



REPUBLIC OF KENYA



**Nyamute v Tapaine & another (Environment and Land Case E043 of 2024)
[2025] KEELC 6416 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6416 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E043 OF 2024
MD MWANGI, J
SEPTEMBER 25, 2025**

BETWEEN

MICHAEL NYABUTO NYAMUTE PLAINTIFF

AND

LOKITAN TAPAINÉ 1ST DEFENDANT

THE LAND REGISTRAR KAJIADO 2ND DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff, instituted the present suit against the Defendants vide a Plaint dated 26th April 2024. The Plaintiff's case, as discerned from the pleadings, is that he is the registered and beneficial owner of all that parcel of land known as Kajiado/Kitengela/30143 measuring 2.023 hectares, having purchased the same from one Lokitan Tapaine in the year 2010. He avers that he has since enjoyed quiet possession and use of the property until recently when the Defendants, without any colour of right, allegedly encroached upon and interfered with his occupation thereof.
2. The Plaintiff contends that unless restrained, the Defendants' acts will result in the illegal deprivation of his property and the loss occasioned will not be adequately compensated by way of damages. He thus seeks, inter alia:
 - a. A declaration that he is the registered proprietor of Kajiado/Kitengela/30143;
 - b. An order allowing him uninterrupted occupation and usage of the said property;
 - c. A permanent injunction restraining the Defendants, their agents or servants from any form of interference with his quiet possession;
 - d. Costs of the suit; and



- e. Such other relief as the Court may deem fit.
3. The 2nd Defendant, through the Honourable Attorney General, entered appearance on 6th November 2024 and filed a Statement of Defence denying the Plaintiff's claim, save for admitting the Plaintiff's registration as proprietor of the suit property as evidenced by the title deed and official search. The 2nd Defendant contends that the allegations of encroachment and interference are matters in dispute between the Plaintiff and the 1st Defendant, and prays for the dismissal of the suit with costs.
4. The matter proceeded to hearing undefended as against the 1st Defendant, the 1st Defendant having failed to enter appearance and or file a statement of Defence.

The Plaintiff's Evidence

5. The Plaintiff, Michael Nyabuti Nyamute (PW1), testified viva voce in support of his case. He stated that in the year 2009, the 1st Defendant sold to him a parcel of land, being Kajiado/Kitengela/30143. He adopted his witness statement on record as his evidence-in-chief and produced the documents listed in his list of documents, which were duly marked as Exhibits 1 to 7 in the order in which they are listed.
6. PW1 further testified that the title to the suit property is registered jointly in his name and that of his wife, Winnie Isaidizi Iminza, who also recorded a witness statement in support of the claim. He stated that they have been in occupation and possession of the property since they purchased it.
7. According to PW1, in the year 2023 he received a call from an officer attached to the Directorate of Criminal Investigations (DCI) at Kajiado, informing him that there were other persons claiming ownership of the same parcel of land. He thereafter met the said officer in person and presented his ownership documents for verification. PW1 maintained that he has a valid and indefeasible title to the suit land and prayed for a declaration that he is the lawful proprietor thereof.

Issues for Determination

8. Having considered the pleadings, and the evidence on record, the Court is of the view that the following issues arise for determination:
 - i. Whether the Plaintiff has proved that he is the lawful proprietor of the parcel of land known as Kajiado/Kitengela/30143.
 - ii. Whether the Plaintiff has satisfied the legal criteria for the grant of a permanent injunction.
 - iii. Whether the Plaintiff is entitled to the other reliefs sought, including costs of the suit.

Analysis and Determination

i. Whether the Plaintiff has proved that he is the lawful proprietor of the parcel of land known as Kajiado/Kitengela/30143.

9. Section 26(1) of the [*Land Registration Act*](#) provides that:

“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, 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.”
10. The Plaintiff in his testimony produced a title deed and an official search showing registration in his name and that of his wife as joint proprietors of Kajiado/Kitengela/30143. The 2nd Defendant expressly admitted this proprietorship at paragraph 3 of its Statement of Defence. No evidence was adduced by any party to challenge the validity of that registration on any of the statutory grounds under section 26(1)(a) or (b) of the *Land Registration Act*. The registration of the Plaintiff and his wife vests absolute ownership in them, and the certificate of title constitutes prima facie evidence of proprietorship. This court finds that the Plaintiff and his wife are the lawful and registered proprietors of Kajiado/Kitengela/30143.

ii. Whether the Plaintiff is entitled to the reliefs sought, including costs of the suit.

11. On the evidence before this Court, the Plaintiff has proved ownership of the suit property. Section 24(a) of the *Land Registration Act*, No. 3 of 2012 provides that:
- “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.”
12. In the case of Kenya Power & Lighting Co. Limited – Versus - Sheriff Molana Habib [2018] eKLR, it was held inter alia as follows:-
- “...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. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”
13. Considering that the Plaintiff has established his proprietorship of the suit property and further considering the provisions of Section 24 of the *Land Registration Act* that vests in the proprietor the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto, the Plaintiff and his wife are entitled to an order of permanent injunction which is hereby granted as against the 1st Defendant only.
14. The Plaintiff has not proved any claim against the 2nd Defendant. I wonder why the Plaintiff sued the 2nd Defendant in the first place.
15. On the issue of costs, guided by the provisions of Section 27(1) of the *Civil Procedure Act*, and considering the overall circumstances of this case, I consider it appropriate that each party bears its own costs of this suit.
16. Accordingly, judgment is entered for the Plaintiff against the 1st Defendant only in the following terms:



- a. A declaration is hereby issued that the Plaintiff, Michael Nyabuti Nyamute, and his wife, Winnie Isaidizi Iminza, are the lawful and registered proprietors of all that parcel of land known as Kajiado/Kitengela/30143 measuring 2.023 hectares.
- b. The prayer for a permanent injunction is granted restraining the 1st Defendant, his agents or servants from any form of interference with the quiet possession of the Plaintiff and his co-owner Winnie Isaidizi Iminza of all that parcel of land known as Kajiado/Kitengela/30143 measuring 2.023 hectares.
- c. Each party shall bear its own costs of the suit.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mwiti for the Plaintiff

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

