



REPUBLIC OF KENYA



**Said Bin Seif Properties Limited v Savani & 9 others (Environment and Land Case 148 of 2018) [2025] KEELC 7292 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7292 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIRONMENT AND LAND CASE 148 OF 2018**  
**LL NAIKUNI, J**  
**OCTOBER 24, 2025**

**BETWEEN**

**SAID BIN SEIF PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**SURAYAKANT SAVANI ..... 1<sup>ST</sup> DEFENDANT**

**MANU SAVANI ..... 2<sup>ND</sup> DEFENDANT**

**SHOBHNA SAVANI ..... 3<sup>RD</sup> DEFENDANT**

**JASUMATI SAVANI ..... 4<sup>TH</sup> DEFENDANT**

**JAI SAVANI ALL ..... 5<sup>TH</sup> DEFENDANT**

**DEV RAMANLAL MOHANLAL SAVANI (PERSONAL REPRESENTATIVE OF THE LATE RAMANLAL M SAYANI) ..... 6<sup>TH</sup> DEFENDANT**

**ANSUYA SAVANI (PERSONAL REPRESENTATIVE OF THE LATE SHANTILAL M. SAVANI) ..... 7<sup>TH</sup> DEFENDANT**

**MAYUR SAVANI (PERSONAL REPRESENTATIVE OF THE LATE RAMNIKALAL SANGHVI) ..... 8<sup>TH</sup> DEFENDANT**

**MALTI CHUNILAL SAVANI (PERSONAL REPRESENTATIVE OF THE LATE CHUNILAL SANGHVI) ALL T/A MOMBASA LAND DEVELOPMENT ..... 9<sup>TH</sup> DEFENDANT**

**MOMBASA LAND DEVELOPMENT ..... 10<sup>TH</sup> DEFENDANT**



## JUDGMENT

### I. Preliminaries

1. The Judgment of this Honourable Court pertains to the Amended Plaintiff dated 23<sup>rd</sup> October, 2018 instituted on the same day by Said Bin Seif Properties Limited the Plaintiff herein against Mohanlal Kal – Ratilal Motichand Doshi, Gulamhusein Csmailji Karachiwalla, Maganlal G. Sanghvi, S. Urayakant Savani, Manu Savani, Shobhna Savani, Jasumati Sa Vani and Jani Savani Ali T/A Mombasa Land Development Company. It was against the Defendants herein.
2. Upon service of the pleading and summons to enter appearance, the Defendants entered appearance through a Memorandum of Appearance dated 9<sup>th</sup> October, 2018 and filed on the same day, and an Amended Statement of Defence dated 2<sup>nd</sup> November, 2018.

### II. Description of the parties

3. The Plaintiff was described as a limited liability company incorporated in the Republic of Kenya under the provisions of the Companies Act, Cap. 486, Laws of Kenya and carrying out business within the Republic of Kenya.
4. The Defendants were described as male adults of sound mind who were at all material times trading as Mombasa Land Development Company and carrying out business within the Republic of Kenya. All the five [5] Defendants are sued in their capacity as partners in Mombasa Land Development Company which is a business entity registered under the registration of business names Act Cap 489 Laws of Kenya. They are sued as successors in title to the original partners who have since passed on.

### III. Court directions before the hearing

5. Nonetheless, on 16<sup>th</sup> November, 2021, upon conducting a pre – Trial Conference, the Honourable Court fixed the hearing dated for 22<sup>nd</sup> February, 2022 but it eventually commenced hearing on 22<sup>nd</sup> June, 2022 the parties having fully complied on the Provisions of Order 11 of the Civil Procedure Rules 2010. It proceeded for hearing by way of adducing “viva voce” evidence with the Plaintiffs’ witnesses testifying in Court. Thereafter, the Plaintiffs closed their case and the Defendants called their witnesses on 19<sup>th</sup> June, 2024.

