



**Bhogal (Suing as the Administrator of the Estate of Narwar Singh Bhogal)  
v Deed & 2 others (As Personal Representatives of the Estate of Ahmed  
Meera Lebbe Seyado Shiab Deen - Deceased) (Environment and Land Case  
393 of 2019) [2025] KEELC 6178 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6178 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 393 OF 2019**

**AA OMOLLO, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**HARBINDER SINGH BHOGAL (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF NARWAR SINGH BHOGAL) ..... PLAINTIFF**

**AND**

**AHMED SALEEM DEED ..... 1<sup>ST</sup> DEFENDANT**

**ZAINAB DEEN ..... 2<sup>ND</sup> DEFENDANT**

**SAIYAD ABBAS AYSHA RAUFF ..... 3<sup>RD</sup> DEFENDANT**

**AS PERSONAL REPRESENTATIVES OF THE ESTATE OF AHMED MEERA  
LEBBE SEYADO SHIAB DEEN - DECEASED**

**JUDGMENT**

1. The Plaintiff pleaded that Narwar Singh Bhogal (Deceased) and Ahmed Meera Lebbe Seyado Shiab Deen (Deceased) were joint owners of a property known as L. R. No. 12596/68 (original number 12596/2/67) (hereinafter referred to as "the suit property") by virtue of a Certificate of Title issued on 26th June 1986.
2. He pleaded that they took a loan facility from the National Bank Ltd on 14<sup>th</sup> November 1986 for the use of Ascon Ltd and the suit property was used as security. That the loan was repaid but the plaintiff did not pursue the release of the title and discharge from the bank. In July 2019, the Plaintiff corresponded with the bank on the whereabouts of the title documents. By letter dated 3/9/2019 the Bank confirmed that the amount borrowed under the charge was cleared by Ascon Limited. They also confirmed that they could not trace the original title for suit property



3. That Singh Bhogal (Deceased) learned that the suit property was rented out to tenants and the income is was going to the Defendants. He therefore instructed his advocates to issue demand notices to the tenants who were occupying the premises. He contends that as a joint owner of the property, Narwar Singh Bhogal (Deceased) is entitled to a share of rental income in the suit property.
4. The Plaintiff prays for judgment against the Defendants jointly and severally for:-
  1. A declaration that the Plaintiff Narwar Singh Bhogal (Deceased) is a joint owner of L. R. No. 12596/68 (original number 12596/2/67)
  2. Lease/tenancy documents for the existing tenants.
  3. A rent account for all rental income received by the Defendants from commencement of the lease/tenancy agreements.
  4. An order directing that the Plaintiff and the Defendants do open a joint safe at a reputable bank and do deposit the original title for L. R. No. 12596/68 (original number 12596/2/67) there.
  5. An order directing the Defendants to pay to the Plaintiff Narwar Singh Bhogal's (Deceased) his share of the rental income as shall be determined from the rent account.
  6. An order directing the Defendants to pay to the Plaintiff Narwar Singh Bhogal's
  7. (Deceased) his share of the rental income for future rents collected.
  8. Costs of this suit.
  9. Any other relief or order that this Honourable Court may deem fit to grant.
5. The Defendants filed a defence and counter claim dated 10<sup>th</sup> February 2020 denying the claim in toto. They contend that the Plaintiff's name was added to the title because at the time the deceased defendant was a foreigner but needed to do business in Kenya. He therefore affiliated himself with the Plaintiff for ease to access financing from Kenyan financial institutions.
6. The Defendants admitted the contents of paragraphs 4 of the Plaintiff adding that Ascon Ltd was owned by the Plaintiff, Mr Deen-deceased and a third party who is not joined as a party to these proceedings. Its their contention that the loan owed to the bank was solely paid by the deceased Defendant as a consequent, the title was released to him.
7. The Defendants pleads that the deceased solely developed the land, operated his business on it and rented out a portion to tenants. They deny the Plaintiff is entitled to any stake in the property since he did not participate in acquiring or developing it. He urged the court to dismiss his suit with costs.
8. In the counter-claim, the Defendants plead that they have been in open and uninterrupted occupation of the suit premises since 1986 to the exclusion of the Plaintiff. Further, that they maintained, developed and improved the suit land by erecting permanent buildings on it and doing business thereon. That the Plaintiff didnot lay any claim to the business until 2019 as pleaded in the Plaintiff.
9. The Defendants prayed for judgement in their favour that:
  - a. The Plaintiff's suit be dismissed with costs
  - b. A declaration that registration of the Plaintiff's name in the certificate of title to the suit property was only as a trustee and the plaintiff has no proprietary interest.



