Sanghani & 4 others v Kenya National Highways Authority & 3 others (Environment and Land Case 41 of 2015) [2025] KEELC 8619 (KLR) (10 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8619 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND CASE 41 OF 2015

SM KIBUNJA, J

DECEMBER 10, 2025

BETWEEN

NARENDRARKUMAR KARSAN SANGHANI ..... 1ST PLAINTIFF

RAVJI KARSAN BHIMJI SANGHANI ..... 2ND PLAINTIFF

NAUTAMLAL RAVJI KARSAN SANGHANI ..... 3RD PLAINTIFF

HARSHADKUMAR RAVJI KARSAN SANGHANI ..... 4TH PLAINTIFF

ASWIN NARENDRA SANGHANI ..... 5TH PLAINTIFF

AND

KENYA NATIONAL HIGHWAYS AUTHORITY ..... 1ST DEFENDANT

THE ATTORNEY GENERAL ..... 2ND DEFENDANT

THE NATIONAL LAND COMMISSION ..... 3RD DEFENDANT

SHREEJI ENTERPRISES (K) LIMITED ..... 4TH DEFENDANT

JUDGMENT

1. The plaintiffs commenced this suit through the further amended plaint dated 9th December 2021, averring that they are the registered leasehold proprietors as joint tenants of MN/V/1817, CR. No. 29162, delineated on deed plan No. 207770 dated 23rd August 1996, the suit property. They claim that they bought the suit property from the 4th defendant and acquired leasehold interest on 10th June 2008 at a consideration of Kshs.13,750,000, and thereafter erected a stone wall boundary and placed a gate on the southern side which abuts the Mombasa- Nairobi Highway. The suit property is located next to subdivision MN/V/2043 (C.R 34485).The plaintiffs claimed to have been dutifully paying land rates and rent until sometime on 21st January 2015, when the 1st defendant delivered a letter to the plaintiffs' employee of its notice of intended demolition dated 20th January 2015, addressed to

the plaintiff's previous tenant; Talewa/TRC Limited Site Offices and Yard. The letter alleged that the plaintiffs had encroached onto the road reserve for A109 without permission from them, and that the encroachment be removed within 30 days or otherwise they will proceed to remove the encroachment. That the 1st defendant then proceeded to painted X in yellow on the gate and wall. That the plaintiffs through their advocates wrote back to the 1st defendant acknowledging receipt of the letter, and then conducted a survey to clarify the boundaries and the said report asserted that the plaintiffs had not encroached. They wrote a second letter on 13th February 2015 advising the 1st defendant that they had not encroached and a third letter on 2nd March 2015 demanding that the 1st defendant to withdraw the notice of intended demolition, but no response was received. The plaintiffs became apprehensive that the 1st defendant would execute the notice and therefore filed this suit. They stated that they had observed from a replying affidavit by the 1st defendant dated 3rd July 2015, of allegations that the suit property or part of it was compulsorily acquired some time in 1960's, but indicated that f the suit property had truly been compulsorily acquired, then the 2nd and 3rd defendants had committed fraud, illegality/mistake and or misrepresentation, whose particulars they set out at paragraphs 21 & 21A of the plaint. They also gave particulars of abdication of statutory duty by the 1st defendant at the last part of paragraph 21 of the plaint. The plaintiffs therefore sought the following prayers:

a. A declaration that the boundary wall and gate erected and constructed by the plaintiffs on L.R No. MN/V/1817 fall within the dimension, abuttals and boundaries as delineated on deed plan number 207770 dated 23rd August, 1996 issued by the Director of Surveys;

b. A declaration that the boundary wall and gate erected and constructed by the Plaintiffs on L.R No. MN/V/1817 does not encroach onto the A109 road reserve;

c. A declaration that the 1st defendant's notice of intended demolition dated 20th January, 2015 is illegal, null and void;

d. A permanent injunction against the Defendants, its servants, employees, officers and/or agents restraining them from entering, using, occupying or interfering in any manner whatsoever with the plaintiffs' quiet and peaceful possession of L.R No. MN/V/1817 and in particular restraining them from demolishing the boundary wall and gate or any other structure on the suit property;

