



REPUBLIC OF KENYA



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Parekh & another (Suing as the Personal Representatives of the Estate of Harshadrai Manilal Parekh) v Access Bank (Kenya) Plc & another (Environment & Land Case E324 of 2022) [2025] KEELC 4775 (KLR) (19 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4775 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E324 OF 2022**

**AA OMOLLO, J
JUNE 19, 2025**

BETWEEN

HASMUKRAI MANILAL PAREKH 1ST PLAINTIFF

RAMESH MANILAL PAREKH 2ND PLAINTIFF

**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF
HARSHADRAI MANILAL PAREKH**

AND

ACCESS BANK (KENYA) PLC 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs as executors of the estate of H. M. Parekh brought this case against the Defendants via a plaint dated 29th September, 2022 and amended on 5th November 2024. They plead that the deceased is the registered proprietor of the property L.R No. 1870/1/394 located in the City of Nairobi. They aver that in 1996, the 1st defendant demanded that the deceased release the title to the suit property to them to hold as security for an overdraft facility of Kshs.7,500,000 granted to Global Travel Ltd.
2. It is the plaintiff's case that on 20th February, 1996, the 1st Defendant fraudulently registered a caveat against the suit title. Further that the 1st Defendant filed a case against Global Travel Ltd vide HCCC No. 91 of 2005 for recovery of Kshs.12,591,088.80. That the said case was dismissed on 4th June, 2021 on the basis that the undated guarantee was flawed.
3. The Plaintiffs aver that despite the above finding, the 1st Defendant continues to fraudulently hold the original suit title and maintains the caveat. Due to the 1st Defendant's fraudulent, illegal and unconstitutional actions of holding the original Certificate of Title and continuing the caveat the



deceased, the Estate has been unable to obtain any financing from financial institutions to develop the land and or dispose of the suit property which is valued at Kshs.150,000,000/= .

4. Wherefore the plaintiffs pray for judgment against the Defendant for;
 - a. A declaration that caveat number I.R 36722/2 registered over the property known as L.R No. 1870/1/394 I.R 36722 in favour of Trans-National Bank Limited is null and void, fraudulent and illegal.
 - b. A mandatory injunction compelling the 1st Defendant to remove the caveat registered as entry No. IR. 36722/2 on 20th February, 1996 against L.R No. 1870/1/394 I.R 36722.
 - c. A mandatory injunction compelling the 1st Defendant to release the original Title L.R No. 1870/1/394 IR 36722 to the Plaintiffs to the Plaintiffs failing which to pay to the Plaintiffs the equivalent of the value now at Kshs 150,000,000
 - d. An order of this Honourable Court to issue and direct the Chief Land Registrar to cancel entry 36722/2 in the register for the land comprised and described as Title L.R 1870/1/394 LR 36722/1.
 - e. An order that the 1st Defendant to pay general damage of Kshs.10,000,000 for lodging and continuing the caveat and holding the original Certificate of Title L.R 1870/1/394 I.R 36722/1 wrongfully and without any reasonable cause.
 - f. An order that the 1st Defendant to pay to the Plaintiffs by way of compensation special damages of Kshs 150,000,000 being the current value of the suit property
 - g. Costs.
 - h. Interests on e and f at court rates.
5. The 1st defendant did not enter appearance or file a defence. The 2nd Defendant filed a statement of defence dated 17th June, 2024 denying the claim in toto. It pleaded that the suit property was registered in the name of Harshadrai Maninal Parekh on 9th June, 1982 for a leasehold period of 45 years which has since expired. That in reference to paragraph 5 of the plaint, no registrable instrument was ever lodged with the 2nd Defendant in respect to the overdraft facility. It added that the Plaintiff never presented an application to lift the caveat registered on the suit title as entry no 2.

The evidence adduced:

6. After the pleadings closed, the oral hearings commenced with the plaintiff calling two witnesses. Mr. Hsahmukrai Maninal Parekh gave his evidence on 3rd February, 2025 as PW1 on behalf of the Plaintiff. He adopted his two witnesses' statements dated 29th September, 2022 and 29th January, 2025. The 1st witness statement reiterated the contents of the plaint referring to deposit of suit title with the 1st Defendant and the judgment in Civil Case No. 91 of 2005.
7. PW 1 accused the 1st Defendant of fraud in holding title to the suit property and continuing a caveat on it which action have caused the deceased and his estate irreparable loss. He stated the loss that they are unable to secure financing using this title to develop the land or sell it. The witness put the value of the land at Kshs.150,000,000.
8. In his oral testimony to court, PW 1 produced the documents in the bundle dated 29th January, 2025 as P ex 1- 15. He avers that the 1st defendant caused the caveat to be registered on the suit title without any basis as the high court declared the guarantee invalid. That despite the judgment in Civil Case No.



