



**Grey Peak Company Limited v Kasena (Environment & Land Case E003 of 2024) [2025] KEELC 3897 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3897 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E003 OF 2024**

**EK MAKORI, J  
MAY 15, 2025**

**BETWEEN**

**GREY PEAK COMPANY LIMITED ..... PLAINTIFF**

**AND**

**KAZUNGU KASENA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit on January 17, 2024, through a Complaint dated January 16, 2024, against the Defendant. The Plaintiff seeks the following reliefs:
  - a. A declaration that the Plaintiff is the lawful owner of those parcels of land identified as Title Number CR 21907, Portion No. 5603, Original Number 5498/2/Malindi; Title Number CR 21908, Portion No. 5604, Original No. 5498/3 Malindi; Title Number CR 21909, Portion No. 5605, Original No. 5498/4 Malindi; and Title Number CR 21910, Portion No. 5606, Original No. 5498/5, and is entitled to peaceful and quiet possession thereof.
  - b. An order of permanent injunction prohibiting the Defendant, by himself, his servants, agents, or any individual from constructing upon, alienating, encumbering, selling, disposing of, or interfering with the Plaintiff/Applicant's entry, access, use, development, and/or peaceful and quiet enjoyment of all rights and privileges associated with all those parcels of land identified as Title Number CR 21907, Portion No. 5603, Original Number 5498/2/Malindi; Title Number CR 21908, Portion No. 5604, Original No. 5498/3 Malindi; Title Number CR 21909, Portion No. 5605, Original No. 5498/4 Malindi; and Title Number CR 21910, Portion No. 5606, Original No. 5498/5.
  - c. The Plaintiff requests an order of eviction, directing the removal of the Defendant from all those parcels of land identified as Title Number CR 21907, Portion No. 5603, Original Number 5498/2/Malindi; Title Number CR 21908, Portion No. 5604, Original No. 5498/3



Malindi; Title Number CR 21909, Portion No. 5605, Original No. 5498/4 Malindi; and Title Number CR 21910, Portion No. 5606, Original No. 5498/5.

- d. An order for the Officer Commanding Malindi Police Station, the area chief of Ganda location, and any officer seconded by them to maintain peace, enforce, and supervise compliance with the orders of this honorable court.
  - e. Damages for trespass.
  - f. Such other or further reliefs that this honorable court may consider just and appropriate to grant.
  - g. Costs of this suit.
2. The Plaintiff averred that it is, at all material times, the registered owner of all those parcels of land known as Title Number CR 21907, Portion No. 5603, Original Number 5498/2/Malindi; Title Number CR 21908, Portion No. 5604, Original No. 5498/3 Malindi; Title Number CR 21909, Portion No. 5605, Original No. 5498/4 Malindi; and Title Number CR 21910, Portion No. 5606, Original No. 5498/5 (hereinafter referred to as "the suit properties").
  3. The Plaintiff asserts that in 2023, the Defendant unlawfully invaded, forcefully entered, and took possession of the suit properties, remaining therein without authorization. Furthermore, the Defendant has denied the Plaintiff access and continues to engage in significant acts of waste concerning the suit properties through disposition, construction, and trench excavation, constituting a clear case of trespass.
  4. Despite being served with all pertinent court processes, the Defendant did not enter an appearance nor file a defense. Consequently, and in accordance with Order 10 Rule 9 of the Civil Procedure Rules, the case was scheduled for a formal proof hearing on February 10, 2025, during which the Plaintiff's director, D'andrassi Fabrizzio, adopted his witness statement dated January 16, 2024, and produced as Exhibits 1-6, the documents in the list bear the same date.
  5. In submissions dated February 18, 2025, Counsel for the Plaintiff identified two issues for determination:
    - i. whether the Plaintiff is the lawful and registered owner of the suit properties; and
    - ii. Whether the Plaintiff is entitled to the reliefs sought.
  6. Counsel submits that the Plaintiff has duly fulfilled the burden of proof as envisioned under Sections 107 and 109 of the *Evidence Act*, which stipulates that he who alleges must prove. The Plaintiff has provided prima facie evidence of ownership, which remains unchallenged. Counsel relies on Sections 24 and 26 of the *Land Registration Act* to underscore the sanctity of title. Additionally, he cites the case of *Sawe v Kosgei & another (ELC Case 233 of 2015) [2025] KEELC 118 (KLR)*, affirming that the titles exhibited by the Plaintiff have not been contested on the grounds of fraud, misrepresentation, or corrupt scheme, as delineated in the provisions mentioned above.
  7. Counsel further argued that the Defendant's actions as pleaded correspond to the definition of trespass as outlined in Black's Law Dictionary, 10th edition. He urged the court to evict the Defendant from the suit properties with the assistance of the OCS Malindi, the Ganda location area chief, and any officer delegated by the Plaintiff, while also seeking damages for trespass. To further substantiate this request, Counsel referenced the cases of *Nakuru Industries Limited v S S Mehta & Sons (Civil Case 36 of 2013) [2016] KEHC 981 (KLR)* and *John Kiragu Kimani v Rural Electrification Authority [2018] KEELC 810 (KLR)*.



### **Analysis and determination.**

8. This court's primary issue for consideration is whether the Plaintiff has sufficiently established its case against the defendant by the requisite standard. Although the suit was unopposed, the Plaintiff is responsible for formally substantiating its case based on a balance of probabilities, as mandated by law. This stance was articulated by the Court of Appeal in *Kirugi and Another v Kabiya & 3 others* [1987] KLR 347:

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

9. Based on the documentary evidence, it is evident that the properties in question were transferred to the Plaintiff by Waitham Limited, for consideration, as per a transfer dated 18th July 1994. The transfers were duly registered in favor of the Plaintiff on 22nd July 1994.

10. The law unequivocally delineates the status of a titleholder concerning land. Section 24(a) of the [Land Registration Act](#) stipulates the interests conferred through registration. It states:

“Subject to this act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.”

11. Section 26 (1) of the [Land Registration Act](#) states the following:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner 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.”

12. The Plaintiff has demonstrated that it is indeed the registered owner of the properties subject to this suit and, consequently, the rightful owner, having lawfully acquired the same from Witham Limited. Under these circumstances, and in the absence of any opposition to the Plaintiff's titles to the properties in question, I determine that the Plaintiff is entitled to all rights, interests, and privileges associated with the properties.

13. The Plaintiff is entitled to the relief sought in the Plaintiff dated January 16, 2024.

14. Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:



Mr. Pamba for the Plaintiffs

Happy: Court Assistant