- c. A declaration that any interest the plaintiff may have had has been extinguished by the doctrine of adverse possession.
  - d. An order vesting the suit property to the Defendant
  - e. An order of injunction does issue against the Plaintiff, restraining him, his agents
10. Once the pleadings closed, each party called the evidence of one witness. Harbinder Singh Bhogal testifying as PW1 said that he is the son and the administrator of the estate of Narwar Singh Bhogal (Deceased). He reiterated the facts as pleaded in the plaint of joint ownership of L. R. No. 12596/68 (original number 12596/2/67). He also stated that the suit property was in the year 1986 used as security to secure finances for Ascon Ltd and which loan was subsequently repaid.
  11. In his further statement dated 8<sup>th</sup> November 2024, the Plaintiff's witness mentioned that on 27<sup>th</sup> June 1986, Narwar Singh Bhogal (Deceased) and the Defendant, Ahmed Meera Lebbe Seyado Shiab Deen (Deceased) jointly entered into a Memorandum of Registration of Transfer of Lands with Charity Motors Limited in respect of all that L.R No. 12596/68 (original no. 12596/2/67). That the said document shows the property was sold to the two deceased persons jointly as co-owners.
  12. He states that Nanuar Singh Bhogal (Deceased) began to receive from the department of lands, demand for rates and interests in respect of L. R. Non 12596/68, which he dutifully settled and was issued with a rates receipt thereof. The deceased also paid for rates demanded vide receipts dated 23<sup>rd</sup> January 1998 and 31<sup>st</sup> July 2000. The witness asserted that Narwar Singh Bhogal (Deceased), in his capacity as a business partner, continuously received communication in the form of letters addressed to him and Ahmed Meera Lebbe Seyado Shiab Deen (Deceased) regarding L. R. No. 12596/68-N.W. Embakasi. He produced documents contained in the three sets of lists as exhibits in support of his case.
  13. On their part, the Defendants relied on the evidence of ZINATH MIYUNGI DEEN, who introduced herself as the widow to Ahmed M. L.S. Deen (deceased) whose name appears on the certificate of title of the suit property. She said that the deceased came to Kenya in 1977 as a citizen of Ceylon (modern-day Sri Lanka) as shown in Dex 2.
  14. DW stated that Mr Deen-deceased realised that it was difficult to do business as a foreigner and had no access to capital. It was for this reason that he formed a Company together with the Plaintiff and a third person, known as Mr. Kirui. The deceased formed a Company called Ascon Limited together with the duo which according to the witness was ran by the deceased on the day to day operations of the Company.
  15. It is the Defendants' evidence that as per Dex 5 that the deceased purchased the suit property using his own funds but was advised to register it with one of the directors, Mr. Narwar Singh Bhogal. That the only reason that the suit property was registered in both names was because Mr. Bhogal was a Kenyan Citizen who had done business and in Kenya for a long time and had interacted with most Kenyans in the banking industry.
  16. The witness continued that soon after acquiring the suit property, he charged the same to the National Bank of Kenya. In order to get finance to run ASCON Limited, among his other concerns (Dex 7). That it is clear from the charge documents that proceeds of loan were directed to ASCON Limited.
  17. Further, the Defendants contend that it is Mr Deen-deceased who solely paid for the loan due to National Bank Ltd and thereafter the title documents released to him. That The deceased severally visited Mr. Bhogal in Nakuru attempting to resolve the issue of his title over the suit property but Mr. Bhogal denied him audience. The reason the deceased did not further pursue the issue of his title with



Mr. Bhogal (the Plaintiff) was because he realized that he was not keen on setting the record straight as seen document No. 17 and 18 of the Plaintiff's bundle of documents.

18. The witness concluded by stating that the Plaintiff is not entitled to the suit property as they did not contribute anything towards its purchase and development. She urged the court to dismiss the Plaintiff's suit and enter judgment for the Defendants as prayed in the counter-claim.

