



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ibrahim v Bagajo & 2 others (Environment and Land Case E007 of 2022)  
[2025] KEELC 8249 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8249 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND CASE E007 OF 2022**

**JO MBOYA, J  
NOVEMBER 27, 2025**

**BETWEEN**

**ABDULLAH ABDI IBRAHIM ..... PLAINTIFF**

**AND**

**HASSAN BAGAJO ..... 1<sup>ST</sup> DEFENDANT**

**HUSSEIN BORU ..... 2<sup>ND</sup> DEFENDANT**

**LATU SELF HELP GROUP ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff approached the court vide Plaint dated 29<sup>th</sup> September 2022; and wherein same sought the following reliefs:-
  - i. An order of permanent injunction against the barring the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the 3<sup>rd</sup> defendant other member other members, assigns, employees, agents, successors in title or any one claiming under it behest from entering/ trespassing into the subject matter.
  - ii. Costs and interest of the suit
  - iii. Any other relief that this Honorable court may deem fit and just to grant.
2. The Defendants duly entered an appearance and thereafter filed a statement of defence dated 18<sup>th</sup> October 2022; and wherein the Defendants denied the claims by the Plaintiff. Furthermore, the defendants contended that the portion of land being claimed by the plaintiff herein forms part and parcel of land / plot number Chechelesi/ ISL/117/95/9 belonging to and registered in the name of the 3<sup>rd</sup> defendant. In addition, it was contended that the 3<sup>rd</sup> defendant duly applied to be allocated land by the county council of Isiolo [ now defunct] and thereafter same was duly allocated the subject plot vide Minute number 15 of 1996.



3. In the premises, the defendants have posited that same are lawfully in occupation of the disputed grounds and hence the claims by the plaintiff are misconceived and legally untenable.
4. The suit beforehand was subjected to the usual pretrial directions, whereupon the parties intimated to the court that same had duly filed and exchanged the requisite documents. In particular, it was contended that both parties had filed the list and bundle of documents, list of witnesses and witness statements. In this regard, the parties confirmed that the matter was ready for hearing.
5. The plaintiff's case is premised on the evidence of one witness, namely; Abdulahi Ali Ibrahim. Same testified as PW1.
6. It was the testimony of the witness [ PW1] that same is the plaintiff herein. Furthermore, the witness testified that by virtue of being the plaintiff same is familiar and conversant with the facts of the case. Moreover, the witness averred that same has since recorded and filed a witness statement dated 29<sup>th</sup> September 2022 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement was thereafter duly adopted and constituted as the evidence in chief of the witness.
7. Additionally, the witness referenced the list and bundle of documents dated 29<sup>th</sup> November 2022, containing 12 documents and which documents the witness sought to tender and produce before the court. Instructively, the documents under reference were duly produced and admitted as exhibits P1-P12, respectively.
8. It was the further testimony of the witness that same has also filed a Plaint dated 29<sup>th</sup> September 2022; and a verifying affidavit of even date. To this end, the witness sought to adopt and reiterate the content[s] of the plaint. Furthermore, the witness also sought the reliefs at the foot of the Plaint.
9. On cross-examination by learned counsel for the defendants, the witness testified that same duly applied to be allocated a plot within Isiolo. In particular, the witness averred that same made a formal application to the county counsel of Isiolo [now defunct] and that the application letter was copied to the district commissioner- Isiolo district. Moreover, the witness averred that the application for allotment of land forms part of the documents which same has tendered and produced before the court.
10. The witness further testified that following the application to be allocated a plot within Isiolo area, same was duly issued with a letter of allotment which the witness tendered and produced before the court. Nevertheless, the witness averred that same has not produced before the court the minutes of the county council of Isiolo [now defunct] confirming the allocation of the suit property.
11. While still under cross-examination, the witness testified that same has also tendered and produced assorted document[s], including a copy of the rents/ rates clearance certificate; official receipts confirming payment of the stand premium; a letter from the County Executive committee member – Land Isiolo county and a letter from CEC- Isiolo addressed to the police authenticating ownership of the suit property.
12. Additionally, the witness testified that same was issued with a letter of allotment dated 13<sup>th</sup> January 1999 and which letter of allotment the witness averred was accompanied with a part development plan. Regarding Exhibit P3 the witness averred that the said document is the Part Development Plan. Besides, the witness stated that the part development plan bears a plan number. However, the witness averred that the plan number at the foot of the letter of allotment differs from the one contained at the foot of the letter dated 28<sup>th</sup> August 1996.