e. In the alternative, the Defendants, jointly and severally to pay the plaintiffs:

    i. Kshs.25,000,000 being the open market value of the leasehold interest as at 15th July, 2015 or the current open market value of L.R No. MN/V/1817 as shall be applicable at the date of judgment; and

    ii. Kshs.550,000 paid as stamp duty on 4th June 2008 during the acquisition of L.R No. MN/V/1817 together with interest thereon at the commercial rate of 30% per annum or such other average commercial rate of interest as the court shall in its discretion deem necessary to apply; and/or

    iii. All sums paid as annual rent and annual rates since the year 2009 together with interest thereon at the commercial rate of 30% per annum or such other average commercial rate of interest as the court shall in its discretion deem necessary to apply.

f. Costs of incidental to this suit;

g. Any other or further relief that this Honourable Court may deem fit to award.

2. The plaintiffs' claim is opposed by the 1st defendant through its statement of defence dated 17th February 2022, averring that the suit property together with MN/V/2043 are subdivisions from LR No. 82/2/V, also referred to as LR. No. MN/V/82/2. That in 1969 or thereabouts the Government of Kenya had through the Department of Roads, proposed to construct the Changamwe-Mikindani-Jomvu road, and developed the plans and designs. The Commissioner of Lands vide gazette 3581 of 1969of 21st November 1969, issued notice of inquiry pursuant to section 9(1)(a) of the Land Acquisition Act, 1968, and vide gazette notice No. 3637 of 1969 of 28th November 1969, gazetted various parcels including MN/82/2/V, that were to be compulsorily acquired pursuant to section 6 (2) of the Land Acquisition Act. Sometime after 1985, the said parcel MN/82/2/V was subdivided into the suit property and MN/V/2043. The 1st defendant stated that the suit property measures approximately 0.1793 hectares according to a sub division map dated 24th December 1985, and that the suit property encroaches the road by 0.1777 hectares, which leaves only 0.0016 hectares not on the road reserve. The 1st defendant stated that MN/82/2/V, having been compulsorily acquired and reserved for public purpose, could not have been transferred to the plaintiffs, and hence the notice of demolition dated 20th January 2015 is lawful.

3. The 2nd defendant also opposed the plaintiffs' suit, through its statement of defence dated 27th May 2022, averring it was not privy or party to any fraud, and that if any was committed by the 2nd defendant, then it is as a result of misrepresentation or misguidance. That the 2nd defendant conducted the registration with due diligence based on properly executed documents presented for registration, in good faith.

4. The 3rd defendant did not file any statement of defence.

5. In its amended defence dated 30th January 2023, the 4th defendant admitted selling to the plaintiffs its leasehold interest in the suit property pursuant to an agreement of sale entered in 2008, and consequently executing the transfer dated 28th May 2008.under sections 4(1) & (2) of the *Limitation of Actions Act*. That it had good title under section 23 of the Registration of Titles Act, chapter 281 of Laws of Kenya that was in operation then, having been innocent purchaser for value from Shreej Transporters [1990] Limited on 23rd April 1997, and was not party to any misrepresentation or fraud. That it has been wrongly joined as a defendant, and that the plaintiff cannot sustain any claim against it.

6. The 4th defendant also filed a notice to its co-defendants dated 30th January 2023 seeking indemnity in the event that judgment is passed in favour of the plaintiffs, and also the costs of the suit on the grounds that the plaintiffs have claimed that the defendants fraudulently, illegally, mistakenly, misrepresented and/or abdicated from their statutory duty in ensuring that the titles issued were properly and validly issued.

7. In reply to the 1st defendant's defence, the plaintiffs joined issues and denied that the publication of notices of intention to acquire and of inquiry is tantamount to the acquisition of L.R MN/82/2/V. They further stated that no particulars were given on the compensation paid, and to which proprietor to support the claim that the suit property had been compulsorily acquired. Further, there were no entries made in the register of the suit property under section 35 (3) of the *Land Registration Act* 2012 to show it was reserved for public purposes.

