



Avalanche Investment Group Ltd v Makuthi & another (Being administrators of the Estate of John Makuthi Kathumba) (Environmental and Land Originating Summons E035 of 2021) [2025] KEELC 7287 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7287 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E035 OF 2021
JG KEMEL, J
OCTOBER 22, 2025**

BETWEEN

AVALANCHE INVESTMENT GROUP LTD PLAINTIFF

AND

LITHA KATUMBI NDUVA KATHUMBA MAKUTHI 1ST DEFENDANT

AMINA MBULA NDUVA KATHUMBA MAKUTHI 2ND DEFENDANT

**BEING ADMINISTRATORS OF THE ESTATE OF JOHN MAKUTHI
KATHUMBA**

JUDGMENT

1. Vide an amended originating summons dated the 25/2/2025 the Plaintiff sought orders against the Defendants THAT;
 - a. The court issues an order of injunction to restrain the defendant, their agents, employees, and hired goons from evicting, demolishing, excavating, chasing away the plaintiffs' security guards, or in any manner interfering with the suit property, being titles Nos. 9092/1 and 9092/2 are registered as IR No. 103055 and IR 103056 (hereinafter referred to as the suit lands).
 - b. A declaration that the certificate of title issued to the Plaintiff is conclusive evidence of ownership and that it is the absolute and indefeasible owner of the suit lands.
2. The summons are based on the grounds annexed thereto and the supporting affidavit of Abdi Abdifatah Muhumed sworn on 25/2/2025. Briefly, the deponent averred as follows;
 - a. He is a director of the Plaintiff and therefore authorised to swear the affidavit on behalf of the Plaintiff.



- b. The Plaintiff is the registered proprietor of the suit lands which are currently charged to Diamond Trust Bank Limited.
 - c. The defendants have trespassed onto the suit lands and excavated the land, removed its security personal on the ground and destroyed and carted away motor vehicles belong to the Plaintiff
 - d. The defendants have no interest in the suit lands to justify their trespass on the land.
3. The Defendants, through the replying affidavit sworn by Litha Katumbi and Amina Mbula on 28/4/23, where they avow that;
- a. They are the administrators of the estate of the late John Makuthi Kathumba.
 - b. They denied trespassing on the suit lands.
 - c. They have been validly in occupation of LR No 7075/3 since 1953, and their rights are recognised under Art 40 of *the Constitution*.
 - d. That the disputed land is adjacent to their homestead, and their animal sheds and pasture grounds are within the suit lands.
 - e. The survey report of the applicant dated 17/4/21 confirms that L R No 9092/1 lies on L R No 25727 and 25728. This indicates that LR 9092/1 overlaps with other parcels forming part of Jomo Kenyatta International Airport (JKIA) land.
 - f. LR No 9092/1, being a subdivision of parcel 9092, was revoked for being part of JKIA Land
 - g. The certificate of lease for LR No 9092/1 does not exist.
 - h. That when the Plaintiff entered the land, it was made clear to him that the land had belonged to their family since 1953, but nonetheless they brought trucks there and left them on the land.
 - i. That the NLC recognised their interest in the land in its report on enquiries of titles within Jomo Kenyatta Airport (JKIA) Public Land LR No 21919 dated 21/1/2019 at paragraph 46, where it was stated that the family of the late John Makuthi Kathumba should be compensated on the basis of a valid squatter claim on the land. It further stated that Kenya Airports Authority (KAA) should compensate the family to facilitate resettlement elsewhere.
 - j. That parcel 9092/1 appears to have been subdivided by the Plaintiff in October 2001, and the certificate of title for 9092/1 was changed to LR No. 25728, which belongs to JKIA as shown in FR No. 402/35. Following further subdivisions by the Plaintiff, vide FR 450/128, the land now overlaps JKIA land, raising doubts as to whether the suit land 9092/1 actually exists.
 - k. That the Plaintiffs have no legal interest in the suit lands and that Kenya Airports Authority ought to have been enjoined into the suit.
 - l. The court was urged to dismiss the suit with costs.
4. On 29/04/2025, the matter proceeded to a hearing, with the parties having fully complied with the provisions of Order 11 of the Civil Procedure Rules 2010. The matter went to hearing through the adducing of “viva voce” evidence, with the Applicant’s witness, PW1, giving testimony. After that, the Applicant marked its case as closed, and the Respondents called their witness, DW1. They also marked their case as closed thereafter.



