



Kisemei v Mercbima International Limited & 2 others (Environment and Land Case 2 of 2023) [2025] KEELC 4687 (KLR) (16 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4687 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 2 OF 2023
LC KOMINGOI, J
JUNE 16, 2025**

BETWEEN

WILSON ANKAINA KISEMEI PLAINTIFF

AND

MERCBIMA INTERNATIONAL LIMITED 1ST DEFENDANT

HON. JOE MUSYIMI MUTAMBO 2ND DEFENDANT

EQUATORIAL COMMERCIAL BANK LTD 3RD DEFENDANT

JUDGMENT

1. This suit through the Plaint dated 15th October 2015, was first filed at the ELC Nairobi as ELCC No. 1023 of 2015 before being transferred to this Court.
2. It is the Plaintiff's case that the 1st defendant was a limited liability company duly registered with its objective being quarry mining; the 2nd Defendant was at the time, an elected Member of National Assembly for Mwingi Central Constituency and a Director of the 1st Defendant; and the 3rd Defendant was a Commercial bank duly registered as such under the *Banking Act*.
3. He claimed that at all material times, he was the registered proprietor of parcels LR. No. Kajiado/Kitengela/46021 and Kajiado/Kitengela/46022 which at the time was valued at Kshs. 350,000,000. Between 16th April 2003 and July 2015, the Plaintiff leased these parcels to the 1st Defendant to operate a quarry mine at a monthly rent of Kshs. 300,000. He claimed that the 1st and 2nd Defendants requested for the original title documents to show the bank the site of the quarry operations and the Plaintiff complied. On 8th October 2015, the Plaintiff received a letter dated 3rd March 2014 from the 3rd Defendant in his postal address 281-00242 indicating that the 3rd Defendant was in possession of the original Title deeds on account of a loan facility that the 3rd Defendant had extended to the



- 1st Defendant. The Plaintiff claimed that the original Title deeds were acquired from him through misrepresentation and the alleged loan was fraudulently procured.
4. He particularised the fraud against the 1st and 2nd Defendants as follows: Misrepresenting to the 3rd Defendant that the Plaintiff executed a letter of guarantee and indemnity in favour of the 1st Defendant in consideration of the loan facility from the 3rd Defendant to the 1st Defendant. Charging the Plaintiff's properties without his knowledge or consent in the loan facility from the 3rd Defendant to the 1st Defendant. Forging a letter of guarantee and indemnity in favour of the 1st Defendant disguised as executed by the Plaintiff. Not paying the 3rd Defendant's loan facility in an attempt to defraud the Plaintiff of his properties Kajiado/Kitengela/46021 and 46022. Colluding with the 3rd Defendant to deprive of the Plaintiff of his properties Kajiado/Kitengela/46021 and 46022. Converting into security the Plaintiff's original documents for parcels Kajiado/Kitengela/46021 and 46022 which the 2nd Defendant had been given for safe keeping during the lease period.
 5. As a result of the loan facility, the 3rd Defendant attempted to exercise lien over the Plaintiff's properties, a guarantee the Plaintiff was not aware of. He went on to state that the 3rd Defendant acted negligently by not undertaking due diligence to ascertain the authenticity of the letter of guarantee and indemnity presented by the 1st and 2nd Defendants; not requiring the Plaintiff's physical presence before the letter of guarantee could be presented and accepted by the 3rd Defendant and using forged documents as a guarantee for the loan facility.
 6. The Defendants were therefore trying to deprive the Plaintiff of his properties using forged documents and he thus sought for:
 - a. A declaration that the Plaintiff is not a guarantor in favour of the 1st Defendant in consideration for a loan facility extended by the 3rd Defendant to the 1st Defendant.
 - b. A declaration that the exercise of lien over the Plaintiff's original title documents over LR No. Kajiado/Kitengela/46021 and 46022 is illegal, null and void.
 - c. An order of mandatory injunction compelling the Defendants to forthwith release to the Plaintiff his original title documents over LR No. Kajiado/Kitengela/46021 and 46022.
 - d. An order of permanent injunction restraining the Defendants either by themselves, agents, assigns or successor in the title from trespassing into, remaining upon, developing, alienation, selling, auctioning, transferring or in any manner whatsoever interfering with the Plaintiff's proprietorship and or peaceful enjoyment of LR No. Kajiado/Kitengela/46021 and 46022.
 - e. General damages.
 - f. Interest on (e) above at Court's rates.
 - g. Costs of the suit.
 - h. Any other relief that this Court may deem fit and just to grant.
 7. In response to the Plaintiff's Plea, the Defendant filed a Statement of Defence praying that the Plaintiff's suit be dismissed with costs and Counter Claim dated 23rd June, 2023 seeking the following prayers:-
 - a. A declaration that there is a valid contract between the parties therein and an order of specific performance be issued against the Plaintiff to complete the sale agreement herein.