**Analysis and Determination:**

19. I have read and considered the respective submissions filed with the Plaintiff's submissions dated 28<sup>th</sup> March 2025 and the Defendants' submissions dated 21<sup>st</sup> May, 2025. Following the facts pleaded, evidence adduced and submissions rendered, I frame the questions to resolve the dispute:
- a. Whether there is proof of trusteeship between the parties.
  - b. Whether the suit is time-barred.
  - c. Whether or not the Plaintiff has proved his case.
20. There is no dispute that the suit title is registered in both names of Narwar Singh Bhogal and Ahmed M. L.S. Deen. There is also no dispute that the names of these two (now deceased) were the founding directors of Ascon Limited, together with a third party who is not a party to these proceedings. Further, there is no dispute that in November 1986, the suit title was used to secure financing for Ascon Limited from the National Bank of Kenya.
21. The first question is whether the registration of the deceased Plaintiff's name was as a trustee of and not a co-owner with Mr. Ahmed M.L.S.S Deen-deceased. The Plaintiff's case, as presented, is that he was a co-owner and therefore is entitled to a half share of the property, including rental income generated.
22. In contesting the suit, the Defendants pleaded and stated that the Plaintiff's name was added because Mr Deen-deceased was a foreigner and, by the Kenyan laws, he could not own a property in his name. They produced documents showing the nationality of Mr Deen-deceased and his application for Kenyan citizenship. However, there was no document produced supporting the trustee relationship.
23. Among the documents produced by the Defendants at number 5, is the transfer form dated 23<sup>rd</sup> June, 1986 showing the transfer in favour of the two deceased parties. Similarly, the Charge and Discharge from National Bank Ltd was in their joint names. All the copies of demand notes for rates from the Nairobi City Council (produce by both) were issued in the joint names.
24. Consequently, for the burden shifted to the shoulders of the Defendants to prove the existence of the trusteeship alleged. They cited the provisions of Section 28(b) of the Act states:-

“Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same without their being noted on the register”.

- (a) .....
  - (b) trusts, including customary trusts
- And



Section 25(2) provides :

“Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee”

25. The Defendants argue there was an implied trust because of the fact that since the title to the suit property was issued in the year 1986, only the Defendant took possession. No claim nor any action has been brought against the Defendant until the present suit which was filed in the year 2019, over 30 years later. All this time, it is the Defendant who met all the responsibilities that come with land ownership in Kenya.
26. They also aver that no explanation has been proffered by the Plaintiff for the fact that they took no action nor laid any claim against the Defendant if indeed their registration on the title was meant to confer proprietary rights over the suit property.
27. The Defendants cited several cases inter alia, *Sirma v Singoei* (Civil Appeal 109 of 2018) [2022] KECA 708 (KLR) (8 July 2022) Where the court of appeal upheld the trial court’s reliance on evidence adduced by a witness to infer a trust. Also, the fact that the Respondent took 15 years to start filing for eviction, with no explanation was given for the inaction. The court looks at the balance of probabilities to arrive at a conclusion.
28. Order 2 rule 4(2) of the Civil Procedure Rules states that;

“Without prejudice to subrule (1), a defendant to an action for the recovery of land shall plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant shall not be sufficient.”
29. Order 2 rule 10 (1) of the CPR also provides thus;

“Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing - (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies.”
30. In light of the provisions contained in the Civil Procedure Rules, possession only as is being alleged by the Defendants is not sufficient. In their statement of defence filed, there were particulars of trust pleaded. Secondly, the existence of a trust is question of fact which must be proved by evidence. In the case of *Juletabi African Adventure Limited & another v Christopher Michael Lockley* [2017] eKLR cited by the Defendants, the court of Appeal stated thus at paragraph 14:

On trust, the respondent’s uncontroverted evidence was that his relationship with the 2<sup>nd</sup> appellant was based from the beginning on mutual trust. As such, an implied trust could arise where one person, such as in this case, purchases property but the same is conveyed in the name of another other than the purchaser. Maintaining that the circumstances surrounding the case had established a resulting trust in favour of the respondent he relied on *Dyer vs. Dyer* [1788] 2 Cox Eq. 92. According to him, the respondent was unequivocal that his intention was to purchase the land for his benefit and he sent the money for that purpose. Furthermore, no resolution was tendered by the appellants to the effect that the 1<sup>st</sup> appellant had purchased the properties.



