



Lali & another v Haji & 3 others; Kenya Wildlife Services (Interested Party) (Environment and Land Case E001 of 2023) [2025] KEELC 7530 (KLR) (22 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7530 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E001 OF 2023
EK MAKORI, J
OCTOBER 22, 2025**

BETWEEN

MOHAMED MOHAMMED LALI 1ST PLAINTIFF

HAJI ATHMAN MBWARAJI 2ND PLAINTIFF

AND

HARUN HAJI 1ST DEFENDANT

HUSSEIN HAJI ALI 2ND DEFENDANT

COUNTY GOVERNMENT OF LAMU 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

AND

KENYA WILDLIFE SERVICES INTERESTED PARTY

JUDGMENT

1. On January 17, 2023, the plaintiffs filed this suit seeking the following reliefs:
 - a. A permanent injunction preventing the 1st and 2nd defendants, their employees, and agents from disturbing, trespassing, alienating, claiming rights or ownership, or interfering with the plaintiff's quiet possession, peaceful enjoyment, or ownership of the unregistered land parcel of approximately 4 acres located in Kiwayu sub-location, Ndau Location, Lamu County.
 - b. An order that the Officer Commanding Station, Kiunga Police Station, do assist in compliance with order (a).
 - c. General damages.
 - d. Costs of this suit and interests at court rates.



2. The 1st and 2nd defendants denied the plaintiff's claim through their joint statement of defense dated February 8, 2023. The 3rd defendant also denied the claim in its statement of defense dated March 3, 2023. The 4th defendant similarly denied the claim in a statement of defense dated February 8, 2023. The interested party did not participate in the proceedings.
3. The matter proceeded to a full trial, as shown in the court proceedings.
4. At the hearing, the 2nd and 1st plaintiffs testified as PW1 and PW4, respectively. They adopted their written witness statements and presented exhibits No. 1 to 11, which are attached to the plaintiffs' list of documents dated January 17, 2023. The plaintiffs also called two witnesses: PW2-Harun Athman and PW3-Swaleh Salim.
5. The 1st and 2nd defendants testified as DW1 and DW2, respectively. They adopted their respective written witness statements dated February 20, 2024, and produced exhibits No. 1, 2, and 3, which are attached to the 1st and 2nd defendants' list of documents dated February 20, 2024.
6. The 3rd defendant called one witness, Paul M. Munyendo, who testified as DW3. He adopted his written witness statement, dated April 7, 2025, and produced in evidence as Exhibit No. 1, attached to the 3rd defendant's list of documents dated April 7, 2025.
7. The 4th defendant and the Interested party did not call any witnesses.
8. At the conclusion of the cases for all parties, the court instructed the parties to address the issues raised at trial through written submissions. I acknowledge receipt of submissions from the learned counsel for the plaintiffs, Mr. Otieno; Mr. Shujaa for the 1st and 2nd defendants; Ms. Kulthum for the 3rd defendant; and Mr. Munga for the 4th defendant. The submissions significantly aided in resolving the issues involved in this matter.
9. Based on the evidence, submissions, and materials provided to me, the issues I am to determine are as follows: whether the plaintiffs have any proprietary interests in the suit land; whether the defendants have trespassed on land owned by the plaintiffs; whether the plaintiffs are entitled to general damages related to the suit land; and who is entitled to the costs of the suit.
10. The issues raised above can be condensed into one central question: whether the plaintiffs have established a proprietary interest over the suit property against the whole world.
11. The plaintiff believes they have established proprietary rights to the suit property based on ancestral claim and occupancy.
12. The defendants collectively disagree, asserting that the suit property is situated on Kiunga Island, which was designated a Marine reserve on October 4, 1979, by Gazette Notice.
13. The suit lands are described in paragraphs 8 and 9 of the plaint as being an unregistered parcel of land measuring 3 acres located at Kiwayu sub-location within Ndau Location in Lamu County, and an adjacent unregistered parcel of land measuring 1 acre, also situated at Kiwayu sub-location within Ndau Location in Lamu County.
14. The 1st plaintiff testified that he inherited the suit land, measuring 3 acres, located on the second-row beachfront of the island from his late mother, Asha Kombo Yakub. He claimed his mother engaged in crop farming and livestock keeping on the island since the pre-independence era. However, at the hearing, the 1st plaintiff did not provide any evidence of the alleged inheritance or any proof that his late mother had initially owned the suit land.



15. The 2nd plaintiff also testified that he inherited the 1-acre parcel of land on the first-row beachfront of the island from his late father, Athman Mbwarahaji, who also practiced crop farming, livestock keeping, and fishing on the island. Similarly, the 2nd plaintiff did not present any evidence of inheritance from his late father or proof that his father was the owner of the suit land.
16. In paragraph 11 of the plaint and during their testimony, the plaintiffs admitted that the suit lands are located within the Kiunga Marine National Reserve. The 3rd defendant produced a copy of Gazette Notice No.3022 dated October 4, 1979, published in the Kenya Gazette on October 19, 1979, showing that Kiunga Island was declared a Marine Reserve on October 4, 1979.
17. The Gazette Notice clearly states that the land claimed by the plaintiffs as their ancestral land is located within a marine reserve. Therefore, their claim of exclusive possession and use of what is fundamentally part of a marine reserve has no legal foundation. The plaintiffs argued that although the disputed lands are within the marine reserve, the entity legally responsible for managing the reserve recognizes the ancestral land rights of the local inhabitants within the reserve. They also allege that their late parents lived and earned their livelihoods there for generations, thereby establishing land rights and resource rights within the reserve.
18. However, no evidence was presented to support these claims. It is clear from the evidence that the plaintiffs do not have any legal right to the disputed land. Aside from the plaintiffs and their witnesses' allegations, no proof was provided that the disputed land is ancestral land of the plaintiffs; even if it were, this land is designated as a marine reserve.
19. Numerous precedents establish that when land is designated as public land, it cannot be alienated for private land. See, for example, the decision cited by Mr. Munga, with which I agree; Kenya Forest Service v Otieno & another (Environment and Land Appeal 43 of 2021) [2023] KEELC 18019 (KLR), which held that:

“The fact that the Resolution was passed in the year 1983 and 1990 for the declaration of the suit land as forest land meant that the said land was reserved for public utility and was therefore not available for alienation or for use as a private land. While it is not in dispute that the 1st Respondent holds a title deed in respect of the suit land (the process of acquiring the said title having been discussed in the preceding paragraph), the question remains whether the said land was available for alienation and/or allocation. As was held in the case of Niaz Mohamed Jan Mohamed Vs Commissioner for Lands & 4 Others HCCC No. 423 of 1996, land acquired in public interest cannot be alienated and allocated to private individuals, even a portion thereof unless certain conditions such as degazettement, are met.”
20. Article 63 (2) of *the Constitution* cited by the plaintiffs in support of their claim that the suit land is ancestral land does not apply to the marine reserve. Article 63(2)(d) of *the Constitution*, also cited by the plaintiffs, defines community land. This definition does not include a gazetted marine reserve; therefore, the suit land is not considered community land as described in *the Constitution*.
21. The plaintiffs acknowledge that the suit land is a designated government marine reserve, and they have been farming and building structures there. In that case, it is essential to recognize that they have been doing so without permission, which is considered illegal under the *Wildlife Conservation and Management Act*, 2013. Because of this, the plaintiffs do not have any exclusive rights or ownership claims to the land against the 1st and 2nd defendants, nor against the world at large.
22. The plaintiffs also referenced the decision in the case of Center for Minority Rights Development and Minority Rights Group International v Kenya, Africa Commission on Human and Peoples Rights -



Communication 276/2003 (the Endorois Case), where the African Commission ruled that the Kenyan government violated the rights of the indigenous Endorois community by evicting them from their ancestral lands to create a wildlife reserve. They argued that, similarly, the plaintiffs have ancestral land rights within the marine reserve. However, the case is different. In that case, the petitioners sought restitution of their ancestral land, compensation for wrongful displacement from Lake Baringo Game Reserve, and a declaration that their rights to property, culture, religion, natural resources, development, and faith had been violated. This is not the situation here. The plaintiffs in this case are not being evicted from their ancestral land to create a marine reserve. On the contrary, the marine reserve was established in 1979, and neither the plaintiffs nor their late parents filed suit against the Minister in charge of wildlife and Kenya Wildlife Services regarding the establishment of the marine reserve on alleged ancestral land or their eviction from it. Furthermore, there is no claim for the restitution of ancestral land in this case.

23. It is well-established law that when the marine reserve was established in 1979, the land was vested in the Kenya Wildlife Service. It was also the plaintiffs' testimony under cross-examination that they do not reside on the suit land; they reside elsewhere.
24. From the foregoing, the plaintiffs have no proprietary interests in the suit land that can be protected with a permanent injunction. Since the plaintiffs have no color of right to the suit land, the issue of the 1st and 2nd defendants trespassing onto the plaintiffs' lands does not arise.
25. Based on the evidence presented, the plaintiffs' main complaint seems to be a decision by the 3rd defendant's Deputy Sub-County Administrator, outlined in a letter dated September 2022, which accused the plaintiffs of encroaching on land owned by the 1st and 2nd defendant. They should have initiated a judicial review application and sought orders of certiorari to quash the decision.
26. The plaintiffs testified that after receiving the letter, their buildings, which they had erected on the suit land, were demolished. However, they stated that they did not see who demolished the buildings. The fact that the plaintiffs and the 1st and 2nd defendants had been disputing over the suit land does not in itself prove that the defendants were involved in the demolition. Therefore, the plaintiffs are not entitled to damages from the defendants or any injunctions as requested in the plaint.
27. Aside from this, no evidence of the demolition was provided; it was only an allegation. The plaintiffs did not present any photographs showing the debris left behind, nor was any evidence submitted regarding the demolition.
28. In paragraph 15 of the plaint, the plaintiffs listed the details of the damages they claimed to have suffered, but did not attempt to prove these at the trial. No credible evidence was presented showing that the buildings existed on the land before the alleged demolition. It is well-established law that damages or losses must be explicitly pleaded and proven with reliable evidence. By the end of the plaintiffs' case, they had not presented any evidence to support their claims of loss and damage. Therefore, the plaintiffs are not entitled to any monetary damages.
29. In a nutshell, this is a marine reserve.
30. The plaintiffs' suit is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 22ND DAY OF OCTOBER 2025.

E. K. MAKORI

JUDGE



In the Presence of:

Mr. Shujaa for the 1st and 2nd Defendant

Happy: Court Assistant

In the Absence of:

Mr. Otieno for the Plaintiff

Ms. Kulthum for the 3rd Defendant

Mr. Munga for the 4th Defendant