### IV. The Plaintiff’s case

6. From the filed pleadings, at all material times relevant to the suit the Plaintiff averred that the Defendants own Plot Number MI/XXXVII/95 which shares a common boundary with the Plaintiff’s Plot No. MI/XXXVII/18. On or before January, 2017, the Plaintiff noticed that a tall building standing on the Defendants Plot Number MI/XXXVII/95 was built in a manner suggesting it had taken a big chunk of land from the Plaintiff’s Plot No. MI/XXXVII/18 and decided to commission a surveyor who did a topo cadastral survey and noted that indeed the said building had encroached on the Plaintiff’s plot in two parts which the surveyor marked “A” and “B” on sketch which is part of the Plaintiff’s list of documents [The Plaintiff intends to rely on the said survey report in its entirety].
7. As a result of the said encroachment the Plaintiff had been deprived of the use of 93.63 sqm of his land which spaces are fully developed by the Defendants together with their Plot Number MI/XXXVII/95 from the ground up to first floor and being used for commercial purposes for many years. The Plaintiff further averred that the Defendants took advantage of the fact that they had a seventy five [75] years



lease in respect of Plot Number MI/XXXVII/18 in which they were to build houses and use the same during the term of the lease and thereafter hand over the built structures in a tenantable position, an issue which has partly been complied with though a dispute lies in court over the state of the houses when the Plaintiff took possession thereof.

8. According to the Plaintiff at no time, before or during the continuance of the lease agreement between itself and the Defendant did it give them permission to encroach, build over, build in or do such acts on the Property such as the one that is the cause of action of this suit because the Defendants were supposed to develop this portion as part of a 75 year lease and hand it over as a building in a tenantable position to the Plaintiff at the expiry of term. The Plaintiff averred that the Defendant owed it a duty of care not to alienate their premises and develop it together with Plot Number MI/XXXVII/95 and believed that at some point during the continuance of its lease with the Defendant in the suit Property, the Defendant decided to take unjustifiable liberties with the Plaintiff's Property with full knowledge that at the time it quits the premises, the Plaintiff would be left with a less space/plots than the one subject to the lease. The Defendants continued use of the encroached portion of Plot number MI/XXXVII/18 had caused the Plaintiff loss and damage.
9. The Plaintiff relied on the following particulars of damage: -
  - a. Failing to build the Plaintiff's structure on the said space as per 75 year lease
  - b. Denying the Plaintiff rent acquired from the alienated space
  - c. Changing the design on Plot Number MI/XXXVII/18
  - d. Reducing the size of Plot Number MI/XXXVII/18 irregularly by 93.63 sq metres which is a huge space in a town property
  - e. Depriving the Plaintiff the use of the rooms/shops standing on that space since November, 2016
10. The Plaintiff claimed damages. According to the Plaintiff there was another suit pending between the parties regarding the amount payable to redecorate the houses which were subject to a seventy five [75] years lease but issues are quite different from the present suit. Despite demand made and notice of intention to sue having been issued, the Defendants have refused, neglected and/or failed to admit liability rendering this suit necessary. The Plaintiff admitted the jurisdiction of the court to hear and determine the suit.
11. The Plaintiff therefore prayed for Judgment to be entered against the Defendants jointly and severally for: -
  - a. The entire demolition of the encroaching parts of the building;
  - b. Costs of this suit;
  - c. General damages for unlawful encroachment and use of Plaintiff portion of land
  - d. Interests on prayers [c, d & e above];and
  - e. Any other relief this Honourable Court may deem just
12. The Plaintiff called PW 1 on 27<sup>th</sup> April, 2023 at 12.30 pm where in the witness testified that: -



#### **A. Examination in Chief of PW - 1 by Mr. Obinju Advocate: -**

13. PW - 1 was sworn and testified in Kiswahili language. He identified himself as Mr. Saif Said Saif Al Busaidy, a citizen of Kenya and a holder the national identity card bearing all the details shown to Court. He told the Court that he filed a witness statement which he relied on as his evidence in chief. He had a bundle of documents listed as 1 to 11. Plaintiff Exhibit 1 to 10 admitted as evidence while “PL, MFI – 11” as the Land Surveyor’s Report. Further there were Plaintiff’s Supplementary – Plaintiff MFI -12”. Further there was a 2<sup>nd</sup> further List of Documents attached – 2 documents Plaintiff Exhibit 13 and 14’ respectively. The original title deed for suit Land Reference No. Mombasa/Block/ XXXVII/18 0.0858 acres dated 15<sup>th</sup> December, 2021; Serial No. 36403.98. The Plaintiff 3<sup>rd</sup> further List of Documents dated 7<sup>th</sup> November, 2022 marked as Plaintiff “MFI - 15.” Finally, he was questioned to come and testify in court I have a Board Resolution. Resolution dated 28.10.2022 marked as Plaintiff Exhibit – 16”.
14. PW 1 told the court that briefly he was the director for Said Bin Seif Property Ltd; his father entered into the lease with the Defendants. At the expiry of the lease they discovered there was a building constructed on their property – it was a case of encroachment; they involved their advocates to take action. To date they had encroached on our land. They were seeking demolition and general damages. The extended of the encroachment is 96.6 Sq. meters. They tried to have a meaningful solution but there had not been any meaningful response.

