



Mac Dee Fast Food Limited & 2 others v Inspector General of Police & 8 others (Environment and Land Case 174 of 2019) [2025] KEELC 6117 (KLR) (15 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6117 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 174 OF 2019
BM EBOSO, J
SEPTEMBER 15, 2025**

BETWEEN

**MAC DEE FAST FOOD LIMITED 1ST PLAINTIFF
ANTHONY NDUNG’U IRUNGU 2ND PLAINTIFF
LUCY NJERI THAIRU 3RD PLAINTIFF**

AND

**THE INSPECTOR GENERAL OF POLICE 1ST DEFENDANT
THE POLICE SERVICE COMMISSION 2ND DEFENDANT
THE ATORNEY GENERAL 3RD DEFENDANT
THE CHIEF LAND REGISTRAR 4TH DEFENDANT
THE NATIONAL LAND COMMISSION 5TH DEFENDANT
THE OCPD MAKONGENI THIKA 6TH DEFENDANT
THE OCS MAKONGENI THIKA 7TH DEFENDANT
THE DIRECTOR OF LAND ADMINISTRATION IN THE MINISTRY OF
LAND AND PHYSICAL PLANNING 8TH DEFENDANT
THE DIRECTOR GENERAL OF PHYSICAL AND LAND USE PLANNING IN
THE MINISTRY OF LAND AND PHYSICAL PLANNING 9TH DEFENDANT**

JUDGMENT

Introduction

1. The dispute in this suit revolves around two key questions:



- (i) Whether registration of the 1st plaintiff as the proprietor of land parcel number Thika Municipality Block 2/832 was improper; and
 - (ii) Whether the said land is public land reserved for Thika Makongeni Police Station. These are some of the key questions that the court is expected to determine in this Judgment.
2. It is important to observe at the outset that, the National Land Commission, which is the body constitutionally mandated under Article 67 (2) (a) of *the Constitution* to manage public land on behalf of the National and County Governments, elected not to step forward to tender pleadings and evidence in the dispute. Secondly, no witness from the National Police Service was presented to testify on whether the suit land is public land reserved for or occupied by Thika Makongeni Police Station. Thirdly, in exercise of its jurisdiction under Order 1 Rule 10 (2) of the Civil Procedure Rules, the court on its own motion, ordered joinder of:
- (i) The Director of Land Administration in the Department of Land of the National Government; and
 - (ii) The Director General of Physical and Land Use Planning in the Department of Physical and Land Use Planning of the National Government so that the duo could assist the court to reach a just, effectual and complete adjudication and settlement of the key issues in the suit.

The duo did not file any subsequent pleadings to specifically respond to the plaintiff's claim. Although they filed two bundles of trial documents, they did not attend court to produce the said documents as evidence or to tender any oral evidence in the dispute.

3. It is against the above background that the court is now invited to determine, among other issues, the above two key questions. Before I do that, I will briefly outline the parties' respective cases, evidence and submissions.

Plaintiff's Case

4. The plaintiff initiated the suit through a plaint dated 21/11/2019. The plaint was amended on 4/9/2023. In summary, the plaintiff's case was that they were the legally registered proprietors of land parcel number Thika Municipality Block 2/832, measuring 0.3370 hectares (hereinafter referred to as "the suit land"). They legally and procedurally purchased the suit land and they had been in quiet possession of the land since the time of purchase. While in the process of developing the land, the 6th defendant illegally removed the boundary beacons of the land and forcefully prevented them from undertaking development activities on the land, claiming that the land belonged to the Kenya Police service, a claim which they contested.
5. The plaintiffs averred that despite the National Land Commission writing to the 6th defendant a letter dated 11/6/2018 directing him to restore the beacons, the 6th defendant failed to abide and persisted in uprooting the boundary beacons.
6. The plaintiffs sought the following reliefs against the defendants:
- (i) a declaration that the suit land belongs to the plaintiffs;
 - (ii) a permanent injunction restraining the defendants and their agents/servants against trespassing on, damaging, wasting, erecting structures on and/or interfering with the suit land;
 - (iii) an order compelling the 9th defendant to regularize the plaintiffs' documents as provided by the law;



- (iv) as an alternative relief to (i) & (ii) above, an order decreeing compensation by the Government at the current market value of the suit land; and
- (v) costs of the suit.