8. In reply to the 4th defendant's defence the plaintiffs denied that the cause of action is time barred stating that the allegation of compulsory acquisition was raised after filing of the suit, and the time of 12 years for limitation against the 4th defendant started running after the 1st defendant filed its defence on 21st October 2015. That their claim is for recovery of land under which section 7 of *Limitation of Actions Act* should be filed in respect of 4th defendant within 12 years from 21st October 2015.

9. During hearing plaintiffs called Narendrakumar Karsan Sanghani, the 1st plaintiff, Said Kaingu, administrator and head of security with K.B. Sanghani, Dennis Malembeka, land surveyor, who testified as PW1 to PW3 respectively. PW1 relied on his statement dated 14th February 2020, the list of documents, supplementary list of documents and further supplementary list of documents dated 11th March 2015, 26th February 2016 and 14th February 2020 respectively, and testified that the suit property is owned by his brothers and himself and that they acquired it in 2008 for sum of Kshs.13,750,000. He narrated the origin of the dispute as pleaded in the amended plaint and claimed that he was not aware that the suit property had been compulsorily acquired. He added that the property said to have been compulsorily acquired was not the suit property and that all the documents filed by the 1st defendant do not implicate the suit property. He acknowledged that the notice of possession in the 1st defendant's further list of documents refers to L.R 241/V/MN and 243/V/MN but was adamant that it did not refer to the suit property. On cross-examination, he stated that the 1st defendant's notice of intended demolition did not refer to the suit property. He admitted that plot 2043 is indicated in the aforementioned sale agreement to have been a subdivision of MN/82/2/V. He stated that as per the 1st defendant documents, the suit property and 2043 are 0.1652 ha and 0.1684 ha respectively. He stated that he engaged a surveyor who confirmed that the suit property is not on a road reserve, and reiterated that he has not been shown proof of any payment made during the alleged compulsory acquisition.

10. PW2 adopted the contents of his statement dated 13th February 2020 as his evidence in chief. He testified how the security guard gave him a notice to demolish from 1st defendant and he then saw the markings on the gate done by 1st defendant and briefed PW1. He took photographs of the notice and markings and sent them to PW1 who was in Nairobi.

11. PW3 told the court how he was asked to determine whether the suit property was on a road reserve by PW1. He prepared a report dated 9th February 2015 on the basis of the authenticated survey plans from the Director of Survey and found that the plot had not encroached on the road reserve. He was categorical that the suit property is not a subdivision but a direct grant. He stated that he relied on FR 306/105, and added that if the suit property had been compulsorily acquired, it would have been noted so on the register, as compulsory acquisition is a process that is well documented.

12. The 1st defendant called Mr. Samuel Odoyo Oloo, senior surveyor with the 1st defendant, who testified as DW1. He adopted the contents of his statements dated 21st October 2015 and 17th June 2021 and list of documents dated 29th June 2024, wrongly dated 29th June 2015, and a further list of documents dated 7th March 2018 and another further list of document dated 16th June 2025 as his evidence in chief. He testified that the maps and survey plan he produced as exhibits shows subdivision of MN/82/2/V to create two parcels which are not referenced as evidenced by the beacons. He added that the map in the report also shows the subdivision of MN/V/82/2, which created two parcels and a road, and that the parcel at the bottom is the suit property, while the one at the top is 2043/V/MN. He testified that the acreage in the said surveyor's report is 0.1652ha and 0.2030 ha for the suit property and parcel 2043 respectively, while in the subdivision work plan of 1985 shows the lower parcel being 0.1793 ha and the upper one at 0.1992 ha. He explained that the difference could be explained by the space taken by the road of access as seen in the plaintiffs' documents. Furthermore, he stated that the total acreage for MN/V/82/2 is 0.193 ha according to the gazette notices herein. On cross-examination, he admitted that he did not have survey plans to show the origins of MN/V/82/2 and agreed that document marked D7 is not from Survey of Kenya. He also agreed he did not have any document portraying who was the owner of MN/V/82/2, before the compulsory acquisition. He was also uncertain as to whether the inquiry advertised in one of the said gazette notices was held. He added that the complete acreage in 1969 for parcel 82/2 was 0.3715 ha, and only 0.193 ha was compulsorily acquired, leaving 0.1785