13. It was the further testimony of the witness that same is not aware whether the 3<sup>rd</sup> defendant was ever issued with a letter of allotment. Furthermore, the witness testified that same did not annex any copy of the 3<sup>rd</sup> defendant's letter of allotment to the supporting affidavit sworn on 22<sup>nd</sup> September 2023. In any event, the witness averred that if any such letter of allotment was annexed to his supporting affidavit, then same was annexed by his advocates.
14. Regarding the letter of allotment issued on 13<sup>th</sup> January 1999, the witness averred that same duly accepted the terms/ conditions at the foot thereof. In addition, the witness testified that same also paid the standard premium and the various statutory levies contained at the foot of the letter of allotment.
15. It was the further testimony of the witness that the plaint which same has filed alludes to a reference number. In particular, the witness testified that the reference number is plot number 1519. Besides, the witness also testified that the letter of allotment also has a reference number.
16. Upon being referred to Plaintiff's exhibit 6; the witness testified that the document is the part development plan. Moreover, the witness averred that the part development plan bears reference number ISL/107/19/490. In addition, the witness also confirmed that surveyors were sent to the suit land to confirm the physical coordinates of the property in question.
17. On further cross-examination, the witness testified that the county government of Isiolo has variously confirmed that the suit property lawfully belongs to the plaintiff. In this regard, the witness referenced a letter dated 19<sup>th</sup> September 2022; and which was produced as exhibit P12.
18. On re-examination, the witness testified that same has produced assorted documents from the county government of Isiolo which confirm that the suit property belongs to the plaintiff. Moreover, the witness averred that he has also produced a letter from the County Government of Isiolo, which indicates that the documents held by the 3<sup>rd</sup> defendant are forgeries.
19. While still under re-examination, the witness testified that same has been paying the rates to the county government of Isiolo. In this regard, the witness reiterated that same is the lawful proprietor of the suit property. Furthermore, the witness intimated that the defendants do not have any lawful rights to; or interest over the suit property.
20. With the foregoing testimony, the Plaintiff's case was closed.
21. The defendant's case is anchored on the evidence of two witnesses, namely; Abdi Godana and Hussein Boru same testified as DW1 and DW2, respectively.
22. It was the testimony of DW1 that same is a member of the 3<sup>rd</sup> defendant. Moreover, the witness added that same is the vice chair of 3<sup>rd</sup> defendant, which is a self-help group. In addition, the witness testified that by virtue of being a member and the vice chair of the 3<sup>rd</sup> defendant, same is therefore familiar with the facts of this case.
23. Additionally, the witness averred that he has since recorded and filed a witness statement. To this end, the witness referenced the statement dated 12<sup>th</sup> February 2024 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement dated 12<sup>th</sup> February 2024 was duly adopted and constituted as the evidence in chief of the witness.
24. Furthermore, the witness averted to the listed bundle of documents dated 12<sup>th</sup> February 2024 and which documents the witness sought to tender and produce before the court. There being no objection to the production of documents, same were tendered and admitted before the court as exhibit[s] D1-D12 respectively.