Plaintiffs' Evidence

7. The plaintiffs led evidence by Anthony Ndung'u Irungu and Lucy Njeri Thairu who testified as PW1 and PW2 respectively. PW1 adopted his written witness statement dated 21/11/2019. He produced the 7 documents contained in the plaintiffs' bundle dated 27/7/2020. In addition, on 17/2/2025, the plaintiffs procured and caused to be recorded, a consent admitting their 25 additional documents, contained in their supplementary bundle of documents dated 4/9/2023.
8. In summary, PW1's testimony was that he was a director of Mac Dee Fast Food Limited. They bought the suit land from one Vikta Maina Ngunjiri. The suit land was subsequently transferred to the company. They wished to develop the suit land but the Officer Commanding Thika Makongeni Police Station had been uprooting the boundary beacons and had been interfering with their possession of the suit land.
9. During cross-examination, he stated that the 1st plaintiff was the registered proprietor of the suit land. He added that they bought the suit land from Victor Maina Ngunjiri at Kshs.60,000,000/=. They sued the defendants because the Police blocked them when they went to develop the suit land, adding that the OCS informed them that the Police had instructions from a former Governor to stop them from developing the land and that they (the plaintiffs) needed to surrender part of the land.
10. PW1 stated that Makongeni Police Station abutted the suit land, adding that the Police Station and the suit land were separated by a feeder road. He stated that the OCS who had prevented them from developing the suit land had since been transferred.
11. PW2 (Lucy Njeri Thairu) stated that she was a director of the 1st plaintiff. She adopted her witness statement dated 27/7/2020. She testified that they bought the suit land from one Vikta Maina Ngunjiri and the land was transferred to them. She testified that they wanted to develop the suit land, adding that the OCS of Makongeni Police Station was interfering with the suit land by uprooting the boundary beacons. It was her evidence that the OCS had ignored a letter from the National Land Commission requiring him to cease interfering with the beacons.

Case of the 1st, 2nd, 3rd, 4th, 6th and 7th defendants

12. The Attorney General filed a defence dated 23/1/2020 on behalf of the 1st, 2nd, 3rd, 4th, 6th and 7th defendants. The defence was not amended after the 8th and 9th defendants were joined to the suit. The six defendants denied the averments made in paragraph 11 of the plaint to the effect that the plaintiffs were the registered proprietors of the suit land. They further denied the averment that the OCS of Makongeni Police Station had uprooted the boundary beacons and had prevented the plaintiffs from developing the suit land. In answer to the allegation that the OCS had ignored a letter written to him by the 5th defendant, they pleaded that they were strangers to the said allegation.
13. Trial proceeded on the basis of the defence dated 23/1/2020. Despite the subsequent joinder of the 8th and 9th defendants and the subsequent amendments to the plaint, the defence dated 23/1/2020 was not amended.
14. During trial, the six defendants led evidence by Jomo Thome and Peter Ndungu Macharia who testified as DW1 and DW2, respectively. DW1 adopted the contents of his written witness statement dated



3/9/2020. His evidence was that in 2004, the then Kamenu Ward Councillor, who was also the Deputy Mayor of Thika Municipality, facilitated the establishment of Makongeni Police Post, which was to serve Kamenu, Makongeni and Kiganda Wards. Later, the Area Community formed a lobby group called Thika Residents Anti-Corruption Lobby Group.

15. DW1 stated that through the lobby group, they became aware of grabbing of Police land after they came across a letter allocating stalls at Makongeni Bus Park, Garissa Road, by the Municipal Council of Thika. They made complaints through letters to various Government Offices between 2004 and 2005. The last letter was written on 26/10/2005 to the Permanent Secretary, Ministry of Lands and Housing, detailing how the Police land had been grabbed. At that point, members of the lobby group became threatened and went under. DW1 added that later in 2011, the then Area Councillor, S.N. Kanta, revived the lobbying for the Police land.
16. DW1 stated that in 2018, the 1st plaintiff hired people to fix beacons. Members of the community policing went to the suit land the next morning and uprooted the beacons. Subsequently, they filed a case at Thika Law Courts but they later learnt that the file had gone missing, only for them to be summoned in relation to the present case.
17. In his evidence during cross-examination, DW1 stated that the suit land was Block 2/4953/853, adding that it was designated for a police station. He further stated that the police land measured 10¾ acres. He added that at the time of testifying, the suit land was being used as a yard for construction materials. It was his evidence that he was not aware the suit land had a title deed, adding that when they tried to obtain an official search, they were told the land belonged to the Police Department.
18. DW2 [Peter Ndung’u Macharia] adopted his witness statement dated 3/9/2020. He testified that he was a businessman and the Chairman of Kamenu Sublocation Community Policing, having assumed chairmanship in 2015. He stated that they had been lobbying for repossession of land that had been grabbed from Makongeni Police Station, which was originally 10¾ acres. He added that when in 2018 the 1st defendant erected beacons at a parcel of land adjacent to the Makongeni Police Station, the Community Policing Committee uprooted the beacons the following morning. They thereafter wrote to the Cabinet Secretary for Internal Security and copied the letter to various Government Offices. They held a peaceful demonstration and subsequently filed a case at Thika Law Courts. Later, they were told the court file went missing.
19. In cross-examination, he stated that the suit land was Block/832, adding that he did not know if the suit land had a title deed. He further testified that he did not know the registered proprietor of the suit land, adding that the suit land was unoccupied.