Evidence adduced by the Applicant

5. Abdi Fatah Muhumed Abdi, the Applicant's Director, gave evidence as PW 1. He referred to his Supporting Affidavits dated 24/8/2021 and 25/2/2025, along with the annexures attached. He also relied on his witness statement dated 01/08/2024. Additionally, the Witness presented documents on pages 115 to 128 of the Plaintiff's bundle relating to title No. 9092/1.
6. PW 1 stated that the Respondents have not been in occupation of the two parcels of land the Applicant is claiming. He averred that the Applicant bought LR 9092/1 from Abdi Mohammed Isaak. He stated that the report by the National Land Commission (NLC) indicates there are 118 grants regardless of the Kenya Airport Authority's title on JKIA land. He averred that the Defendants were to be compensated with parcel 7075/3. He asserts that LR 9092 is their land and that Kenya Airports Authority has promised to issue them a lease. He maintains that they have been in possession and have constructed a wall thereon.
7. During cross-examination by the Defence Counsel, PW 1 stated that it was determined that all titles on LR 9092 should be revoked. However, these titles have not yet been revoked. He confirmed that what they purchased could be classified as public land. He also mentioned that the Applicant's transfer took place in 2012. Entry No. 2 thereon is in favour of AINU-Shamsi Hauliers Limited, where he serves as a Director.
8. It was his testimony that the Valuer stated he could not perform a search for the suit property. He averred that the parcels have been converted to parcels 653 and 654, as per Gazette Notice No. 1707. However, he had not presented the titles for these new numbers before the court. He confirmed that the titles were due to be revoked and that KAA was to issue new leases, which have not yet been issued. He also averred that he had constructed a wall without obtaining approvals from the Kenya Airports Authority or the County Government of Nairobi. It was his evidence that, although the recommendations of the National Land Commission affected his property, nothing has been done since to remedy the situation. Despite claiming that they had reported the Respondent's trespass, he was unable to prove this assertion.
9. During re-examination, the witness stated that the Plaintiff's title had not been cancelled because the Gazette Notice had not been brought to his attention. He stated that the mother title was 21919. He argued that the defendants should be compensated through parcel No. 7075/3 rather than through his titles. PW 1 stated that the whole area belongs to Kenya Airports Authority and that the Authority was to grant them leases in exchange for the surrender of the titles they currently hold.
10. With that, the Plaintiff closed its case.
11. DW 1 was Amina Mbula Kathumba. She relied on their Replying Affidavit sworn jointly with her sister Litha Katumbi Kathumba on 28/4/2023 as Administrators of the Estate of John Makuthi Kathumba. She also relied on annexures marked as D Ex No.1-3. She stated that their father bought a parcel of land known as 7075/3. They have been living on the said parcel from 1954 to date. She accused the Plaintiff of forcefully encroaching on part of their land. She averred that she attended the hearings at the National Land Commission. The Commission acknowledged their occupation of LR 7075/3 and recommended that they be given their land. She further stated that the Plaintiff came at night with a lorry and constructed some mabati structures on their parcel. She urged the court to remove the Plaintiff from the land.
12. In cross-examination, DW 1 confirmed her assertion that their father bought parcel 7075/3 from a white farmer named Lama in the early 1950s. She stated that their father took possession in 1958.



She affirmed that NLC recognised their squatter status. She reiterated that she attended the hearing at NLC. Subsequently, NLC cancelled all the titles. She contended that there is no report whatsoever indicating that their plot overlays the Plaintiff's property.