#### **B. Cross examination of PW - 1 by Mr. Karega Advocate.**

15. PW - 1 testified that the lease was for 75 years which was granted to his father “Plaintiff was between an individual and not a company and his father. He filed this suit in the year 2018. It was the original lease title for the suit land; the one that had been encroached. The title was issued on 15<sup>th</sup> December, 2021 but the suit was filed in 2018. He did not have a deed of assignment to an individual to the company. He had no idea when the encroachment took place. He was too young to know when the surrounding buildings within the suit land were built as he was too young. With reference to the lease = these buildings were built in the 1950s, the witness stated that he was familiar with Mr. Kaguru Advocate. He was the one who filed this case. Page 22 letter dated 1<sup>st</sup> August, 2017 letter by Mr. Kaburu & Co. Advocates 1<sup>st</sup> Paragraph the buildings/construction were done 75 years ago. The witness told the court that they had been there on the land for over 40 years from the time of the construction to the filing of the case. They had leased the property and they had no right to enter the leased premises to know the happenings on it.
16. PW - 1 stated with reference to the lease that it provided for the Landlord and the surveyors had the right to enter the leased premises for purposes of inspection. He confirmed that his statement his statement that he had no right to enter was incorrect. The lease lapsed in the year 2016 hence the right to enter was available but they had reason to enter as there was no construction going on was wanted to give the tenant peaceful enjoyment. The Plot was in 0.0558 acres, the encroachment is 96.6 Sq. It has prevented us from developing it the plot. With reference to the valuation Report dated 31<sup>st</sup> October, 2022 the witness told the court that the same may be based on opportunity costs. There were no buildings.

#### **C. Re - examination of PW - 1 by Mr. Obinju Advocate.**

17. PW - 1 reiterated that the plot belonged to his father; 60 years ago it was transferred to the corporation. The dispute is on encroachment of the land and not on ownership. From Mr. Kaburu Advocates the buildings were built 40 years ago. They came to discover the encroachment upon the expiry of the lease.



They had a right to enter but they had never wanted to interfere for 75 years. Had they known, they could never have allowed them. On several occasions they had tried to reach them to buy it they declined. From the opportunity costs incurred the encroachment had adversely affected out development plan on the site land.

18. On 19<sup>th</sup> June, 2024 the Plaintiff called its second witness PW 2 who told the court that: -

**A. Examination in Chief of PW - 2 by Mr. Obinju Advocate.**

19. The witness testified under oath and in English language. He was called Mr. Edward Marenye Kiguru. He was a Land Surveyor of 51 years' experience. He was a private surveyor attached to Survey Edward Kiguru Land Surveyor. He was instructed by the Plaintiff to conduct the survey on February 2020 this was in respect of two parcels of land MI/XXXVII/18 and 95. It was near the Marikiti area. He was to carry out the cardographic survey to identify the boundaries and picking out the structures thereof. By doing so to find out where there would be any cases of encroachment on the two [2] parcels.
20. PW - 2 told the court that he did carry out the report dated 6<sup>th</sup> February, 2020; they relocated the beacons though some could not be relocated they found out there were encroachment of parcels to No. 18 and 95 on area of 96.6 sq. meters. The information was drawn to a map attached to the report. He produced the report as Plaintiff Exhibit No. 12.