Case of the 5th Defendant

20. The 5th defendant neither entered appearance nor filed a defence. On 4/11/2024, Ms. Kemunto attended court on behalf of the 5th defendant. The court record shows that she also appeared on 17/2/2025 and made the following verbatim presentations:

“I recently joined the National Land Commission and I was not aware that the case had proceeded without our involvement. I leave it to the court”.

21. The record further shows that she attended court on 19/3/2025 and stated as follows:

“I do not intend to file any submissions as we did not participate in the hearing”



Case of the 8th & 9th Defendants

22. The 8th and 9th defendants were joined to the case after the plaintiffs, the 1st – 4th defendants, 6th defendant and 7th defendant had testified. The two defendants elected not to file pleadings. They did not file witness statements. The 8th defendant only filed a bundle of documents dated 9/3/2023 containing 21 documents that constituted the correspondence file for the suit land. The 21 documents were, however, not produced by the 8th defendant as evidence. Most of the documents are, however, contained in the plaintiff's subsequent supplementary list and bundle of 25 documents dated 4/9/2025. The plaintiffs' supplementary documents were admitted as evidence through a consent recorded on 17/2/2020. The documents advance the plaintiffs' case that the title held by the 1st plaintiff was lawfully obtained.
23. The 9th defendant filed a bundle dated 9/3/2023 containing one document – part development plan, Ref. 4/78/1A. The said development plan was never produced as evidence by the 9th defendant.
24. From the record, the 8th and 9th defendants neither filed defences nor led evidence in the matter.

Plaintiffs' Submissions.

25. The plaintiffs filed written submissions dated 1/3/2022 and 18/3/2025. They identified the following as the four issues that fell for determination in the case: (i) Whether the plaintiffs had met the criteria for grant of an order of permanent injunction; (ii) Whether the plaintiffs are bonafide proprietors of the suit land; (iii) Whether the defendants and their agents had trespassed and or illegally encroached into the plaintiff's land, parcel number Thika Municipality Block 3/832; and (iv) Who should bear costs of the suit.
26. Counsel for the plaintiffs submitted that an order of permanent injunction ensues when the court is satisfied that the right of a party has been infringed, violated or threatened. Counsel added that the plaintiffs tendered evidence showing that they were the registered proprietors of the suit land and that, without any colour of right, the 6th and 7th defendants illegally uprooted boundary beacons relating to the suit land and were using force and threats to prevent the plaintiffs from accessing the suit land. Counsel added that the 5th defendant's letter requiring the 6th defendant to reinstate the beacons and not to interfere with the plaintiffs' property had not been heeded. Counsel urged the court to grant a permanent injunction.
27. On whether the plaintiffs were bonafide proprietors of the suit land, the plaintiffs cited the Supreme Court of Kenya decision in Dina Management Limited vs County Government of Mombasa and 5 others (Petition 8 (E10) of 2021 (2023) KESC 30 (KLR) and made reference to the exhibits tendered by the plaintiffs. Counsel submitted that the plaintiffs purchased the suit land from Vikta Maina Ngunjiri, who was a registered proprietor, and they were subsequently registered as proprietors of the land and issued with a title. Citing Section 26 of the *Land Registration Act*, counsel argued that the court was required to accept the plaintiffs' title as conclusive evidence of proprietorship.
28. On whether the defendants and their agents had trespassed on the suit land, counsel submitted that the 6th defendant illegally uprooted the beacons of the suit land and ignored the letter dated 11/5/2018 from the 5th defendant. Counsel argued that the plaintiffs had proved trespass. On costs, counsel submitted that costs follow the event and urged the court to allow the plaintiffs' suit and award them costs of the suit.