13. In re-examination, the Witness testified that NLC visited and inspected the land. It was her evidence that parcels 9091/92 are within their parcel 7075/3.
14. The Defendants then closed their case.

Submissions

15. Upon the closure of the hearing, the Court directed the parties to file their submissions within a strict timeframe. In response, the parties complied. The Applicant filed its submissions on 2/05/2025, whereas the Respondent's submissions are dated 24/06/2025.
16. The Court has considered the submissions by the parties and considered them in its decision. In any case, the submitted documents now form part of the court record.

Analysis and Determination

17. I have considered the Originating Summons before court, the rival affidavits, and submissions on record. The main issues for determination are;
 - a. Whether the Originating Summons is merited; and
 - b. What are the appropriate orders to issue
 - a. Whether the Originating Summons is merited;
18. In assessing whether the suit is merited, I will consider the prayers separately. I will start with the second prayer, where the Applicant seeks a declaration of absolute and indefeasible ownership of the property identified as Title Number 9092/1 and Title Number 9092/2, registered as IR 103055 and IR 103056 pursuant to the Certificate of Title issued to it. Before granting such a declaration, the effects of registration and the ownership of the suit property must be established.
19. The provision of Section 24 of the [Land Registration Act](#) 2012 No. 3 of 2012 provides as follows:

“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.”
20. Similarly, the provision of Section 25 (1) of the said Act further provides that:

“the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the 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, but subject to any lawful encumbrances, set out in this section.”
21. While Section 26 of the [Land Registration Act](#) provides: -
 1. “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.
2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
22. From the pleadings and during the proceedings, the Plaintiffs attached and indeed produced the original copy of the Certificate of Title for the disputed land. Clearly, the legal document lists the Applicant as the current registered owner of the suit property. The entries indicate that the property was initially registered in the name of Heartland Buildings Limited, which subsequently transferred it to AINU-Shamsi Hauliers Limited. Later, the property was transferred to Abdi Mohamed Issak before being transferred to the Applicant on 29/6/2012. Based on this, the Applicant seeks protection of its proprietary rights over the property.
23. In denying the assertions made against them, the Respondents assert that they have possessed the parcel of land known as LR No. 7075/3 since 1953. They state that the parcel is adjacent to their homestead, which they use as an animal/cow shed and pasture, and thus forms part of what they recognise as their land. They argue that the Survey Report by Cambrian Valuers Limited dated 17/4/2021, relied upon by the Applicant, indicates that the Report confirms LR No. 9092/1 falls on LR No. 25727 and 25728, meaning LR No. 9092/1 overlaps with other parcels that form part of the JKIA land. Consequently, the purported Certificate of Title for LR No. 9092/1, which originated from a subdivision of LR No. 9092, was revoked for being part of the land belonging to the JKIA, and to date, the Certificate of Title for LR No. 9092/1 does not exist. They annex a copy of the National Land Commission Report on the Titles within JKIA dated 21/01/2019.
24. At this stage, it is crucial for the court to refer to the Report dated 21/1/2019 submitted by both parties herein. As context for the Report, it is noted that the matter was brought before the NLC following the complaint filed by Kenya Airports Authority (KAA) regarding irregular titles within JKIA land parcel LR No. 21919. KAA requested an inquiry into the grants of leases/titles, the subsequent revocation of those grants, and the recovery of the land in favour of the Authority. KAA contended that the land in question was public land reserved for airport use and was therefore illegally and irregularly allocated to private individuals.
25. Upon hearing the parties with grants on the suit property, the Commission concluded that the said parcel of land is public land and the grants issued thereon were irregular. In its recommendations, the Commission at Paragraph 43 recommended that all the long-term (99 years) grants affecting the KAA land be cancelled or revoked and replaced by short-term leases in accordance with the terms and conditions approved by KAA.
26. It further recommended that KAA should compensate for any approved developments and improvements made by private entities that will be demolished. There should be no compensation for land, but where appropriate, KAA should offer affected entities alternative sites on a sublease basis. In paragraph 46, the report states that the family of the late John Makuthi Kathumba, who claimed parcel No. 7075/3 within the JKIA land, should be compensated on the basis of a valid squatter claim to the land. KAA should compensate the family in good faith to facilitate resettlement elsewhere. The



squatter's continued stay on JKIA land is not tenable since it is close to the flight tunnel and poses a security risk to airport operations.