25. It was the further testimony of the witness that same has also tendered and produced a copy of the letter of allotment dated 11<sup>th</sup> January 1996. In this regard, the witness averred that the land being claimed by the plaintiff was lawfully allocated to the 3<sup>rd</sup> defendant. Moreover, the witness testified that same does not know whether the plaintiff herein was ever issued with a letter of allotment.
26. On cross-examination, by learned counsel for the plaintiff, the witness testified that where the authenticity of land ownership documents is raised, the validity/ authenticity thereof can only be established by the county council of Isiolo [now defunct] and the county government of Isiolo. In addition, the witness testified that the disputed land falls within the jurisdiction of the county government of Isiolo.
27. Upon being referred to the letter dated 12<sup>th</sup> February 2020, the witness acknowledged/ conceded that the letter under reference confirms that the suit property lawfully belongs to the Plaintiff. Moreover, the witness averred that same has not availed any document to contradict the content[s] of the letter dated 12<sup>th</sup> February 2012.
28. Regarding the letter dated 19<sup>th</sup> September 2022, the witness averred that same was issued by the county government of Isiolo. Additionally, the witness admitted that the said letter also confirms that the suit plot lawfully belongs to the plaintiff.
29. Upon being shown the letter dated 26<sup>th</sup> September 2022, the witness testified that same also confirms that the suit property belongs to the plaintiff. Moreover, the witness averred that when the defendants were called upon to take their documents for verification, the defendants did not submit their documents for verification.
30. Furthermore, the witness averred that same has tendered the documents before the court so that the court can determine the validity of their documents.
31. On re-examination, the witness averred that same did not submit the defendant's title document[s] to the county government of Isiolo for verification. Nevertheless, the witness testified that the documents held by the 3<sup>rd</sup> defendant are not forgeries. Furthermore, the witness reiterated that the land in question was given to the 3<sup>rd</sup> defendant by the county council of Isiolo.
32. The 2<sup>nd</sup> witness who testified on behalf of the defendants was Hussein Boru. Same testified as DW2.
33. It was the testimony of the witness that same is the secretary of the 3<sup>rd</sup> defendant. To this end, the witness averred that he is therefore conversant with the facts of the matter. Furthermore, the witness referenced the statement dated 12<sup>th</sup> February 2024 and thereafter sought to adopt and rely on same as his evidence in chief. The witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
34. Additionally, the witness referenced the listed bundle of documents dated 12<sup>th</sup> February 2024 and thereafter reiterated their content[s]. Notably, the documents under reference had been produced and marked exhibits D1-D12 at the instant of DW1.
35. On cross-examination, the witness testified that same had been the secretary of the 3<sup>rd</sup> defendant for approximately 4 years. Furthermore, the witness averred that same is conversant with the suit property. In any event, the witness testified that the custodian of records as pertains to the suit property is the county government of Isiolo. In this regard, the witness acknowledged that it is the county government of Isiolo that is seized of the authority to clarify the legitimate owners.
36. Regarding the letters dated 12<sup>th</sup> February 2020; 12<sup>th</sup> April 2022 and 26<sup>th</sup> September 2022, the witness confirmed/admitted that the content[s] of the letters in question confirmed that the suit property