ha. DW1 elucidated that the 1985 subdivision was for the original parcel 82/2 before compulsory acquisition. He defended the subdivision as it was registered with Survey of Kenya and became a lawful document. He reiterated that he prepared the map marked D7 as an overlay by superimposing the maps at the survey of Kenya, showing that the subdivided plots encroached on the public road, He added that the 1st defendant issued and served the notice of intention to demolish the development on the suit property after they noticed the encroachment. He admitted that the predecessor of the 1st defendant was guilty of laches as it did not bring the claim over the suit property between 1969 to 2015. DW1 admitted that the notice of possession was not addressed to the registered proprietors of the affected properties. He added that the said notice of possession did not indicate the parcel numbers but had number 241 and 243 written by hand. DW1 stated that the 1st defendant did not do a valuation of the suit property which guide the court on the compensation amount. He confirmed that page 2 of the compensation agreement, indicated that one Rukia was to be paid Ksh.3,283, but admitted there is no evidence that the said payment was made. He also admitted that there was no evidence of surrender of the title for 82/2/V/MN by the previous owner.

13. The 4th defendant called Naresh Ranpura who testified as DW2. He relied on the contents of his statement filed on 21st February 2023 as his evidence in chief. He narrated how he sold the suit property in 2008 to the plaintiffs, and denied that it had been compulsorily acquired. He acknowledged that the suit property is a subdivision and that the original plot is what was allegedly compulsorily acquired. He was also not aware of any adverse claims to the suit property when he sold it to the plaintiffs.

14. At the closure of the defence hearing on 27th October 2025, the court gave the plaintiffs ten days to file and serve their submissions, and the defendant a similar period after service to file theirs. The learned counsel for the plaintiffs filed their submissions dated 4th November 2025 on the 6th November 2025. The leaned counsel for .....

15. From the pleadings, oral and documentary evidence tendered by PW1 to PW3, DW1 and DW2, submissions by the learned counsel, the following issues arises for the court's determinations:

    a. Whether the suit property had been compulsorily acquired by the Government, and if so what are the consequences on the property.

    b. Whether the 4th defendant passed a good title over the suit property to the plaintiffs.

    c. What prayers are the plaintiffs entitled to.

    d. Who bears the costs?

16. The court has considered the parties' pleadings, oral and documentary evidence by PW1 to PW3, DW1 and DW2, submissions by the learned counsel, superior court decisions cited thereon, and come to the following determinations:

    a. The plaintiffs bought the suit property and another from the 4th defendant, who had himself bought the same from Shreeji Transporters Limited in 1990. They both claim to be innocent purchasers for value without notice. The 4th defendant had been dutifully paying land rates and rent as evidenced by the documents at pages 12 and 24 of their list of documents dated 11th March 2015. Though the plaintiffs claimed that they have also been paying land rates and rents, no documentary evidence in support was provided. The dispute herein arises because the 1st defendant, being the body in charge of road infrastructures under the national government, issued a notice of intended demolition of a gate and boundary wall claiming on the suit

property, claiming it had been compulsorily acquired in 1969, and was therefore, part of the road reserve.

b. Obviously, the plaintiffs and the 1st defendant are the main contestants in this dispute. Compulsory acquisition is a means, through which the government uses to acquire land from private individuals/entities for a public purpose. Any land that has been compulsorily acquired, would not be available for private use, unless it is lawfully released for a subsequent alienation. A property that has been compulsorily acquired would be so indicated on its register/record maintained at the land registry. From the evidence availed by the parties herein, there is nothing on the register/records maintained by the land registry that show that the suit property had been compulsorily acquired or is a subdivision from a compulsorily acquired property.