- b. An Order directing the Plaintiff to forthwith refund to the Defendants Kenya Shillings Three Million One Hundred Thousand (Kshs.3,100,000/=) paid to him as a deposit for the purchase price of land known as L.R. No. Kajiado/Kitengela/46021 and L.R. No. Kajiado/Kitengela/46022 together with the developments carried on the lands and interest thereon;
 - c. Costs of the counterclaim;
 - d. Any other remedy this Honourable court may deem just in the circumstance.
8. In response to the Defendant's Counterclaim, the Plaintiff filed a Reply to Defence and Defence to Counterclaim dated 21st September, 2023.

Evidence of the Plaintiff.

9. PW1, Wilson Ankaine Kisemei, the Plaintiff adopted his witness statement dated 15th October 2015 as part of his evidence and produced his bundle of documents which was marked as P. Exhibit 1-7. He stated that he entered into a lease agreement with the Defendants in 2013 and that they owed him Kshs. 48 million in rent arrears. He stated that he gave the 2nd Defendant sometime in January or February 2014, he gave the 2nd Defendant the original title deeds for the suit properties as the bank needed to know the parcels of land he was leasing. He promised to return the said titles on the same day but kept them for about two (2) years despite requests from the Plaintiff. He stated that he had no relationship with Equatorial Bank and never deposited his titles with the bank for (any) loan facility. He further stated that in 2014 he intended to sell the properties to the 2nd Defendant for Kshs. 28,000,000 and was paid Kshs. 2,000,000 although 10% deposit ought to have been 2,800,000. He stated that he suffered loss due to unavailability of his titles because he was unable to dispose of the land. It is his case that the 2nd Defendant also breached the sale agreement. He urged that the prayers in the Plaintiff be granted.

Evidence of the 1st and 2nd Defendants.

10. The 1st and 2nd Defendants did not attend the hearing despite service of the hearing notice. Their case was as then marked as closed.
11. The case against the 3rd Defendant was withdrawn on the 28th October 2015.
12. At the close of the oral testimony, the Plaintiff tendered final written submissions.
Submissions of the Plaintiff.
They are dated 24th February 2025.
13. Counsel identified the following two as the issues for determination:
14. On whether the Plaintiff had proved his case on the required burden of proof, it was submitted that the suit was on the basis that the 1st and 2nd Defendants' without the Plaintiff's knowledge unlawfully caused the Plaintiff's title deeds to be deposited as security for a loan facility that the Plaintiff was neither aware of nor had he consented to guarantee. Following this suit, the 3rd Defendant returned the original titles to the 2nd Defendant which confirmed that it was the indeed the 2nd Defendant who had deposited the said titles with the bank. After the return of the titles, the Plaintiff withdrew the suit against the 3rd Defendant. It was further submitted that the Defendant's allegation that the Plaintiff willingly gave them the title deeds knowing they were to be used as collateral was dishonest because the title deeds were given to the Defendants in 2013 before the parties entered into the aborted sale agreement dated 16th May 2014. There was therefore no way, the Plaintiff provided the titles as collateral to finance a sale agreement that was not in existence at the time. Counsel further submitted that a forensic report duly



found that the signature appearing on the letter dated 24th May 2013 was different with the Plaintiff's known signature. As such, the Plaintiff had proved that the Defendants deceitfully obtained his title deeds and attempted to use them as collateral without his knowledge or consent.

15. On whether the Plaintiff was entitled to the prayers sought, it was submitted that having established that the Defendants obtained the Plaintiff's titles deceitfully, the Plaintiff was entitled to the prayer of permanent injunction as held in *Ouya v Embakasi Ranching Company Ltd* [2024] KEELC 3965 (KLR). On the issue of general damages, it was submitted that the Defendants took possession of the Plaintiff's titles in 2013 and returned them in 2020 and these actions caused the Plaintiff together with his family emotional and psychological distress. Counsel also submitted that the Plaintiff lost opportunity of selling these properties to other interested parties because the 2nd Defendant showed his interest in purchasing them but not only ended up breaching the sale agreement but also making the title deeds unavailable to the Plaintiff. He was therefore entitled to an award of general damages citing *Otieno vs General Motors East Africa Ltd & 2 others* [2022] KEHC 11475 (KLR).

Analysis and Determination.