- belongs to the plaintiff. Additionally, the witness acknowledged that the letter dated 26<sup>th</sup> September 2022 confirms that the documents held by the 3<sup>rd</sup> defendants are forgeries.
37. On re-examination, by learned counsel for the defendants, the witness averred that it is true that the letters from the county government of Isiolo confirm that the suit property belongs to the plaintiff. In addition, the witness also acknowledged that the letter from the county government of Isiolo has also indicated that the 3<sup>rd</sup> defendant's documents are forged.
  38. While still under re-examination, the witness averred that even though the letter dated 26<sup>th</sup> September 2022 intimated that the 3<sup>rd</sup> defendant's documents are forgeries, the officials of the 3<sup>rd</sup> defendant have neither been arrested nor charged with any criminal offence.
  39. With the foregoing testimony, the Defendant's case was closed.
  40. Upon the close of the hearing, the advocate[s] for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and issued directions pertaining to the filing and exchange of the written submissions. The court also prescribed the timelines for the filing of the Written Submission[s].
  41. The Plaintiff filed written submissions dated 25<sup>th</sup> October 2025 and wherein the Plaintiff has highlighted three [3] key issues for consideration and determination. The issues highlighted by the plaintiff are, namely; whether the plaintiff is the lawful and beneficial owner of plot number 1519 KAMBI GARBA-Isiolo municipality; whether a permanent injunction ought to issue; and whether the Plaintiff is entitled to the cost of the suit.
  42. The Defendants filed written submissions dated 10<sup>th</sup> November 2025 and where in the same have canvassed two [2] key issues, namely; whether the plaintiff has proved his case to the requisite standard; and whether the orders sought can be granted or otherwise.
  43. I have reviewed the pleadings filed; the evidence tendered [both oral and documentary]; and upon consideration of the written submissions filed by/ on behalf of the parties, I come to the conclusion that the determination of the subject dispute turns on two [2] key issues. The two key issues that crystallize for determination are, namely; whether the plaintiff has established/ proven his case as pertains to ownership of the suit property to the requisite standard or otherwise, and what reliefs [if at all] ought to issue.
  44. Regarding the first issue, it is imperative to recall and reiterate that the Plaintiff approached this court contending that same applied to the county council of Isiolo [now defunct] to be allocated a plot within the jurisdiction of the said council. Furthermore, the plaintiff posited that his application for allotment of land was equally copied to the district commissioner, Isiolo.
  45. It was the further position by the plaintiff that his application for allotment of a plot was duly considered and thereafter approved. To this end, the plaintiff tendered and produced before the court a letter dated 24<sup>th</sup> May 1996, which was addressed to the Commissioner of Lands, intimating the recommendation of the plot allocation committee [through the district commissioner-isiolo]. Moreover, the plaintiff also tendered and produced a copy of the letter of allotment and a bundle of receipts confirming payment of the stand premium and incidental statutory levies.
  46. Additionally, the plaintiff tendered and produced before the court three [3] sets of letters dated 12<sup>th</sup> February 2020, 19<sup>th</sup> September 2022 and 26<sup>th</sup> September 2022, from the County Government of Isiolo. In particular, the letters under reference confirmed and authenticated that the suit property lawfully belongs to the plaintiff herein.



47. On the other hand, it was the testimony of the plaintiff that the documentation which had been relied upon by the defendants and which purported to show that the 3<sup>rd</sup> defendant had been allocated the same land was found to be forgeries. In this regard, the plaintiff invited the attention of the court to the second paragraph of the letter dated 26<sup>th</sup> September 2022 which clarified that the documents held by the other party [3<sup>rd</sup> defendant] are forged documents.
48. I beg to state that the documentation that has been tendered by and on behalf of the plaintiff demonstrates on a balance of probability that the suit property belongs to and is owned by the plaintiff. For good measure, the authenticity, validity and veracity of the documents have neither been impugned nor impeached.
49. Moreover, it is important to highlight that in civil proceedings, like the one beforehand, a party is called upon to tender evidence that would convince the court that the fact[s] in dispute is more probable than not. Where the evidence tendered demonstrates the probability of the fact in issue, then the fact in issue is deemed to have been proved and established in the eye[s] of the Law.
50. In the case of Jamal Salim v Yusuf Abdulahi Abdi & another [2018] eKLR - Civil Appeal 103 of 2016, the Court of Appeal expounded the manner of proving a fact in issue.
51. For coherence, the Court stated as hereunder:-
27. In the end, we find that the respondents had not established their claim. In *Re B(children) (FC)* UKHL 35 Lord Hoffman observed that:
- "If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1.
- The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule than one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."
52. Before concluding on this issue, it is instructive to recall that the 3<sup>rd</sup> defendant has also laid a claim to the same disputed ground. In particular, it was contended that the suit ground had been duly allocated to the 3<sup>rd</sup> defendant and in this regard, various documents were tendered as exhibits.
53. Nevertheless, it is not lost on me that when the defendants were called upon to submit the impugned documents to the county government of Isiolo for verification, same [defendants] declined to comply. The Defendants did not avail any reason[s], why same declined to submit their Documents for verification in the manner sought by the County Government of Isiolo. Notably, it was contended that the impugned Documents had been issued by the predecessor of the County Government of Isiolo and hence there should have been no fear in submitting the Documents for verification.
54. In my humble view, the failure, refusal, or neglect by the Defendants suggest[s] that there was something un-towards, or fishy about the Documentation that the Defendants held. No wonder same were afraid to submit the Documents for verification. Instructively, a basis does exist for making an inference that the verification would have generated adverse/ detrimental evidence against the Defendants.
55. Furthermore, it is also important to underscore that the County Government of Isiolo, which is the custodian of records pertaining to the unregistered land within its jurisdiction, wrote various letters



inter alia the letter dated 26<sup>th</sup> September 2022; and wherein the county government of Isiolo indicated that the documentation held by the 3<sup>rd</sup> defendants were a forgeries.