c. The Land Registrar was not availed as a witness, and the court is left to rely on the certificate of search and grant to that were produced as exhibits, by the plaintiffs and 1st defendant. Going by the certificate of search dated 3rd March 2015, the five plaintiffs are indicated as the registered proprietors of the suit property of leasehold interest commencing from 1st July 1996 for a rental sum of Kshs.13,000 p.a, The acreage has been indicated as 0.1652 ha. The above search is supported by a grant CR. 29162 for the suit property, which indicates that a transfer was registered on 10th June 2008. The first grantees whose tenure started on the above mentioned dated of 1st July 1996, were Christopher Kuria, Robert Kiptoo Kipkorir, Kitawa Mwamburi and Innocent Muturi.

d. Before the boundary wall and gate subject matter of the notice of demolition were constructed, permission was obtained from the defunct Municpal Council of Mombasa. The approval was subject to certain conditions as evidenced by their letter dated 23rd November 2011. The contents of the certificate of search, grant and letter approving the construction of the wall and gate leads the court to one conclusion that both the office of the Land Registrar and the County Government, did not take or treat the suit property as not public land since 1st July 1996. There were no evidence availed to show that the suit property was public land before 1st July 1996, and no witnesses were called to testify on that.

e. The 1st defendant, through DW1, produced several documents as D1 to D10. The first is a map dated 12th March 1968, showing the proposed Changamwe-Mikindani-Jomvu road and it shows that part of it will pass through a portion of parcel 82/R. the second document is a map dated 11th August 1969, also showing the said proposed road. It indicates parcel 243, but does not have parcel 82/R or 82/2. At this point, the court reminds itself that the DW1 claimed that the suit property and MN/V/2043 are subdivisions of MN/V/82/2. The sixth document is an map or an extract of the second map, which has zoomed in specifically on sheet 7, and it shows plot MN/V/82/2, which has been subdivided into MN/V/2043 at the top but no reference has been given for the bottom part, where the proposed road passes, a fact that was admitted by DW1.

f. At this point we now dive into the compulsory acquisition process which was explained by DW1, but for good measure, the court will refer to the Land Acquisition Act Chapter 295 of the Laws of Kenya, which was repealed by the current *Land Act* Chapter 280 of the Laws of Kenya. The whole Land Acquisition Act was purely for purpose of compulsory acquisition. In the case of Patrick Musimba versus National Land Commission & 4 Others [2016] KEHC 5956 (KLR) the court explained the acquisition process at paragraphs 86 to 110, which mirrors what is provided in the repealed Act. The court will assume that the procedures before the

aforementioned gazette notices were issued were followed as is expected of a public office. This is in tandem with principle of presumption of regularity. See the decisions in the cases of Chief Land Registrar & 4 others versus Nathan Tirop Koech & 4 Others (2018) eKLR and Teresia Kamene Kingoo versus Harun Edward Mwangi (2019) eKLR. The principle of presumption of regularity applies here because the same was not rebutted by evidence as the burden of proof falls on he who alleges.

g. DW1 explained that a notice of inquiry was gazetted vide gazette notice 3637 of 1968 which the court has perused and it states that the inquiry would be held at the Lands office and Changamwe Chief's office on 17th and 18th December 1969. Under the presumption of regularity, the court will assume that the inquiry took place. That as observed at paragraph 92 of Patrick Musimba versus National Land Commission & 4 Others case [supra], what was to follow after completion of the inquiry was compensation. DW1 presented a compensation agreement that shows one Rukiya Binti Mnttar was awarded Kshs.3,283. The court assumes that the said Rukiya was paid the said amount. The next step after payment of compensation is taking of possession as was held at paragraph 93 of the Patrick Musimba versus National Land Commission & 4 Others [supra] as follows:

> " The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the *Land Act*."

