



REPUBLIC OF KENYA



Teleposta Pension Scheme Trustees Registered v Hemed & 3 others (Environment and Land Case 229 of 2013) [2025] KEELC 18328 (KLR) (17 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18328 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 229 OF 2013
SM KIBUNJA, J
DECEMBER 17, 2025**

BETWEEN

TELEPOSTA PENSION SCHEME TRUSTEES REGISTERED PLAINTIFF

AND

SAID HEMED 1ST DEFENDANT

ISLAM INVESTMENTS LIMITED 2ND DEFENDANT

THE NATIONAL LAND COMMISSION 3RD DEFENDANT

THE DISTRICT LAND REGISTRAR 4TH DEFENDANT

JUDGMENT

1. Vide the amended plaint dated the 17th June 2014, the plaintiff sued the defendants averring inter alia that the Minister of Finance vested land parcel Mombasa/Block XXV1/201, Kizingo, measuring 1.435 acres to it through Legal Notice No. 154, that was published in the Kenya Gazette Supplement No. 45 of 5th November 1999; that their surveyor established that Mombasa/Block XXV1/666, measuring 0.7932 had been carved out of Mombasa/Block XXV1/201, but the records for the remaining portion of 0.6418 could not be traced; that they subdivided Mombasa/Block XXV1/666 into six parcels being Mombasa/Block XXV1/1106 to 1111 and certificates of leases were issued in its favour on 16th March 2004; that in 2007, the plaintiff discovered that Mombasa/Block XXV1/665, suit property, had been carved out of Mombasa/Block XXV1/201 and certificate of lease issued to 1st defendant on 10th May 1994, and it lodged a complaint with the Commissioner of Lands and Kenya Anti-Corruption Commission; that the plaintiff has been in possession of the suit property since the date of vesting but sometimes in May 2009, the 1st defendant attempted to fence the suit property but was stopped by the plaintiff's members; that the 1st defendant procured the certificate of lease over the suit property through fraud, misrepresentation, deceit and has illegally and fraudulently transferred the suit property to the 2nd defendant. the plaintiff set out the particulars of fraud, misrepresentation,



deceit and illegality attributed to the 1st and 2nd defendants at paragraphs 12 & 15B respectively, and sought for the following prayers:

- a. “A declaratory order to the effect that the property known as title number Mombasa/Block XXV1/665, was vested to Kenya Posts and Telecommunications Corporation (now defunct) by the Minister for Transport and Communications vide legal notice Number 133 published in the Kenya Gazette Supplement Number 11 of 11th March 1988 absolutely without further conveyance or transfer or assignment.
 - b. A declaratory order to the effect that the property known as title number Mombasa/Block XXV1/665 was vested to Teleposta Pension Scheme Trustees Registered by the Minister of Finance vide legal notice number 154 published in number 45 of 5th November 1998 without further conveyance or transfer or assignment.
 - c. A declaratory order to the effect that the certificate of lease for title number Mombasa/Block XXV1/665 issued to the 1st defendant on 10th May 1994 is fraudulent, illegal, null and void ab initio.
 - d. An order of permanent injunction restraining the defendants whether by themselves, servants, agents or any other person whosoever acting on instructions and authority of the defendants whether express or implied from taking possession, selling, disposing, alienating, charging, advertising for sale, taking possession or in any manner dealing with the property known as title number Mombasa/Block XXV1/665.
 - e. An order directing the Commissioner for Lands 3rd defendant in conjunction with the Land Registrar 4th defendant to forthwith cancel the certificate of lease for title number Mombasa/Block XXV1/665 issued in favour of the 1st and 2nd defendants and issue a lease and a certificate of lease in favour of the plaintiff.
 - ae. An order directing the 3rd defendant to cancel the lease issued to the 1st and 2nd defendant and issue a new lease to the plaintiff.
 - (eee) An order directing the 4th defendant to issue a certificate of lease to the plaintiff.
 - f. Costs of the suit.
 - g. Such further order or relief which the Honourable court may deem fit and necessary to grant.”
2. The 1st & 2nd defendants opposed the plaintiff’s claim through their amended statement of defence dated the 5th November 2014 averring inter alia that the suit is bad in law and or time barred, and denied that the plaintiff has been in possession of the suit property; that they denied that the suit property was ever lawfully or legally vested to the plaintiff or its predecessor; that the plaintiff had failed to disclose that it had withdrawn an earlier suit being HCCC No. 326 of 2009 Teleposta Scheme Trustees Registered versus Said Hemed following the advice of the Director, Kenya Anti-Corruption Commission, vide their letter dated 30th July 2009, to the effect that its investigations had shown that the suit property was allocated to the defendant in 1994 which was before the vesting gazette notice of 1999. The 1st & 2nd defendants prayed for:
- a. “That the plaintiff’s suit to be dismissed with costs.
 - b. General damages.
 - c. Any other orders or remedy that this honourable court shall deed fit to grant.”