56. It is also important to state that despite being aware of the position taken by the county government of Isiolo, DW2 conceded that the defendants neither sought to challenge the content[s] of the letter dated 26<sup>th</sup> September 2022, or seek clarification from the County Government.
57. In the premises, and being guided by the holding in the case of Presbyterian Foundation versus Kibera Siranga Self-Help Nursery School 2023 KECA, I come to the conclusion that the Plaintiff has duly established and proven the root of his title. Simply put, the plaintiff has demonstrated his entitlement to the suit property as against the Defendants whose documents were confirmed to be forgeries.
58. Turning to the second issue, namely; what reliefs [if at all] ought to issue. It is pertinent to observe that the lawful owner/ proprietor of immovable [Landed] property is conferred with statutory rights, interests and privileges in respect of the designated property. Some of the rights that accrue to or vest in the lawful owner of a landed property include the right to exclusive occupation, possession and use thereof. [ See the holding in Moya Drift Firm Limited vs theuri 1973 EA; Ocean View Plaza Ltd v Attorney General [2002] eKLR - Civil Case 527 of 2001 'B'; and Isaac Gathungu Wanjohi & another v Attorney General & 6 others [2012] KEHC 5200 (KLR), respectively].
59. Having found and held that the Plaintiff herein has established his entitlement to the suit property, it then follows that the plaintiff is entitled to exclusive occupation, possession and use of the property; and where his right to exclusivity is threatened [ like in the instant case], then an order of permanent injunction ought to issue. Notably, an order of permanent injunction operates to prohibit and or restrain offensive intrusion into the property of another and thus helps to vindicate the owner's proprietary rights.
60. In the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] KEHC 5027 (KLR), the court [ Weldon Korir J - as he then was] highlighted the tenor of an order of permanent injunction.
61. For coherence, the Court stated thus:-
  8. It is apparent from the pleadings that the Respondent was seeking a permanent injunction against the disconnection of his electricity by the Appellant. A permanent injunction, which is also known as a 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.  
[Emphasis Supplied].
62. In a nutshell, I find and hold that the plaintiff has established a basis to warrant the grant of an order of permanent injunction. Suffice it to underscore that in the absence of an order of permanent injunction, the defendants herein shall continue to interfere with the Plaintiff's possessory right[s] to and in respect of the suit property. Such a situation, if allowed, will not doubt constitute a violation of the Plaintiff's proprietary rights in terms of Article 40 of *the Constitution*, 2010.



**Final Disposition.**

63. Flowing from the analysis contained in the body of the Judgment, it must have become apparent that the Plaintiff has discharged the burden of proof as pertains to the claims that were placed before the court. Instructively, the plaintiff has proven entitlement to the suit property.
64. In the end, and for the reasons alluded to; the final orders that commend themselves to the court are as here-under:-
- i. An order of permanent injunction be and is hereby issued barring the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the 3<sup>rd</sup> defendant other member other members, assigns, employees, agents, successors in title or any one claiming under its behest from entering/ trespassing onto the suit Property.
  - ii. Costs of the suit be and are hereby awarded to the Plaintiff.
  - iii. The Cost in terms of [ii] above shall be agreed upon; and in default same to be taxed in the conventional manner.
65. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**OGUTTU MBOYA, FCIArb, CPM [MTI].**

**JUDGE.**

In the presence of:

Hussein/Mukami – Court Assistants

Mr. Munene Kirimi for the Plaintiff

Mr. Jarso for the Defendants.