- 91 of 2005, the 1st Defendant has not withdrawn the caveat or released the title. PW 1 stated that they are claiming general damages because the owner has been unable to use the land and Kshs.150,000,000 because they were unable to get extension of the lease.
9. In cross-examination by Mr. Allan Kamau, Principal State Counsel, PW 1 repealed that they were unable to get extension of the lease because the title was held by the 1st Defendant. that Mr. Harshadrai died in 2008 but he learnt of the caveat about 3 – 4 years back. The witness was referred to the notification of details of caveat sent to the deceased in 1996 and PW 1 responded that he was not aware if that notice was challenged.
 10. PW 1 confirmed the land is vacant. He was referred to the letter dated 8th July, 2022 (found at page 67 of Plaintiff's bundle) and his answer was that he does not know how the title got into the hands of the 1st Defendant. He also confirmed that the 2nd Defendant was not a party in HC Civil Case No. 91 of 2005. That they could not register the order earlier given because they did not have the original title. Their complaint against the 2nd Defendant is its failure to register the court order. PW 1 admitted they did not book the order for registration.
 11. David Chege Kariuki who introduced himself as a registered valuer testified as PW 2. He stated that in September, 2022, he was instructed to return a value on the subject property. He prepared a report dated 22nd September, 2022 and gave open market value at Kshs.150,000,000/=. In cross-examination, he stated that he was instructed via email. He tried to do a search but was unable to get one so he used a search issued in March, 2002.
 12. PW 2 admitted that the remainder of the lease term has an effect on the value of the property. As at September, 2022, there was one year remaining to the expiry of the lease. That he was not aware the registered owner was deceased. He was also not aware who was depositing materials on the property. This marked the close of the plaintiff's case.
 13. The 2nd Defendant relied on the sole evidence of George Gitonga. He introduced himself as the Land Registrar in Nairobi working in the Court Section Department. He adopted his written statement dated 17th June, 2024 as his evidence in chief. He also produced the 9 documents in the list dated 15th August, 2024 as 2nd Defendant's exhibits 1- 9.
 14. In the statement, DW1 outlined the process of transfer over private land which processes inter alia include the following;
 - i. Submission of transfer documents by parties.
 - ii. Parties attaching a valuer report by the chief valuer.
 - iii. Duty payable assessed by collector of stamp duty
 - iv. Submit payment receipt for stamp duty
 15. Under cross-examination by Ms Ndundu Learned Counsel for the plaintiff, DW 1 said he has worked with the Ministry of Lands since 2021. He averred that what is registered on the suit title is a caveat not a charge. That a caveat is for a given purpose. It was also his evidence that in 1996, the practice was to register a caveat not a charge instrument. He stated that the Lands Registry do not register a document unless it's presented to them.
 16. According to DW 1, they did not remove the Caveat as requested by the letter dated 21st September, 2022 because it did not comply with the regulations for removing a caveat. Further that the order of the court directing removal of the caveat was not lodged with them as it does not bear their receipt stamp. That the process involves presentation of the order for registration not serving them with the order.



17. In re-examination, DW 1 stated that the judgment in HCCC 91 of 2005 has never been booked with them. That the application to remove caveat (pages 64 – 65) was never lodged with them. Under RTA, to remove caveat, the original title must also be presented. This was the end of evidence by 2nd Defendant.
18. The parties were given 21 days to file their respective submissions. It is only the plaintiff who filed submissions dated 3rd March 2025. The plaintiff gave a summary of the pleadings and the evidence as the background to the submissions and proceeded to itemize the following issues as arising for determination;
 - a. Whether a declaration can be made that the caveat registered on the suit title is null and void.
 - b. Whether the plaintiff is entitled to the relief of special damages.
 - c. Who bears the costs of the suit.
19. In answering the first question in the affirmative, the plaintiff quoted extensively the provisions of section 57 of the Registration of Titles Act (repealed) and several case law inter alia Sammy Nganga Ngatiri SS vs George Ngatiri Mbugua & 2 Others (2021)Eklr in submitting that the caveat was not registered in accordance with the law. The Plaintiff argued that while the Bank alleged that it had a chargee's interest over the suit property, there was no privity of contract between the deceased and the bank. Despite this, the 1st Defendant continued to maintain a caveat on the title which action denied the owner to carry transactions on the title.
20. It is the Plaintiff's submission that the 1st Defendant having wrongfully and illegally maintained a caveat over the property for over 26 years deprived them of their right to property under article 40 of *the Constitution* hence they are entitled to the special damages claimed. In support of this argument, they relied on the case of Mary Njeri Kariuki and 7 Others versus Mary Mugure (2022)eklr which held that cautions which had been in existence for 12 years had deprived the Applicant of their right to property.
21. On the claim for special damages, the Plaintiff submits that the 1st Defendant having failed to return the original title to enable process application for extension of the lease has caused the loss of the property. The relied on the valuation report which returned the value of the land at Kshs 150,000,000 to urge this court to award them the said sum as special damages.