3. The 3rd defendant did not file any pleadings or participate in the hearing. The 4th defendant filed their statement of defence dated the 27th January 2021 generally denying the plaintiff's claim. The 4th defendant averred that no cause of action has been established, and no reliefs have been sought against it, and the suit should be dismissed with costs.
4. During the hearing, the plaintiff called Peter Kibiegon Rotich, plaintiff's Administrator and Trust Secretary, and Evans Maghas, registered Land Surveyor, who testified as PW1 and PW2 respectively. The plaintiff's case is that it came into being on 1st July 1999, and its responsibility or function included paying pension benefits to persons who had retired under Kenya Post and Telecommunications Corporation, KPTC, now defunct, and employees of Telkom Kenya Limited, Postal Corporation of Kenya and Communication Commission of Kenya. That to enable the plaintiff meet its obligations, the Minister of Finance vested the Mombasa/Block XXV1/201, measuring 1.435 acres, among other properties, to the plaintiff through legal notice No. 154 of 1999, published in the Kenya Gazette Supplement No. 45 of 5th November 1999. That the said property was before then vested to the defunct Kenya Post and Telecommunications Corporation, KPTC, under legal notice No. 133 published in the Kenya Gazette Supplement No. 11 of 11th March 1988. That the plaintiff instructed a surveyor to start the process of perfecting the title to the suit property and during the exercise and discovered only Mombasa/Block XXV1/666, measuring 0.7932 acres that had been subdivided from Mombasa/Block XXV1/201, but could not trace the remainder. The plaintiff subdivided Mombasa/Block XXV1/666 into six portions that it sold to third parties. The plaintiff continued with investigations and in 2007 discovered that Mombasa/Block XXV1/665, measuring 0.642 acres, suit property, was the other portion subdivided from Mombasa/Block XXV1/201 and allocated to 1st defendant and a certificate of lease issued to him on 10th May 1994. The plaintiff position is that the Mombasa/Block XXV1/665, suit property, was illegally subdivided from Mombasa/Block XXV1/201 without its consent, the transfer of the suit property by 1st defendant to the 2nd defendant was fraudulent, and its prayers should be granted as sought.
5. The 1st & 2nd defendants called Charles Onyiego Bwogari, advocate and legal counsel with 2nd defendant, Ephaim Maina Rwingo, licensed surveyor, and Thomas Mukwana, land valuer, who testified as DW1 to DW3 respectively. Their case is that Mombasa/Block XXV1/665, the suit property, was lawfully allocated to the 1st defendant, lease issued by the Commissioner of Lands on 23rd March 1994 that was registered and certificate of lease dated 10th May 1994 issued to him. That before the suit property being allocated to the 1st defendant, it was owned by the government, but became private land upon allocation. That the 2nd defendant did due diligence on the suit property before buying it from the 1st defendant at Kshs.15million, and certificate of lease was issued on 19th July 2011.
6. The 4th defendant called Mercy Chepkemboi, Land Registrar Mombasa, who testified as DW4, and she produced copies of green and white cards in respect of Mombasa/Block XXV1/665 & 666 among others. It was the 4th defendant's case inter alia that parcels Mombasa/Block XXV1/665 & 666 were fresh grants from the Government of Kenya. That the green card for Mombasa/Block XXV1/665 does not show the plaintiff owner or registered interest holder of that land. That the white card for the said land show the lessor is the government of Kenya and the lessee is the 1st defendant for 99 years from 1st January 1994. That the 2nd defendant became the registered owner of the said property on 19th July 2011. To DW4 all the transactions relating to Mombasa/Block XXV1/665 were regularly and legally done with no irregularities noted, and as of the date she testified, she had not received any claim of interest from the plaintiff over that land. In respect of Mombasa/Block XXV1/666, DW4 testified that it was registered as a new grant in the name of Kenya Posts and Telecommunications Corporation on 18th August 1999. The witness took the court through the entry made after the land was subdivided



into parcels Mombasa/Block XXV1/1106 to 1111 and the transactions so far made on the resulting titles.

