



**Miliki Limited v Ali & 3 others (Environment & Land Case E022 of 2020)
[2024] KEELC 13604 (KLR) (4 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13604 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E022 OF 2020
EK MAKORI, J
DECEMBER 4, 2024**

BETWEEN

MILIKI LIMITED PLAINTIFF

AND

MOHAMED YUSUF ALI 1ST DEFENDANT

ABDUL SHAKURE 2ND DEFENDANT

HAYA BILALI 3RD DEFENDANT

KHALIFA MOHAJI 4TH DEFENDANT

JUDGMENT

1. Before this Court is the Plaintiff's Suit instituted vide the Plaint dated 25th November 2020 seeking judgment against the Defendants for:
 - a. A permanent injunction restraining the Defendants from further occupying, constructing, building, drilling boreholes or water wells, sub-dividing, putting up a fence, selling, advertising for sale, letting, subletting, or in any other manner interfering with all those parcels of land known as Lamu/block 2/347, 2/348 and 2/350 situated at Langoni area on Lamu island.
 - b. An order of eviction and vacant possession against the defendants from all those parcels of land known as Lamu Blocks 2/347, 2/348, and 2/350 situated in the Langoni area on Lamu island.
 - c. General and exemplary damages for trespass;
 - d. The officer commanding station Lamu Police to ensure compliance with this Court's orders;
 - e. Costs of this suit together with interest thereon at court rates; and
 - f. Any other or further relief this Court might deem fit and just to grant.



2. The matter proceeded for hearing, and on 15th July 2024, this Court directed that the parties file their submissions. The Defendants were served but did not appear to defend.
3. The Plaintiff testified that he is the legally registered proprietor of the leasehold interest in all those parcels of land known as Lamu/Blocks 2/347, 2/348, and 2/350 situated at Langoni Area on Lamu Island. He leased the suit properties in 2017 to construct a world-class tourist hotel. The Plaintiff has since peacefully used and occupied the suit properties, together with all rights and privileges appurtenant thereto. Additionally, the Plaintiff has been defraying all the land rates concerning the suit properties. Sometime in 2019, the Defendants, illegally and without any color of right, gained access to the suit properties and put up illegal temporary structures thereon, tilled the land, and dug boreholes and water wells, thereby completely defacing the suit properties. The Plaintiff's legal officer visited the suit property and, to their dismay, found the Defendants in the process of erecting a permanent perimeter wall and permanent structures on the suit properties.
4. The Plaintiff avers that the Defendants have never owned the suit properties and are mere strangers who lack title to legal, equitable, and much less possessory rights over them. The Defendants are using their influence as natives and their political connections with area officials to invade the suit properties with the aim of extinguishing the Plaintiff's proprietary rights.
5. The Plaintiffs assert that the Defendant's activities amounted to trespass and were carried out without any authorization or permission from the Plaintiff. Further, Plaintiff has never transferred any of its leasehold interests over the suit property to any person, especially not the Defendants herein.
6. Owing to the illegal structures erected on the suit property and the indiscriminate drilling of water wells and boreholes, the Plaintiff's suit properties have been defaced and devalued to the detriment of the Plaintiff, who has incurred loss and damages.
7. The issues this Court frames for determination are whether:
 - a. The Plaintiff is the bona fide owner of the suit land;
 - b. The Defendants have trespassed onto the suit properties;
 - c. The Plaintiff is entitled to reliefs sought; and
 - d. Who should bear the costs of this suit?
8. The Plaintiff produced a certificate of title and necessary documents to demonstrate the purchase of the suit properties. The plaintiff further produced the official searches that prove that the plaintiff is indeed the registered owner of the suit properties.
9. A certificate of Title is conclusive proof of ownership of land. The rights of a registered owner of the property are set out under Sections 24, 25, and 26 of the [Land Registration Act, 2012](#), which states that:
 - “24. Subject to this Act:
 - (a) The registration of a person as proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto
 26.
 - (i) 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.”

10. I agree with the submissions by the Plaintiff, being the registered owner who bears the title to the suit land, has conclusive ownership of the land unless the same is challenged on the grounds of fraud and illegalities or corrupt scheme. See - Ali Wanje Ziro v Abdulbasit Abeid Said & another [2022] eKLR where the Court observed that:

“The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except

– On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. This court in considering this matter referred to the case of Elijah Makeri Nyangw’ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR where the court held that “-----

-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

11. I also agree with the Plaintiff that the established principle of law is that a fraud claim must be specifically pleaded and strictly proved. The Defendants have claimed that the suit properties were acquired fraudulently; however, they have completely failed to tender any shred of evidence to prove that the suit property is public land or that it was illegally acquired by the Plaintiff.

12. The Court of Appeal in Mombasa Civil Appeal No. 312 of 2012 Emfil Limited v Registrar of Titles Mombasa & 2 others [2014] eKLR held:

“Allegations of fraud are allegations of a serious in nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities”.

13. Regarding trespass, the Defendants allege that the suit properties are public land on which they have lived for many years. As submitted by the Plaintiff, Article 62 (d) and (m) of *the Constitution* of Kenya, 2010 defines what public land is:

“(1) Public land is-

... Land in respect of which no individual or community ownership
(d) can be established by any legal process;

... any land not classified as private or community land under this
(m) Constitution...”



14. As opined by the Plaintiff, In Black's Law Dictionary 8th Edition, a continuing trespass is defined as:
- “A trespass like a permanent invasion on another's rights, such as a sign that overhangs another's property”.
15. In Charles Ogejo Ochieng v Geoffrey Okumu, [1995] eKLR, the Court held that trespass is an injury to a possessory right. Therefore, the proper Plaintiff in an action for trespass to land is the person who has title to it or is deemed to have been in possession at the time of trespass. The Plaintiff has further provided photographic evidence showing the defendants' illegal occupation and use of the suit property. Thus, the claim for trespass stands proved.
16. Whether the Plaintiff is entitled to the reliefs sought, from the evidence adduced, the Defendants invaded the suit property, have been on the ground, been invited to move out, but have refused or neglected to do so with impunity. Therefore, the plaintiff will be entitled to General Damages as enunciated by Obaga J. in Philip Ayaya Aluchio v Crispus Ngayo [2014]eKLR:
- “..... measures of damages for trespass is the difference in value of the plaintiff's property immediately after trespass or costs of restoration whichever is first”
17. The claim herein will succeed against the Defendants jointly and severally as follows:
- a. A permanent injunction is hereby issued against the Defendants from further occupying, constructing, building, drilling boreholes or water wells, subdividing, putting up a fence, selling, advertising for sale, letting, sub-letting, or in any manner interfering with the suit properties in protection of the plaintiff's right of owning property under Article 40 of the Constitution.
 - b. An order be and is hereby issued directing the eviction, and or vacant possession directed at the Defendants herein, to move out of parcel of land known as LAMU BLOCK 2/347, 2/348, and 2/350 situated at Langoni area on the Lamu island (judgment of this Court be served on the Defendants to vacate within 90 days hereof, failure forceful eviction to take effect.
 - c. Kshs. 500,000/- is hereby awarded to the Plaintiffs for trespass.
 - d. If the Defendants don't comply with (b) above, the officer commanding Lamu Police Station will enforce this Court's orders.
 - e. The costs of this suit and interest to be borne by the Defendants.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 4TH DECEMBER DAY OF DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Timbe for the Plaintiff

Happy: Court Assistant

In the Absence of:

The Defendants