**B. Cross examination of PW - 2 by Mr. Karega Advocate.**

21. According to PW 2 before preparing the report he never personally visited the site. He sent the authorized surveyor. The name of the said Surveyor – Mr. Lwambi was not on the report. He worked with him at Mombasa. The land was on Digo Road Marikiti, the witness was pretty familiar with the area. With reference to the report the witness told the court that on MI/XXXVII/18 and 95 there were existing developments structures. On MI/XXXVII/18 – there were permanent structures of 1 to 4 storey floors. The size was 96.6 meters. On MI/XXXVII.95 there are permanent structures of 1 floor. The encroachment is shown by the sky blue colour on the map.
22. The Plaintiff called PW - 3 who testified as follows: -

**A. Examination in Chief of PW - 3 by Mr. Obinju Advocate: -**

23. PW - 3 stated under oath and in English language. He was called Mr. Ephantus Waweru Rugethe. He was a registered valuer practicing as private valuer. He had a Bachelors of Arts Degree Land Economics from University of Nairobi and post graduate diploma from Institute of Valuers. On this matter he was instructed to undertake the encroached part MI/XXXVII 18 and 95. The owner of Plot No. MI/XXXVII 18 wanted to develop the plot. He wanted to know how he would be the loss of the encroached part. The plots were located within Marikiti area; on page 2 and 3 of his report he stated the same was indicated to be 93.6359 M or 1,040.12 Sq. Feet. The percentage of the encroachment of Plot 95 and 18 the potential rental value. The loss was for a sum of Kenya Shillings Three Eighty Four Thousand [Kshs. 384,000/-] per month and Kenya Shillings Four Million Six Hundred and Eight Thousand [Kshs. 4,608,000/-] yearly; he relied on the cadastral survey by the Land Surveyor the same marked as Plaintiff Exhibit No. 15.

**B. Cross examination of PW - 3 by Mr. Karega Advocate.**

24. PW - 3 stated that he had indicated on page 1 that he had undertaken plots which were encroached. His Terms of reference was to advise on the market value of the freehold interest for Court purpose only. But that he had done on the figure of a sum of Kenya Shillings Four Million Six Hundred



& eight Thousand [Kshs. 4,608,000/-] yearly were not assumptions. The structure of the buildings had not been constructed as yet. But what he had done on the figure of he had used the potential monthly rental value loss. It was an assumption; his assumption was that they will get the approvals. The proposed building was 6, 7, 8, 9 or 10 storeys the value would change. His figures were fixed. The other assumption was that they had occupied on only the encroached area. He was not specific whether the development would or not cover the whole encroached area. With reference to page 7 of the valuation report – termed existing structures, but his assumption was that they were to develop the plot. At page 9 of the further document 18.343.164 Sq. Meters – it was 79.92% of the plot. Thus it was not the 100% coverage as he had started earlier on.

25. With reference to the acreage of Plot No. 858 acres [3,47259 Meters] on page 9 of the report the ground floor covers 2.808.81 Sq. Meter plot coverage is 2,808.81/3.7962% the difference of the total area 6.64 Sq. Meters and the encroachment is only 100 Sq. M – 19% has not been built up as yet. They had not submitted the plans for approval. With reference to page 10 of the report, the witness told the court that its proposed commercial Development – projected Building Costs and rate of Return for Plot No. 18. He only used the market compensation approach. He did not use this table. He calculated on the whole area on the encroachment area. It assumed that the whole building is uniform. He did not use this table; he calculated. He only the same rent. With reference to the table on page 10 was what the clients provided him with but for him he used a uniform format.

### **C. Re - examination of PW - 3 by Mr. Obinju Advocate**

26. PW - 3 reiterated that with reference to the T.O.R. He had repeated it on page 4 of the report. He was given a structural drawing and he used the market rate – but on page 10 he used the total top area. Currently what was occupied and the structures was what was on Page 17 of his report i.e. double story structure.
27. Mr. Obinju marked the case closed on behalf of the Plaintiff on 19<sup>th</sup> June, 2024.