7. The learned counsel for the plaintiff, 1st & 2nd defendants and 4th defendant filed their submissions dated 18th August 2025, 26th October 2025 and 3rd November 2025 respectively, that the court has considered.
8. From the parties' pleadings, documentary and oral testimonies by PW1 & PW2, DW1 to DW4, submissions by counsel, the following are the issues arising for determinations by the court:
 - a. Whether the plaintiff's suit was statute time barred
 - b. Whether Mombasa/Block XXV1/665, suit property, was covered in the Minister's vesting order under legal notice No. 154 of 5th November 1999.
 - c. Whether Mombasa/Block XXV1/665, suit property, was available for alienation when it was leased to and registered with 1st defendant.
 - d. Whether 1st defendant acquired good title on registration on 10th May 1994.
 - e. Whether the 2nd defendant was a bona fide purchaser for value without notice of any defect in the title.
 - f. Who pays the costs?
9. The court has carefully considered the parties' pleadings, oral and documentary evidence presented through PW1 & PW2, DW1 to DW4, submissions by the learned counsel for the parties participating in the trial, superior court decisions cited thereon, and come to the following conclusions:
 - a. Though the 1st & 2nd defendants had in their statement of defence summarized in (2) above included prayers for (a) General damages; and (b) Any other orders or remedy that this honourable court shall deem fit to grant, suggesting they intended to incorporate a counterclaim in their defence, there is nothing in the rest of their pleadings to confirm the existence of a counterclaim. The amended defence was filed under receipt No. 3005072 dated 10th November 2014, of Kshs.75/- and it is clear it has no payment made for a counterclaim. The court has noted that the witnesses called by 1st & 2nd defendants, who testified as PW1 & PW2, did not mention any counterclaim, and as their learned counsel did not submit on it, then I will take it that the amended defence did not contain a counterclaim, that deserve to be determined through this judgement.
 - b. The 1st & 2nd defendants pleaded and submitted that the plaintiff's suit is time barred under the *Limitation of Actions Act*, as KPTC has never taken steps to recover Mombasa/Block XXV1/665, suit property, from the time it was registered in the name of the 1st defendant in 1994. That by the time this suit was filed in 2013, the time for recovery of land had lapsed. The question of the suit for recovery of the suit property being time barred is predicated on the presumption that the plaintiff was the legal owner of the land, before the 1st defendant acquired registration on 10th May 1994, which both the 1st & 2nd defendants and 4th defendants have vigorously opposed.
 - c. From the documentary evidence presented to the court by all the parties' witnesses, especially DW4, who is undoubtedly the keeper/custodian of land documents under the Mombasa Land Registry, neither KPTC nor the plaintiff has ever been registered as proprietor of the Mombasa/Block XXV1/665, the suit property. The plaintiff based its claim over the suit



property on the premise that Mombasa/Block XXV1/665 & 666 were subdivisions from Mombasa/Block XXV1/201 that had been vested to it, and before then to KPTC. It is however a fact that none of the parties, both plaintiff and defendants, availed any documentary evidence confirming that the plaintiff and or KPTC had been registered with Mombasa/Block XXV1/201. Indeed, from the testimony of DW4 and the green and white cards she produced in respect of Mombasa/Block XXV1/665 & 666, the two parcels were fresh grants to the 1st defendant and KPTC respectively, from the Government of Kenya, and not subdivisions from Mombasa/Block XXV1/201, that the plaintiff had attempted to trace its source to. In the absence of any verifiable evidence to the contrary, the claim by the plaintiff that Mombasa/Block XXV1/665 was curved or subdivided, from Mombasa/Block XXV1/201 is bereft of any proof, and, the plaintiff had no basis of seeking its recovery. Therefore, the question of limitation does not arise.