Submissions by the 1st – 4th, 6th and 7th defendants

29. The 1st, 2nd, 3rd, 4th, 6th and 7th defendants filed written submissions dated 15/3/2022 through Ms. Rose Nyawira, a Senior State Counsel in the Office of the Attorney General. The Learned State Counsel identified the question as to whether the plaintiffs were bonafide proprietors of the suit land as the single issue that fell for determination in the suit.
30. Citing Section 26 of the *Land Registration Act* and the decision of the Environment and Land Court in *Alice Chemutai Too vs Nickson Kipkurui Korir and 2 others* (2015) eKLR, counsel submitted that although the 1st plaintiff was the registered proprietor of the suit land, the said registration was improper because the suit land forms part of land that was reserved for a police station. Counsel urged the court to dismiss the plaintiffs' suit.

Analysis and Determination

31. The court has considered the pleadings, evidence and submissions tendered in this case. Based on the pleadings, evidence and submissions, the following are the issues that fall for determination in the case:
 - (i) Whether registration of the 1st plaintiff as proprietor of land parcel number Thika Municipality Block 2/832 was improper;
 - (ii) Whether the said land is public land reserved for Thika Makongeni Police Station;
 - (iii) Whether the 6th defendant uprooted beacons relating to the suit land;
 - (iv) Whether the plaintiffs are entitled to the reliefs sought in the plaint; and
 - (v) Who should bear costs of the suit?

Issue number 1 and issue number 2 are intertwined. They will be analyzed and disposed contemporaneously.

32. Before I focus on the above four issues, it is important to observe at the outset that, in the course of the trial, it emerged that the plaintiffs did not appreciate that as an incorporated limited liability company, the 1st plaintiff is a distinct and separate legal entity with the right to acquire and own land. What emerged from the documentary evidence tendered during trial is that, the suit land was acquired by the 1st plaintiff and registered in its name in October 2015. The 1st plaintiff subsequently charged the suit land to NIC Bank Limited to secure a sum of Kshs.60,000,000/= in the same year.
33. As at the time of initiating this suit, the 1st plaintiff was the sole registered proprietor of the suit land. No evidence was tendered by the three plaintiffs to suggest that the 2nd and 3rd plaintiffs were co-registered proprietors of the suit land as averred in paragraphs 13 & 14 of the amended plaint. For the above reasons, the 2nd and 3rd plaintiffs had no basis for designating themselves as co-plaintiffs in the suit. Their individual claims are untenable. However, because the defence did not identify this as an issue, the court will say no more.
34. Secondly, while aware that the plaintiffs were waving a title relating to the suit land, held in the name of the 1st plaintiff, none of the defendants brought a counterclaim to impeach the said title through a nullification order. Secondly, none of them bothered to join the previous registered proprietor as a party to the case. I now turn to the issues that fall for determination.
35. Sections 107 and 109 of the *Evidence Act* place the burden of proof on the party alleging and the party seeking judgment in a particular way. The said sections provide as follows:



- 107.
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
109. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
36. Was the 1st plaintiff's registration as proprietor of the suit land improper? Is the suit land public land reserved for Thika Makongeni Police Station? From the evidence on record, the Commissioner of Lands allocated the suit land to Zipporah Wambui through a letter of allotment dated 21/7/1995. The allotment was based on Part-Development Plan Ref. No. TKA/4/95/20, signed by the Director of Physical Planning on 19/6/1995 and approved by the Commissioner of Lands on 23/6/1995. The allotment was subsequently accepted and the requisite sums were paid.
37. Vide a letter dated 27/3/1998, Zipporah Wambui requested the Commissioner of Lands to effect an informal transfer of the land to Vikta Maina Ngunjiri. The Commissioner of Lands acceded to the request. A lease was subsequently prepared in the name of Vikta Maina Ngunjiri and registered on 29/6/1998. Registration of the lease culminated in the opening of a parcel register on 29/6/1998 and issuance of a certificate of lease on the same day to Vikta Maina Ngunjiri.
38. On 23/10/2015, the suit land was transferred to the 1st plaintiff by Vikta Maina Ngunjiri at a consideration of Kshs.45,000,000/=. On the same day, the land was charged to NIC Bank to secure a sum of Kshs.60,000,000/=
39. It is clear from the uncontroverted evidence on record that the 1st plaintiff acquired a registered title through purchase. The registration and title of the previous registered proprietor have not been challenged or impeached ,as by law provided. The title held by the 1st plaintiff was not challenged or impeached through a counterclaim. That is not all.
40. The Officers of the National Police Service who were sued in this case elected not to tender evidence demonstrating that the suit land is part of the land that was reserved for Makongeni Police Station. Similarly, no evidence was led by any other officer of the National Police Service. The Director of Land Administration in the Department of Land of the National Government, too, elected to neither tender pleadings nor lead evidence. The National Land Commission, similarly, neither tendered pleadings nor presented evidence.
41. The only evidence presented by the defence was from two members of the local community policing lobby. DW1 did not know the registration number of the suit land – he described it as Block 2/4953/853. DW2 did not know the registered proprietor of the suit land. The two witnesses did not tender any documentary evidence to challenge the registration of the 1st plaintiff as proprietor of the suit land or to demonstrate that the suit land had been reserved for use as a police station.
42. Under Sections 24 and 26 of the *Land Registration Act*, courts of law are obliged to accept, as prima facie evidence of legitimate proprietorship, a certificate of title. For clarity, the said section provides as follows:

“ 24.



- (a) The registration of a person as the proprietor of land shall vest in that person, the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) The registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereof and subject to all implied or expressed agreements, liabilities or incidents of the lease.

26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the 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 fraud or 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.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original”.

43. The tenor and import of Section 26 of the *Land Registration Act* is that, it is the duty of the party challenging a registered title to present evidence establishing the impeaching elements contemplated under the said section. The defendants neither presented impeachment pleadings nor tendered proper impeaching evidence against the title held by the 1st plaintiff.
44. For the above reasons, it is the finding of the court that the defence failed to present counter pleadings and relevant evidence demonstrating that the registration of the 1st plaintiff as proprietor of land parcel number Thika Municipality Block 2/832 was improper. It is the further finding of the court that the defence failed to present counter-pleadings and proper evidence demonstrating that the said land is public land reserved for Thika Makongeni Police Station.
45. Did the 6th defendant uproot beacons relating to the suit land? PW1 and PW2 testified that they were directors of the 1st plaintiff. They both orally testified that the 6th defendant uprooted beacons relating to the suit land and failed to heed the 5th defendant's formal request to reinstate the beacons and desist from uprooting them. The 6th defendant elected not to tender evidence relating to the allegation. Consequently, the court is satisfied that the 1st plaintiff proved the allegation against the 6th defendant.
46. Are the plaintiffs entitled to the reliefs sought in the plaint? The court observed in one of the opening paragraphs of the analysis and determination part of this judgment that the 2nd and 3rd plaintiffs did not have causes of action against the defendants. The only party who had a cause of action is the 1st plaintiff.



47. In the absence of appropriate counter-pleadings and appropriate impeaching evidence against the title held by the 1st plaintiff, Article 40 of *the Constitution* and Section 24 of the *Land Registration Act* enjoin the court to protect the rights and recognition conferred through land registration. Consequently, it is the finding of the court that the 1st plaintiff is entitled to prayers (i) and (ii) of the reliefs sought in their statement of claim.
48. Nothing was said about the plea for regularization of documents. The relief is not available in the circumstances. The primary relief having been granted, the alternative relief is unavailable.
49. Taking into account the fact that the Police Officer who uprooted the beacons has since been transferred and was not sued in his personal capacity, I do not think it would be proper to burden the Kenyan taxpayer with the costs of this suit. Consequently, parties will bear their respective costs of the suit.
50. In the end, the suit herein is disposed as follows:
- (a) The claim by the 2nd and 3rd plaintiffs is rejected and dismissed for lack of cause of action.
 - (b) Judgment is entered in favour of the 1st plaintiff against the 1st, 6th and 7th defendants in the following terms:
 - (i) A declaration is hereby made that land parcel number Thika Municipality Block 2/832 measuring 0.3373 hectares or thereabouts, located in Thika Makongeni Area, belongs to the 1st plaintiff.
 - (ii) A permanent injunction is hereby issued restraining the 1st, 6th and 7th defendants and their juniors against trespassing on, damaging, wasting, erecting structures on or interfering with land parcel number Thika Municipality Block 2/832 measuring 0.3373 hectares, located in Thika Makongeni Area.
 - (c) Parties shall bear their respective costs of the suit.

DATED SIGNED AND DELIVERED THIS 15TH DAY OF SEPTEMBER 2025.

B M EBOSO

ELC JUDGE

In the presence of

Court Assistant – Tupet

Plaintiff – Absent

Defendant - Absent