DW 1 produced a notice of possession dated 16th January 1970, which had 241 and 243/V/MN in faint handwritten on it. The court had earlier indicated that what was visible in map 2 which is situated in sheet 10, that is evidently far away from the suit property, as shown in sheet 7. DW1 admitted that there was no evidence traced of taking of possession of the suit property after the compulsory acquisition, before the said notice of intended demolition dated 20th January 2015. Even taking for granted that the suit property had been regularly compulsorily acquired as alleged by the 1st defendant, the failure to take possession shows it was guilty of laches.

h. What then happens when the government is indolent? The court has perused the Limitations of Actions Act Chapter 22 of Laws of Kenya and the Public Authorities Act Chapter 39 of the Laws of Kenya, and there is no provision excusing the government from the provisions of section 7 of the Limitations of Actions Act, which states:

> " An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

Furthermore, DW1 explained that map 7, survey plan, which was approved on 12th February 1986, is for subdivision of MN/V/82/2/V, and indicates that the bottom parcel, which he alleged to be the suit property, measures 0.1793 ha, and that the difference in acreage can be explained by the space taken for a road of access. He also stated that the total acreage of MN/V/82/2 was 0.3715 ha before compulsory acquisition and that 0.193 ha was compulsorily acquired leaving 0.1785 ha. The foregoing evidence leads the court to conclude that the plot with 0.3175 ha is MN/V/82/R, and that MN/V/82/2 is a subdivision thereof. After

subdivision it is clear that the 1st defendant did not take possession and instead Christopher Kuria, Robert Kiptoo Kipkorir, Kitawa Mwamburi and Innocent Muturi made applications for allocation of the suit property, which the then Commissioner of Lands allowed on 23rd December 1996, which is the date of Grant. The court is of the view that the bare minimum the 1st defendant could have done to secure their ownership rights after compulsory acquisition was to ensure an encumbrance on the suit property was registered after the Minister in charge failed to issue a vesting order under section 38 (a) Land Acquisition Act Chapter 295 of Laws of Kenya, (repealed), which provided as follows:

> " At any time after an award is made under section 17, the Minister may by Order published in the Gazette-
>
> a. where the award relates to the acquisition of any land, direct the acquiring officer of the district in which that land is situated, or any other officer authorized in that behalf by such acquiring officer, to take possession of that land for and on behalf of the State...."

The court therefore finds that though compulsory acquisition of the suit property was commenced, it was never perfected by taking or asserting possession, due to the indolence of the then Minister in charge and the predecessor in title of the 1st defendant.

i. Therefore, the compulsory acquisition was not completed, and under section 7 of the Limitations of Actions Act, the government lost any compulsory acquisition rights after 1982, which is when the twelve years from the said notice of possession, which did not even include the suit property, lapsed. Furthermore, the court calculations start from 1970 because the 1st defendant relied and stood by the above notice of possession despite the same not indicating MN/V/82/2, or the suit property, which did not exist at the time. The court therefore finds that the plaintiff's case has merit.

j. The plaintiffs. having succeed in their claim, are in accordance with section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya that provides that costs follow the events unless where otherwise ordered on good grounds, entitled to costs, to be paid by the 1st defendant, who instigated the dispute. The 2nd and 4th defendants had no role in the dispute and the 3rd defendant did not participate in the suit.

17. From the foregoing determinations, the court finds the plaintiffs have proved their claim against the 1st defendant to the standard required of balance of probabilities, but their claim against the other defendants fails. the court therefore enters judgement for the plaintiffs and against the 1st defendant and orders as follows:

a. The court does declare that the boundary wall and gate erected and constructed by the plaintiffs on L.R No. MN/V/1817 fall within the dimension, abuttals and boundaries as delineated on deed plan number 207770 dated 23rd August, 1996 issued by the Director of Surveys;

b. The court does declare that the boundary wall and gate erected and constructed by the Plaintiffs on L.R No. MN/V/1817 does not encroach onto the A109 road reserve;

c. The court does declare that the 1st defendant's notice of intended demolition dated 20th January, 2015 is illegal, null and void;

d. A permanent injunction against the 1st Defendant, its servants, employees, officers and/ or agents restraining them from entering, using, occupying or interfering in any manner whatsoever with the plaintiffs' quiet and peaceful possession of L.R No. MN/V/1817 and in particular restraining them from demolishing the boundary wall and gate or any other structure on the suit property;

e. The 1st defendant to bear the costs of the plaintiff.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

IN THE PRESENCE OF:

Plaintiffs : Mr Chamwanda

Defendants : M/s Olando for 1st Defendant

Mr. Apollo Muinde for 3rd defendant

M/s Essejee for Khagram for 4th Defendant

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