31. Have the Defendants demonstrated that the intention of registering the property was because he was a foreigner? The parties were represented by an advocate during the transaction and he does not explain why a separate agreement was not executed to that effect. Secondly, the Defendants confirm that besides the suit property, the parties also had a company registered in their names together with another 3<sup>rd</sup> Party.
32. Assuming the implied trust was premised on the purchase of the subject property, what informed the registration of the company? If the company was also formed jointly with the other two parties because the deceased Defendant was a foreigner, why did the Defendant require financing secured by the suit title? If the reason was because he was non-Kenyan, then he did not require the financing from a Kenya bank to operate Ascon Limited. It would be inferred that he had the resources to carry out the business.
33. Further, the averment that it is the Defendants who paid off the loan to National Bank Ltd was not corroborated by any evidence. It was merely a statement of fact. The dispute before this court does not concern who undertook the day to day operations of Ascon Ltd, whether it was both the Plaintiff and the Defendant and or the Defendant alone. Secondly, no evidence was produced whether the said company was wound up and how the assets if any were shared that would confirm that it is only the Defendants that were declared as the sole beneficiary. Hence, placing running of Ascon Ltd did not add much value to prove the implied trust.
34. In regards to payment of rates and interests accruing to the Nairobi City Council, the documentary evidence presented that the demand notes were issued in both joint names and each has shared evidence of making payments hence it is not sufficient to establish a trust.
35. In conclusion, I reach a finding that the defence of implied trust fails because it was not pleaded in the defence and it was also not proved by way of evidence.
36. The Defendants also wants an order declaring them as sole owners of the property by operation of the law since they have enjoyed exclusive occupation for a period exceeding 12 years. Can a co-owner sustain an adverse possession claim?
37. Section 91 of the [Land Registration Act](#) provides as follows:

“In this Act, co-tenancy means the ownership of land by two or more persons in undivided shares and includes joint tenancy or tenancy in common.”
38. Sections 94 and 96 of the [Land Registration Act](#) provide for a severance of a common tenancy by way of partition or sale of the land. The inference from a reading of the provisions of the [Land Registration Act](#) of 2012 is that the interest of the joint tenants is undivided. The land in question has not been partitioned to identify the share of the Plaintiff and or the share of the Defendant. In the case *Gatimu Kinguru versus Muya Gathanji (1976) eKLR*, Madan J stated that:

“Each tenant in common is the owner of the whole land but limited to the extent of his share therein because it is not subdivided, in conjunction with his co-tenant in common...”
39. Given that joint ownership has not been severed, it is difficult to ascertain which part of the land the Defendant considered time was running? Thus, it is my considered view and I so hold that the claim for adverse possession has no legs.
40. From the analysis, I have found that the grounds raised by the Defendants in denying the Plaintiff a right to the suit property are not supported and the documents confirming ownership, I find no reason to refuse to make a re-affirm the Plaintiff's interest therein. I also hold that he is entitled to the details/



tenancy agreements of the tenants in occupation of the suit property but I limit the information to be provided from the date of filing of this suit.

41. Consequently, I make an order dismissing the counter-claim with no order as to costs. Instead, I enter judgement for the plaintiff as below:
- a. A declaration is made that the Plaintiff Narwar Singh Bhogal (Deceased) is a joint owner of L. R. No. 12596/68 (original number 12596/2/67) and not a trustee of Ahmed Deen-deceased.
  - b. A rent account for all rental income received by the Defendant from the date of filing of this case on 27<sup>th</sup> November 2019 up to the date of this judgment. The accounts are to be shared with the Plaintiff within Ninety (90) days of the payment.
  - c. An order is issued directing that the Plaintiff and the Defendants do open a joint safe at a reputable bank and do deposit future rents before the partition of the interests of the co-owners within 14 days of this judgment.
  - d. After the taking of accounts and opening of a joint account, an order is issued directed at the Defendants to pay to the Plaintiff (Narwar Singh Bhogal-Deceased) estate. Share of the rental income, as determined from the rent account.
  - e. Costs of this suit to the Plaintiff

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. OMOLLO**

**JUDGE**