### **V. The Defendants' case**

28. In their amended statement of defence, the Defendants admitted that the current partnership for Mombasa Land Development consists of the following additional parties:-
- i. Suryakant Mohanlal Savani as personal representative of the estate of Mohanlal Savani;
  - ii. Malti Chunilal as personal representative of the estate of Chunilal Savani;
  - iii. Mayur Sanghvi as personal representative of the estate of Ramnikal Sanghvi;
  - iv. Ansuya Savani as personal representative of the estate of Shantilal Savani; and
  - v. Dev Ramanlal Mohanlal Savani as personal representative of the estate of Ramanlal Savani
29. The Defendants were strangers to the contents of Paragraphs 10 and 11 of the Amended Plaint. The Defendant denied the contents of Paragraphs 12 and 13 of the Amended Plaint. Without prejudice to the foregoing, the Defendants averred that in or around year 1970, the original partners of Mombasa Land Development Company obtained all the requisite approvals to develop the property known as Plot No. MI/XXXVII/95 [hereinafter the partnership property] before commencing construction of a two storey building thereon. Further, that in or around the year 1970, the original partners commenced the construction and allowed the original partners to develop and complete the construction of a two storey building on the partnership property without any objections thereto.



30. The Defendants averred that all along, both the original partners [who were all deceased] and current partners had been in peaceful and exclusive possession of the partnership property together with the premises erected thereon for a period of more than forty five [45] years and that the status quo on the ground was maintained until sometimes in 2017 when the parties fell out as regards a separate dispute. The Defendants averred that by the conduct of the Plaintiff outlined above, there was acquiescence to encroachment of structures onto Plot No. MI/XXXVII/18, if any, and that the Plaintiff was estopped from claiming encroachment and/or trespass under the doctrines of waiver, acquiescence and estoppel. Similarly, the Defendants averred that the Plaintiff's claim was time barred under the provisions of the Limitations of Actions Act having been filed more than twelve years following the alleged encroachment and/ or trespass, if any, and that the Plaintiff was guilty of laches.
31. The Defendants denied the contents of Paragraphs 13, 14, 15, 16 and 18 of the Amended Plaint. The jurisdiction of this Honourable Court was admitted. With reasons wherefore the Defendants prayed that the suit herein be dismissed with costs to the Defendants.
32. In his opening remarks, Mr. Karega the Advocate for the Defendants informed the court that their case was that the building construction on the plot No. 95. It was constructed in the year 1970. There had never been any encroachment. If at all there was any, which was denied, it could have happened at the point of the construction. There was acquiescence or there was limitation of time governed by the provisions of the Limitation of Action Act Cap. 22. According to the Learned Counsel, that was close to over 12 years which had lapsed since then. The lease they had pre-condition. They were caught up by indolence on the values. He asserted that they were using assumptions to assign a claim against the Defendants. The Defendants did not call any witness.

## VI. Submissions

33. On 18<sup>th</sup> December, 2024 after the Plaintiff and Defendants marked the close of their cases, the Honourable court directed that the parties file their submissions within stringent timeframe thereof on. Unfortunately, by the time of penning down this decision, the Honourable Court had not been in a position to access the submissions from neither the Judiciary CTS nor ELC registry. Pursuant to that the Honourable court reserved a date to deliver its Judgement on 19<sup>th</sup> July, 2025. Eventually, the Judgement was delivered on 24<sup>th</sup> October, 2025.

## VII. Analysis and Determination

34. I have keenly assessed the filed pleadings by all the Plaintiff and Defendants herein, the written submissions and the cited authorities, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
35. In order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following three [ 3 ] issues for its determination. These are: -
  - a. Who is the lawful owner of the suit property known as Mombasa/MN/Block 1/519
  - b. Whether the Plaintiff is entitled to the orders sought in the Plaint
  - c. Who bears the costs of the suit?

### ISSUE No. a). Who is the lawful owner of the suit property known as Mombasa/MN/Block 1/519

36. Under this sub title the Court shall discuss the ownership of the suit properties. As indicated, this is a rather complex matter where the main substratum of it is on the encroachment to the suit property



and compensation of the parties herein. From the very onset, the Honourable Court wishes not to extrapolate on the brief facts, I will just proceed to discuss the provision of Section 24[a] of the Land Registration Act, No. 3 of 2012 outlines the interests and rights of a registered proprietor of land 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.....’

37. Section 25[1] of the Land Registration Act also stipulates that;

‘ 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...’

38. The law is very clear on the position of a holder of a title deed in respect of land. Indeed Section 26[1] of the Land Registration Act provides as follows: -

“ the Certificate of Title issued by the Registrar upon registration, to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all counts 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 the 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
- b. Where the Certificate of Title has been acquired illegally un-procedurally or through a corrupt scheme”

39. It will be seen from the above provisions of the law, that title to land is protected, but the protection can be removed and title impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, un-procedurally, or through a corrupt scheme.