Analysis and determination:

22. The claim as against the 1st Defendant was not defended. Therefore, the orders as against it should be granted as a matter of course. Yet in regard to the claim for general damages, I must satisfy myself that the plaintiff has made out/proved a case. Consequently, I frame the following questions for determination of the dispute:
 - i. Whether or not the caveat on the suit title should be removed.
 - ii. Whether or not the Plaintiff is entitled to any damages.
 - iii. What reliefs can be granted
23. The gist of the plaintiff's case was that the caveat was irregularly placed on the suit title. From the evidence adduced, the caveat was registered in 1996 during the lifetime of the registered owner. The registration was within his knowledge as per the notice served on him (pages 5-8 of the 2nd Defendant's bundle of documents).



24. The deceased did not challenge the registration of the caveat as the civil case No. 91 of 2005 was commenced by the 1st defendant against Global Travel Ltd. The deceased as the 2nd defendant and the current 2nd plaintiff sued as the 3rd defendant. From a reading of paragraph 3 of the judgment in case No. 91 of 2005 (P ex 4), it was only the 1st defendant who filed a counter-claim.
25. It is the finding in Civil Case No. 91 of 2005 which the plaintiffs herein rely on while urging this court to declare that the caveat No. IR 36722/2 registered over the suit property is null and void, fraudulent and illegal. It is my considered view that having been sued in HCC Civil Case No. 91 Of 2005, they ought to have raised the question of illegality or otherwise of the caveat as a defence or counter-claim in the former suit. Having failed to do so, I opine that claim for damages due to its inability to use the title is res judicata HCC 91 of 2005.
26. In the event the finding on res judicata is not correct, the plaintiffs pleaded in paragraph 5 of the amended plaint thus:
- “in or about 1996, the 1st Defendant demanded the deceased release the original certificate of title into its custody to hold as security for an overdraft facility of Kshs 7,500,000 granted to Global Travels Ltd, a limited liability the deceased was a director thereof. An undated guarantee for the sum of Kshs 15,000,000 was also executed by the deceased and his co-director Ramesh Manilal for the duration of 12 months. Neither was there agreement executed between the deceased and the bank expressing the intention of the deceased to charge his property nor was there a charge document executed.”
27. The plaintiffs admit that the deceased executed an undated guarantee for the amount of Kshs.15,000,000 granted to Global Travel Ltd. At paragraph 28 and 29 of the said judgment Odero J. stated thus;
- “28. The above letters amounts to clear and unequivocal admission by the 2nd defendant that as at November, 1994 the 1st Defendant owed the Bank this sum of Kshs.14,217,612.35. The 2nd Defendant by this letter authorized the Bank to continue holding his Title Deed in order to secure the debt. The letters leave no doubt regarding the admission by the Defendants of their indebtedness to the plaintiff.
29. In light of the above, I find and hold that by their own admission the Defendants were indeed indebted to the Plaintiffs in the amount of Kshs.12,591,088.80. Having found that the 1st Defendant was indebted to the Bank in the amount of Kshs.12,591,088,80 the question arises regarding the amount of Kshs.7,000,000 which the 1st Defendant claim was debited from their account and was never returned. According to PW 1 this Fixed Deposit of Kshs.7,000,000 was credited to the account of the 1st Defendant upon maturity. However, PW 1 goes on to say that he does not know exactly when the Fixed Deposit was redeemed.”
28. The Judge went further to state at paragraph 38 thus;
- “38. It is clear therefore that any claim the Bank may have had against the 2nd and 3rd Defendants under the undated Guarantee would only be valid until 27th April, 1988. Accordingly, this claim against the 2nd and 3rd Defendants as guarantors



having been brought in a suit filed almost ten (10) years later in 1995 cannot be sustained at all.”