27. NLC is established under Article 67 of *the Constitution* and operationalized by the *National Land Commission Act*. Section 14 of the *National Land Commission Act* provides for Review of grants and dispositions as follows; -
1. Subject to Article 68(c)(v) of *the Constitution*, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.
 2. Subject to Articles 40, 47 and 60 of *the Constitution*, the Commission shall make rules for the better carrying out of its functions under subsection (1).
 3. In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.
 4. After hearing the parties in accordance with subsection (3), the Commission shall make a determination.
 5. Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
 6. Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.
 7. No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.
 8. In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of *the Constitution*.
 9. The
28. It is clear that NLC conducted an inquiry, which found that the title to the suit property had been unlawfully allocated to private individuals. The NLC recommended that the grants be revoked and that KAA compensate the individuals for the developments on the property. The Commission specifically acknowledged the squatter status of the Respondent and suggested that they be compensated for resettlement. Additionally, Gazette Notice No. 1549 dated 15/02/2019 declared the allocation irregular, and therefore, the titles should be revoked.
29. Furthermore, PW 1 confirmed in his testimony that there was a finding that all titles on LR 9092 should be revoked. However, the titles have not yet been revoked. He affirmed that what they purchased could be public land. Although the Applicant claimed that the parcels had been converted to parcels 653 & 654 via Gazette Notice No. 1707, the titles were not presented before the court. He confirmed that the titles were to be revoked and that KAA was to issue new leases, which have not yet been issued.
30. The Petitioner seeks declaratory orders. From the analysis above, it is clear that the NLC found the suit property had been unlawfully allocated to the Applicant. The parties were to negotiate with KAA with a view to entering into subleases for the premises on conditions. It is evident that KAA has not yet issued new subleases or provided compensation to the occupants who had constructed on the lands.



31. The evidence led this far before the court creates doubt as to whether the properties alleged to be the suit properties exist. I say this because the Valuer was unable to obtain a search over the said parcels. I also note that despite the applicant acknowledging that the said property was public land, neither NLC nor KAA were joined in the proceedings. In my view, the applicant, having not challenged the NLC's findings, it should have been joined to the current proceedings, given its constitutional mandate.
32. In its submissions, the Applicant has argued that NLC lacks the authority to revoke a title. I fully agree with this assertion. See the Supreme Court decision in the Matter of the National Land Commission [2015] e KLR, where the apex court extensively discussed the Commission's mandate. In my view, it is only the court under Section 80 (1) of the Land Registration Act, 2012, that has the power to order the cancellation of a registration. In this case, NLC did not revoke any titles; it merely recommended the revocation of the titles issued for the land in question. That said, the court finds that there are many grey areas which have been admitted by the applicant, leaving substantial doubt in the court's mind regarding the legality of the applicant's title.
33. I find that, given the Plaintiff's admission that the land is part of the airport and that the allocation or acquisition is uncertain, the Plaintiff could have assisted the court by joining KAA, a public body, into the suit..
34. Based on the foregoing analysis, the Applicant's Amended Originating Summons is determined in the following terms;
 - a. The Amended Originating Summons herein has no merit and it is hereby dismissed.
 - b. The Respondent shall have costs of the suit herein.
35. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 22ND OCTOBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Mr N. Ojienda for the Plaintiff Applicant

Mr Maingi for the Respondent

CA- Ms Yvette Njoroge