40. From the filed pleadings, at all material times relevant to the suit the Plaintiff averred that the Defendants own Plot Number MI/XXXVII/95 which shares a common boundary with the Plaintiff’s Plot No. MI/XXXVII/18. On or before January, 2017, the Plaintiff noticed that a tall building standing on the Defendants Plot Number MI/XXXVII/95 was built in a manner suggesting it had taken a big chunk of land from the Plaintiff’s Plot No. MI/XXXVII/18 and decided to commission a surveyor who did a topo cadastral survey and noted that indeed the said building had encroached on the Plaintiff’s plot in two parts which the surveyor marked “A” and “B” on sketch which is part of the Plaintiff’s list of documents [The Plaintiff intends to rely on the said survey report in its entirety].

41. As a result of the said encroachment the Plaintiff had been deprived of the use of 93.63 sqm of his land which spaces are fully developed by the Defendants together with their Plot Number MI/XXXVII/95 from the ground up to first floor and being used for commercial purposes for many years. The Plaintiff further averred that the Defendants took advantage of the fact that they had a seventy five [75] years lease in respect of Plot Number MI/XXXVII/18 in which they were to build houses and use the same



during the term of the lease and thereafter hand over the built structures in a tenenable position, an issue which has partly been complied with though a dispute lies in court over the state of the houses when the Plaintiff took possession thereof.

42. According to the Plaintiff at no time, before or during the continuance of the lease agreement between itself and the Defendant did it give them permission to encroach, build over, build in or do such acts on the Property such as the one that is the cause of action of this suit because the Defendants were supposed to develop this portion as part of a 75 year lease and hand it over as a building in a tenenable position to the Plaintiff at the expiry of term. The Plaintiff averred that the Defendant owed it a duty of care not to alienate their premises and develop it together with Plot Number MI/XXXVII/95 and believes that at some point during the continuance of its lease with the Defendant in the suit Property, the Defendant decided to take unjustifiable liberties with the Plaintiff's Property with full knowledge that at the time it quits the premises, the Plaintiff would be left with a less space/plots than the one subject to the lease. The Defendants continued use of the encroached portion of Plot number MI/XXXVII/18 had caused the Plaintiff loss and damage.
43. The Defendant did not adduce any evidence to the effect that the Plaintiff had acquired the suit land through fraud or misrepresentation or that his certificate of title had been acquired illegally, un-procedurally or through a corrupt scheme.
44. Indeed based on the evidence adduced herein above, and while relying on the provision of Section 26 [1] of the *Land Registration Act*, No. 3 of 2012 we cannot run away from the fact that the Plaintiff has indeed satisfied the legal proviso that he is the absolute and legally registered proprietor of the suit land with all the indefeasible rights and privileges appurtenant to it, title and interests over it vested in them by law. Hence, it follows, therefore, that the Defendants had encroached on the Plaintiff's land.

**ISSUE No. b). Whether the Plaintiff is entitled to the orders sought in the Plaintiff**

45. Under this subtitle, the court shall examine if the Plaintiff has proved his case. The Plaintiff prayed for Judgment against the Defendants in the following terms:-
  - a. The entire demolition of the encroaching parts of the building;
  - b. Costs of this suit;
  - c. General damages for unlawful encroachment and use of Plaintiff portion of land
  - d. Interests on prayers [c, d & e above]; and
  - e. Any other relief this Honourable Court may deem just
46. As may be observed, the law is extremely protective of title and provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the Certificate of Title has been acquired illegally, un-procedurally or through a corrupt scheme.
47. The import of the provision Section 26 [1] [b] is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 [1] [b] is to protect the real title holders from being deprived of their titles by subsequent transactions.



48. Trespass has been defined by Clerk and Lindsell on Torts, 18<sup>th</sup> edition at Pg.23 as;

“any unjustifiable intrusion by one person upon the land in possession.”