- d. Going back to the plaintiff's challenge against the defendants over the ownership of the suit property, the starting point now should be that the court has already made a finding that the Mombasa/Block XXV1/665, suit property, was not part of Mombasa/Block XXV1/201. That whereas the 1st & 2nd defendants claim indefeasibility of their title, the plaintiff has sought to impugn it on the basis of inter alia illegality, deceit, misrepresentation and fraud. It is crystal clear from the superior court decisions including the cases of Munyu Maina versus Hiram Gathiha Maina [2013] eKLR, Waterfront Holdings Limited versus Kandie & 2 Others KECA 1233 (KLR), Kenya Ports Authority versus Africa Inland Church Kenya (Registered Trustees) & 12 Others [2024] KECA 1431 (KLR) (11 October 2024) (Judgement), and Dina Management Limited versus County Government of Mombasa & 5 Others [2023] KESC 26 (KLR), that a title that is obtained unlawfully, fraudulently, illegally, unprocedurally, by misrepresentation or through a corrupt scheme is not protected by the law.
- e. It is however, the responsibility of the one launching the challenge on such a title to tender evidence to prove their allegations under sections 107 to 109 of the *Evidence Act* chapter 80 of Laws of Kenya. The 1st, 2nd & 4th defendants have clearly shown that the suit property was not among the properties to be vested to the plaintiff under Legal notice No. 154 of 5th November 1999 by the Minister of Finance. In any case, the suit property was then not government land but private land having been leased to the 1st defendant on 23rd March 1994 and certificate of lease issued to him dated 10th May 1999.
- f. The 4th defendant's witness, DW4, testified that there was nothing on the register relating to the suit property to show the plaintiff had any interest or claim over it, which is surprising as the plaintiff disclosed through its pleadings and evidence of PW1 that they got to know of the suit property in 2007. The plaintiff's suit is actually a challenge to the 1st defendant's title to the suit property, on the basis of fraud, illegality, misrepresentation and deceit. The law under Article 40(6) of *the Constitution* and section 26(1) of the *Land Registration Act* chapter 300 of Laws of Kenya is that the legal protection of title to land does not extend to that which is found to have been unlawfully acquired, as such a title can be impugned through the court.
- g. In the case of Munyu Maina versus Hiram Gathiha Maina [supra] the Court of Appeal held that when the instrument of title is under challenge;

“...the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from encumbrances...”



In the case of Waterfront Holdings Limited versus Kandie & 2 Others [supra], the Court of Appeal inter alia held that;

“It is now law that the mere fact of issuance of title deeds does not confer the status of indefeasibility of title. Courts of this country have therefore held that they would not hesitate to nullify titles held by those who stare at the court and wave a title of a grabbed land by merely and pleading loudly the principle of indefeasibility of title deed. In cases where the very process of acquisition of land in question is under challenge, it is not enough to simply rely on the title....”

In the case of Kenya Ports Authority versus Africa Inland Church Kenya (Registered Trustees) & 12 Others [supra] the court held that:

“Once an issue arises regarding the procedural propriety of the acquisition of a title, the presumption of indefeasibility of title is open to scrutiny.”

The position in the above cases has been more or less confirmed by the Supreme Court of Kenya in the case of Dina Management Limited versus County Government of Mombasa & 5 Others [2023] KESC 26 (KLR). From the evidence tendered, the plaintiff has failed to prove that the suit property was ever part of the land vested and or owned by it before it was alienated and registered with the 1st defendant. On the other part, the 1st, 2nd & 4th defendants have clearly shown the suit property was a fresh grant from the Government of Kenya that was allocated to the 1st defendant through the lease that was registered and certificate issued. They have clearly traced the root source of the 1st defendant’s title and it has been confirmed by 4th defendant through DW4 to be a valid title.

- h. The 2nd defendant bought the suit property from 1st defendant as detailed by DW1. There is no evidence that has been tendered by the plaintiff or any other party to challenge the process through which the 2nd defendant acquired title to the suit property. The 1st defendant had good title to the suit property and he therefore passed good title to the 2nd defendant. DW4 confirmed that the title the 1st & 2nd defendants acquired over the suit property were valid titles without any irregularities or claims noted in the register. As the 1st defendant has not said he was not paid the purchaser price, the court takes the 2nd defendant as a bona fide purchaser for value of the suit property.
- i. Though the plaintiff joined the 4th defendant in this suit, it is not plead any specific acts and or omissions attributed to that office in their plaint. Paragraph 15E of the plaint speaks to the certificate of lease issued by the 4th defendant being said to have been obtained fraudulently as the property belonged to KPTC at the time of its issuance. The available evidence however show differently, that the suit property was never registered with KPTC and or the plaintiff and further that it was not among the properties vested to the plaintiff through the Minister of Finance vesting order No. 154 of 1999. In any case the 4th defendant does not allocate/alienate land but registers the documents of alienation/allocation including leases and thereafter issues certificates of leases.
- j. From the totality of the evidence presented to this court, the plaintiff’s claim against all the defendants is without merit and fails. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where for good cause the court orders otherwise.



In this case I find no good reason to divert from that edict on costs, and the plaintiff will meet the costs.

1. In view of the foregoing determinations, I find the plaintiff has failed to discharge its duty of proving their claim against defendants on a balance of probabilities, and the court therefore orders as follows:
 - a. That the plaintiff's suit against all defendants is dismissed.
 - b. The plaintiff will pay the costs for 1st, 2nd & 4th defendants.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 17TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff : M/s Nyabenge

Defendants : Mr Taib for 1st and 2nd Defendant

Mr Pendo for 4th Defendant

Kalekye-court Assistant.

