette notice event he was of the opinion that the plaintiffs were only pretending to be tenants, and therefore asked



them to vacate. He also stated that there is no land known as parcel 254A as it was cancelled, after he produced his title at the Land Registry. On cross-examination, he stated that he bought the suit property in 1983 from the Satchu family, while the plaintiffs were still on the land with a big residential house. He stated that Shimoni Enterprises is his agent and that in their letter dated 5th May 1998, the plaintiffs were informed that he had freehold title of parcel 254, and that the plaintiffs are the tenants and not owners. The letter also further indicated that the plaintiffs had failed to pay ground rent and their lease could be cancelled. He also stated that he assumed that the plaintiffs were tenants when he bought the property, and admitted that they have been paying rent to him. He added that he reported the fraudulent claim by the plaintiffs to the police. He also admitted that the 99-year lease against the suit property has not lapsed. That the plaintiffs had failed to pay the rates and the arrears became huge and he was of the opinion that they failed to pay rates as they wanted to grab land. He informed the court that the plaintiffs had charged the suit property through fraud in their names and had the title number changed to parcel 254A. That he bought the suit property as a freehold and knew there was a house on the property belonging to Satchu. That they had agreed Satchu will continue using the house until the 99 years lapses, after which it will become the property of DW1. He testified that he has no claim over parcel 254A and that this suit is over parcel 254. He differentiated the title documents in parcel 254A and parcel 254 whereby the lessor in the previous parcel is Kassim Ramji, while in the latter the lessor is Mohamed Satchurs and Abdulararul Satchur.

7. The learned counsel for the plaintiffs and defendant filed their submissions dated 6<sup>th</sup> January 2025 and 10<sup>th</sup> July 2025 respectively, which the court has considered.
8. The issues for the court's determinations are as follows:
  - a. Whether Mombasa/Block X/254A and Mombasa/Block X/254 is the same property.
  - b. Whether or not there is a lease agreement between the Plaintiffs and Defendant.
  - c. If the answer to (b) is in the positive, whether the Defendant followed due process before issuing an eviction notice.
  - d. What prayers the plaintiffs are entitled to.
  - e. Who bears the cost?
9. After careful consideration of the pleadings, oral and documentary evidence tendered by PW1 and DW1, submissions by the learned counsel, superior courts decisions cited thereon, the court has come to the following determinations:
  - a. It is prudent and wise to first comprehend the genuine details of the suit property because it came out during testimony that the defendant has no problem with the plaintiffs claim. The plaintiff's prayers are based on parcel No. Mombasa/Block X/254A, while the defendant is interested in Mombasa/Block X/254. PW1, the 1<sup>st</sup> plaintiff, did not dispute the defendant's ownership of parcel 254, while DW1, the defendant, was not interested in parcel 254A, but wants the plaintiffs, who occupy his premises, to vacate. From here, it then becomes abundantly clear that the two titles belong to the same parcel of land. Indeed, the indenture of lease produced as SRM1 in a supplementary affidavit sworn by the 1<sup>st</sup> Plaintiff on 25<sup>th</sup> November 2019 it indicates that the parcel where the lease is concerned is parcel 254. From the testimonies of both PW1 and DW1, the land reference No. 254 and 254A refers to the same plot on the ground, which is subject matter of this suit.



- b. In view of the above finding, then the big question that arises is why are there two different registers for the same parcel of land? Upon considering the totality of the evidence before the court, the answer is simple. The white card register for parcel 254A shows that there is a cancellation on the lessor section of the names Mohamedali Cassam Satchu and Abdulrasul Cassam Satchu, and insertion of the name Kassam Ramji, reportedly done by the plaintiffs' deceased father and the interested parties which clearly show they had obtained the leasehold through fraud, and had letter 'A' added after the parcel number on their white card register without any countersigning by the Land Registrar. The court is therefore convinced that the parcel 254A was created in fraudulent circumstances and it is unfortunate that a charge has been registered against the title.
- c. The indenture of lease dated 11<sup>th</sup> January 1951, bears the name of Mohamedali Cassam Satchu and Abdulrasul Satchu as the lessors of parcel 254, a subdivision from No. 183/1. It clearly states the lessors had by indenture of lease dated 1<sup>st</sup> December 1951 executed a lease with the original Longino Dimech, the owner of the original parcel No. 183/1, which was itself a subdivision from No. 178/2. Though none of the parties herein has produced a copy of the original lease agreement as proof of the lease, it has been clearly shown how the freehold title passed through history down to the current owner, the defendant. According to the white card register produced by the plaintiffs, the leasehold title, which must be a sublease, was passed by one Mohanlal Pandya to the deceased and the interested parties, and Mohamedali Cassam Satchu and Abdulrasul Satchu remain the principal lessees. The defendant's title, DEXH5, indicates the only encumbrance as Mohamedali Cassam Satchu and Abdulrasul Satchu, and in his testimony DW1 testified that he was informed that the residential house on the suit property belonged to the Satchu family. That though the defendant did not indicate whether he took any effort to establish if it was true the house on the suit property he bought belonged to the said Satchu family, who had leased it to the plaintiffs, he is estopped from denying that the plaintiffs are his tenants, and not lessees. That as the court has established that the white card register for parcel 254A was created fraudulently, and there is no lease agreement between the plaintiffs and the defendant, all the entries therein are a nullity. In the case of *MacFoy versus United Africa Limited (1961) ALL ER 1169 at 1172* the court stated as follows with regard to something that was a nullity:
- “If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void and void without more ado though it is sometimes convenient to have the court to declare it to be so. Any every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
- Having found that the plaintiffs are tenants on the suit premises, and that they admitted they were obligated to pay the rates, but were in arrears, then it was in order for the defendant, as the undoubted owner of the suit property, to have issued notices to the defendant as he did through his estate agent.
- d. Flowing from the decision in the *Macfoy* case [supra], and pursuant to the powers provided under section 13 of the Environment and Land Court, the court finds this an opportune time for the white card register over parcel 254A, that the plaintiffs claim to be the proprietors, to be revoked. The court having found it necessary to revoke the white card register for parcel 254A, the inevitable result is that the plaintiffs' suit collapses.



- e. That as the plaintiffs have failed in their suit, the defendant is entitled to costs, in terms of Section 27 of the Civil Procedure Act Chapter 21 of Laws of Kenya, that provides that costs follow the event unless where there is a good reason to order otherwise.
10. From the foregoing determinations, I find the plaintiffs have failed to establish their claim against the defendant to the standard required of balance of probabilities, and the court orders as follows:
- a. The plaintiffs' suit is dismissed with costs.
  - b. The Land Registrar is hereby directed to cancel the white card register for Mombasa/Block X/254A forthwith.
  - c. The Deputy Registrar is directed to ensure a copy of this judgment is served upon the Mombasa County Land Registrar for further necessary action in terms of order (b) above.

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 9TH DAY OF JULY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Plaintiffs : M/s Panda for Gikandi

Defendant : Mr Wameyo for Defendant

Mr Kimani for Elijah for 4<sup>th</sup> Interested Party

Shitemi-Court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