49. I am satisfied on the material placed before me that the Plaintiff is the registered proprietor of the suit land. The Plaintiff has accused the defendant of encroaching upon his land and putting barbed wire fence and thereof annexing a portion of his land measuring 10 metres. The Defendants having entered onto the Plaintiff's suit land without any lawful or justifiable cause while the Plaintiff was in possession the Defendants was therefore a trespasser. As to whether the Plaintiff is entitled to General Damages for trespass. In the case of “Park Towers Limited v John Mithamo Njika & 7 others [2014] eKLR”, where the Court held that:-

“I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages awardable depending on the unique facts and circumstances of each case.”

50. In the case of “Philip Aluchio v Crispinus Ngayo [2014] eKLR”, the Court held as follows:-

“..... The Plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage. It has been held that the measure of damages for trespass is the difference in the value of the Plaintiff's property immediately after the trespass or the costs of restoration, whichever is less .....

The Plaintiff herein did not adduce any evidence as to the state of his property before and after the trespass. It therefore becomes difficult to assess general damages for trespass....”

51. Halsbury's Laws of England 4<sup>th</sup> Edition Volume 45 para 26 1503 provides as follows on computation of damages in an action for trespass:

- a. If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.
- b. If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
- c. Where the Defendant has made use of the Plaintiff's land, the Plaintiff is entitled to receive by way of damages such an amount as would reasonably be paid for that use.
- d. Where there is an oppressive, arbitrary or unconstitutional trespass by a Government official or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful conduct, damages may be awarded.
- e. If the trespass is accompanied by aggravating circumstances.

52. Having not provided the value of the land before the alleged trespass, the Court proceeds to award a nominal figure of a sum of Kenya Shillings Three Million Five Hundred Thousand [Kshs. 3,500,000/-] as general damages for trespass.

53. Having now carefully considered the available evidence and the exhibits thereto, the written submissions, cited authorities and the relevant provisions of law, the Court finds that the Plaintiff has proved his case on the required standard of balance of probabilities. For the above reasons the Court enters Judgment for the Plaintiff against the Defendants in terms of prayers No. [a], [b], [c] and [d]. In terms of prayer No.[e], no award is granted.



### **ISSUE No. C). Who bears the costs of the suit**

54. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 [1] of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri v Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers v Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat v Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
55. In the case of:- “Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] eKLR” quoted the case of “Levben Products v Alexander Films [SA] [PTY] Ltd 1957 [4] SA 225 [SR] at 227” the Court held:-
- “It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion [Fripp v Gibbon & Co., 1913 AD D 354]. But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”
56. In the present case, for the fact that the Plaintiff has proved its claim; the Defendants shall bear the costs of the suit.

### **VIII. Conclusion and Disposition**

57. Ultimately, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities and the balance of convenience finds that the Plaintiff has established his case against the Defendants. Thus, the Court proceeds to make the following specific orders:
- a. That Judgment be and is hereby entered in favour of the Plaintiff as per the Amended Plaint dated 23<sup>rd</sup> October, 2018 filed on the same day by Said Bin Seif Properties Limited the Plaintiff herein as against Mohanlal Kal – Ratilal Motichand Doshi, Gulamhusein Csmailji Karachiwalla, Maganlal G. Sanghvi, S. Urayakant Savani, Manu Savanl, Shobhna Savani, Jasumati Sa Vani and Jani Savani Ali T/A Mombasa Land Development Company, the Defendants herein in its entirety.
  - b. That an order be and is hereby issued directing the entire demolition of the encroaching parts of the buildings on the suit property;
  - c. That the Plaintiff be and is hereby awarded general damages for unlawful encroachment and use of the Plaintiff’s portion of land to the tune of Kenya Shillings Three Million, Five Hundred [Kshs. 3,500,000/-].



- d. That the Plaintiff shall have the costs of the suit as per the Amended Plaint dated 23<sup>rd</sup> October, 2018 filed on the same day and interest on [c] and [d] herein.

58. It is so ordered accordingly

**JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 24<sup>TH</sup> DAY OF OCTOBER 2025.**

**HON. MR. JUSTICE L.L. NAIKUNI**

**ENVIRONMENT AND LAND COURT**

Judgement delivered in the presence of: -

M/s. Firdaus Mbula – the Court Assistant.

M/s. Mulongo Advocate holding brief for Mr. Obinju Advocate for the Plaintiff.

M/s Kivuva Advocate holding brief for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> Defendants.