16. I have considered the pleadings, the evidence on record, the written submissions, and authorities cited. The issues for determination are:
- i. Whether the Plaintiff has proved his case as against the Defendants;
 - ii. Is he entitled to the reliefs sought?;
 - iii. Who should bear costs of the suit?
17. It is not in dispute that the Plaintiff is and always been the registered owner of the suit properties. That on 18th April 2013 he and the 1st Defendant entered into a lease agreement over the suit properties. The Plaintiff and the 2nd Defendant entered a sale Agreement dated 16th May 2024 in respect of the suit properties and that he received Kshs.2,000,000/= as part of the deposit of the purchase price.
18. It is also on record that the Defendant's returned the Plaintiff's title deeds to the suit properties pursuant to a consent.
19. The genesis of the dispute stems from the Defendants' act of depositing the title deeds for the suit properties with Equitorial Bank as a security for a loan facility extended to the 1st Defendant. This was done without knowledge and/or consent of the Plaintiff. It is the Plaintiff's case that he had surrendered the title deeds to the 2nd Defendant who needed them to show the bank where they (Defendants) would be conducting business.
20. The Plaintiff produced an undated and unsigned charge between himself as the chargor, the 1st Defendant as the borrower and Equitorial Bank as the chargee over the suit properties. I find that this is proof that the Defendants attempted to encumber the Plaintiff's properties without his knowledge and/or consent.
21. The 1st and the 2nd Defendants though served neglected to participate in the hearing of this case.

The Plaintiff's case is therefore uncontroverted.

22. It is the Plaintiff's case that the 2nd defendant breached the terms of the sale agreement by failing to remit the required deposit of Kshs.2,800,000 representing the 10% of the agreed purchase price of Kshs.28,000,000/=. The Plaintiff was therefore unable to complete the transaction due to the 2nd Defendants persistent and fundamental breach of the agreement.



23. The case against the 3rd Defendant was withdrawn on the 28th October 2015 after it released the title deeds to the Defendants. I find that prayer No. (c) in the Plaintiff has been rendered moot. The plaintiff is now in possession of the title deeds.

24. I find that the plaintiff has proved that he is entitled to the other reliefs sought in the Plaintiff.

In the case of Wilson Ogwang Ouya Vs. Embakasi Ranching Co. Ltd (2024) KEELC 3695 KLR the court cited with approval the case of Kenya Power & Lighting Co. Ltd Vs. Sherriff Molana Habib (2018) eKLR where it held thus;

“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”

30. The provisions of Section 24 (a) and 25(1) of the [Land Registration Act](#), 2012 outlines the rights and interests of a registered proprietor as follows;

“Subject to this Act –

- 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”

31. Whereas Section 25 (1) under the heading rights of a proprietor provides as follows:

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever...”

32. No challenge has been raised to the Plaintiff’s proprietorship in terms of Sections 26 of the Act, and the Court finds that he is the legitimate proprietor of the suit parcels.

33. With this finding, it follows that the Plaintiff has exclusive rights over the suit properties as set out in Section 24(a) of the [Land Registration Act](#). This includes the right to quiet possession of the suit property to the exclusion of the Defendant or any person acting under its authority. The Court finds the prayer for permanent injunction merited.”

25. It is the Plaintiff’s case that the Defendants held his title deeds for more than five (5) years without any justification. During the time he was not able to utilize the suit properties. He could not dispose them to willing buyers. It also exposed him to psychological and emotional distress and ridicule.

26. He has suffered damage and is entitled to be compensated.



In the case of Otieno Vs. General Motors East Africa Ltd & 2 Others (2022) KEHC 11475 the court stated as follows;

“ 20. The Honourable Court takes note of the doctrine that the award of general damages is an exercise of discretion by the trial court based on the evidence and impressions on demeanour of witnesses made by the learned trial Magistrate”.

I award the Plaintiff Kshs. 1,000,000/= which I think is adequate compensation.

27. In conclusion I find that the Plaintiff has proved his case as against the Defendants in a balance of probabilities.

28. Accordingly Judgement is entered for the plaintiff as against the Defendants as follows;

- a. A declaration that the Plaintiff is not a guarantor in favour of the 1st Defendant in consideration for a loan facility extended by the 3rd Defendant to the 1st Defendant.
- b. A declaration that the exercise of lien over the Plaintiff's original title documents over L.R. No. Kajiado/Kitengela/46021 and L.R. No. Kajiado/Kitengela/46022 is illegal, null and void.
- c. General damages Kshs.1,000,000/=
- d. Costs of the suit and interest.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF JUNE 2025.

L.KOMINGOI

JUDGE.

In the presence of:

Ms. Katao for the Plaintiff.

N/A for the 1st & 2nd Defendants.

Court Assistant – Mutisya.