29. Hence the guarantee was not declared illegal but was caught up with limitation of action. No wonder in the end, judgment was still entered against the 1st defendant to pay the sum of Kshs.12,591,088 plus interest at 16.5%. Therefore, the case to withdraw the caveat can only run from the date of that judgment on 4th June, 2021 and not earlier.
30. Did the Plaintiff take steps to enforce/execute the judgment as a means to remove the caveat? DW 1 stated that neither the said judgment nor the order issued by this court on 9th February, 2023 has ever been presented for registration. They (Plaintiffs) did not present any evidence of such process except for a letter written to the Chief Land Registrar. On the face of the copy of judgement in HCCC 91 of 2005, the 2nd Defendant was not a party to the suit.
31. On registration of documents with the Ministry of Lands, Section 26(1) of the Registration of Titles Act Cap 281 (repealed) states as follows;
- “(1) The registrar of each registration district shall also keep a book, to be called the presentation book, in which shall be entered by a short description every instrument which is given in for registration, with the day and hour and, when that is required by the person presenting the instrument, the minute of presentation, and for the purpose of priority the time of presentation shall be taken as the time of registration..”
32. By 21st September, 2022, the plaintiffs through Counsel while writing to the Chief Land Registrar does not mention the judgment in HCCC 91 of 2005. She wrote thus:
- “We hereby make an application as per Section 57(6) of Cap 281 and section 73(1) of [Land Registration Act](#) 2012 for your immediate removal of the Caveat entered as No. 2 against the title. Form LRA 70 is hereby attached.”
33. Section 57(6) of Cap 281 (repealed) provides thus;
- “Except in the case of a caveat lodged by the registrar, the caveatee may make application in writing to the registrar to remove the caveat, and thereupon and upon payment of the prescribed fee the registrar shall give forty-five days’ notice in writing to the caveator requiring that the caveat be withdrawn, and, after the lapse of the service of the notice at the address mentioned in the caveat, the registrar shall remove the caveat from the register by entering a memorandum that it is discharged, unless he has been previously served with an order of the court extending the time as herein provided.”
34. The section mentioned in the said letter is not for execution of a decree and the 2nd Defendant has also explained that under Cap 281, for a caveat to be removed, the original title had to be presented. The letter of 21st September, 2022 does not say the original title was enclosed. There is no correspondence produced addressed to the 1st Defendant to avail the original title. The documents relied on by the Plaintiff demonstrate a lot of laxity exhibited before filing of the present suit which filing in my view was unnecessary.
35. Are the plaintiffs entitled to general damages claimed or any form of damages? As already stated, they did not bring any claim in HCCC 91 of 2005 to state the caveat was irregularly registered. The caveat



was registered in 20th February, 1996 and no correspondence/steps taken by the deceased between 1996 – 2008 (when he died) to remove the caveat or ask for the release of the title.

36. Neither have the plaintiffs presented any evidence or an application for extension of the lease pending availing of the original title. There is no evidence that the debt due to the 1st defendant owed by Global Travels Ltd (which company the Plaintiffs admitted they are directors) has been paid. General damages is an equitable remedy which can only accrue to a person who is diligent and who comes to equity with clean hands.
37. From the facts presented to this court, I am not persuaded that the plaintiffs have proved a case to warrant the award of damages save for the inaction of the 1st Defendant to release title after being served with pleadings in this case and for which inaction, I find a sum of Kshs 100000 as reasonable amount to compensate the Plaintiffs. Since the Plaintiffs already have an order for removal of the caveat (vide the ruling in this case made on 9th February, 2023) it serves no purpose to issue a further order for its removal. However, in order to facilitate the implementation of the order for removal of the caveat, the registrar shall do so without presentation of the original title.
38. In conclusion, I enter judgement for the Plaintiff as follows;

i.

An order is issued directed at the 1st defendant to forthwith release the original title No. 1870/1/394; I.R No. 36722 to the Plaintiffs SUBDIVISION -ii.

An order is granted directed at the Chief Land Registrar to cancel the caveat number I.R. 36722/2 in the register of Land Title No. 1870/1/394 I.R. 36722/1 with or without presentation of the original title.

iii.

General damages of Kshs 100000 payable by the 1st Defendant to the Plaintiffs with interest at court rates from the date of this judgement until payment is made in full

iv.

Each party to bear their costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE, 2025

A. OMOLLO

JUDGE

