



REPUBLIC OF KENYA



KENYA LAW
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Nyale & 2 others v Director of Surveys & 2 others (Environment and Land Case E063 of 2025) [2026] KEELC 434 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 434 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E063 OF 2025
FM NJOROGE, J
JANUARY 28, 2026

BETWEEN

GEORGE MWAMNENO NYALE & 2 OTHERS & 2 OTHERS PLAINTIFF

AND

THE DIRECTOR OF SURVEYS & 2 OTHERS & 2 OTHERS RESPONDENT

RULING

1. The application dated 10th June 2025 is seeking a temporary injunction restraining the defendants from in any way interfering with the plaintiff's ownership and certificates of title to the suit properties known as LR No 20098 Malindi (CR 84859), LR Number 20099 Malindi (CR 84814), and LR Number 20100 Malindi (CR 84815) pending the hearing and determination of the present suit.
2. It is stated that the plaintiffs are the bona fide registered owners who have been in possession and occupation and user of the suit properties for over 25 years, yet vide a Kenya Gazette Notice of 25th May 2025, the 3rd defendant issued notices seeking cancellation of the plaintiffs' titles through rectification of the land register held at the Mombasa Land Registry. The plaintiffs term the intended title cancellation as unlawful, irregular, malicious and against the rules of natural justice, and intended to unconstitutionally impeach the proprietary rights of the plaintiffs by depriving them of their property; that they would suffer irreparable harm and damage should the defendants carry out their intentions. The application is supported by the sworn affidavit of the 1st plaintiff dated 10th June 2025.
3. In the Supporting Affidavit it is stated that the plaintiffs, together with one Paul Njoroge Mutari were issued with leases dated 16th April 2024 for their respective portions of land and they accepted the terms thereof and the leases were registered at the Mombasa land registry on 19th and 20th June 2024. The leases were processed pursuant to allotment letters dated 10th August 1993 and 7th July 1998, issued by the government of Kenya to the plaintiffs in respect of the portions each had occupied since 1990. The surrounding area also has thousands of residents who have been living on traditionally demarcated portions of land for nearly 30 years, with families living their own portions and who are engaged



in farming activities; that some of these people, depending on their exposure, had allotment letters issued by the government of Kenya and some have processed title documents for their portions. The 1st plaintiff holds 2 letters of allotment. The 2nd plaintiff also has a letter of allotment. They pursued those letters of allotment and they were processed into the titles now held and which now are threatened by the Acts of the defendants.

4. The plaintiffs state that it has come to their attention that the 1st defendant has produced a new survey map dated and approved in 2025 for the Kibokoni Sabaki area in which he has created a Settlement Scheme that overlaps and overtakes the suit properties. The basis of the 1st defendant's action is that the Director of Land Adjudication and Settlement and the Director of Land Administration have given him the information that the suit properties were not available for allocation as new grants to the plaintiffs herein. Therefore, the 3rd defendant gave notice, in Kenya Gazette of 23rd May 2025, of intention to rectify land register by cancellation of the titles to the suit properties. It is alleged that the defendants failed to give the plaintiffs and a prior information before issuing the Kenya Gazette notices, contrary to the principles of natural justice. They were also not informed of the basis upon which the Director of Land Adjudication and Settlement and the Director of Land Administration determined that the suit properties were not available for titling to the plaintiffs. The applicants have taken up the issue in writing, with letters being written to the Director of Surveys and the Chief Land Registrar, but no response has been given.
5. The respondents opposed the application through the sworn affidavit of Mike Sego Manyarkiy Principal Land Registrar in Charge of Mombasa Lands Office. The deponent states that parcel number 20099 was allocated to Paul Njoroge Mutari for 99 years from 1st November 1998 in consideration of 7,000/= shillings by way of stand premium and annual rent of Kenya shillings 400/=. A lease was registered over the said land, and later it was transferred to William Githuka the 2nd plaintiff for Kenya shillings 3, 000,000/-. Parcel number 20100 was granted to William Githuka and a lease was registered on the parcel and was later transferred to William Ithuka and John Macharia Nderitu as tenants in common. Parcel number 20098 was allocated to George M. Nyale and a lease was registered; that the contents of the internal memo which was shared to both the Director of Service and Director of Land Administration and the letter dated 25th March 2025 by the Chief Land Registrar indicated that the suit premises were part of the land reserved for Kibokoni Settlement Scheme which scheme was fully occupied by squatters, who are to be settled on the same land; that it could not be understood how the applicants acquired the said parcels and therefore a directive was issued for their titles to be recalled and cancelled unless they were cleared by the Settlement Fund Trustees; that that was the basis on which the Gazette Notice Number 6615 of 23rd May 2025 was published, inviting the proprietors of parcel number CR 84859 to come to the deponent's office together all their necessary registration documents for verification as to whether indeed the said parcels were allocated to the applicants while they were still part of the land reserved for the Settlement Scheme. Instead of obeying the notice the plaintiffs filed this suit.
6. The 1st plaintiff also swore a supplementary affidavit dated 22nd October 2025. The deponent states that when land adjudication and settlement officers visited the area, they confirmed that the plaintiffs' plots are not within the squatter zone.
7. He also deponed that the land set aside for squatters is over 300 acres and the suit parcels are not part of the squatter scheme. It is also stated that 3rd respondent does not have any power in law to cancel the plaintiff's titles vide the Kenya gazette notice.
8. The applicant filed submissions dated 28th October 2025. I have considered the contents of those submissions. Citing Kuria Greens Limited Versus Registrar of Titles and Another 2011 KEHC 4290



KLR cancel for the plaintiff submitted that it is only a court of law with competent jurisdiction that has the power to cancel and or revoke a title document; that under sections 79 and 80 of the Land Registration Act the Land Registrar may only rectify the register or any instrument presented for registration in certain limited number of cases; that the plaintiffs have established a prima facie case with probability of success. The plaintiffs' counsel cited Kelmas Investments Limited Versus Attorney General 2018 eKLR Republic Versus Chief Land Registrar and Another Ex parte Yosabia Kerubo Manyura 2018 EKLR and Isaac Gathungu Wanjohi and Another Versus Attorney General & 6 Others 2012 eKLR regarding the limited nature of the powers of the Land registrar under Section 79 in the light of Article 40 of the Constitution which safeguards property rights. It was also submitted that the plaintiffs had proved that they would suffer irreparable loss and damage if the injunctive orders sought are not granted; that also the balance of convenience tilts in favor of granting the orders sought.

Analysis and Determination.

9. I have considered the application before court. the respondents admit that there are titles that were issued to the plaintiffs. Title to land in Kenya can not be cancelled willy-nilly. The due process of law has to be followed in doing so. The usual process is to come to a court of law and established that the title was validly or illegally obtained. the court tries the claims of both parties and comes up with a declaration as to validity of title.
10. In the present case the plaintiffs have demonstrated that they hold title and the fact that the defendants admit that such titles exist and were issued by the government is crucial. The provisions of the law in Sections 25-26 of the Land Registration Act provide as follows:
 - 25.(1) 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, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
- 26.(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts 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 that 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; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.



11. Considering the indefeasibility of title as provided for above, and the circumstances in which title can be declared illegal and liable to be cancelled, the actions of the respondents are likely to prejudice the plaintiff's right to fair trial regarding the validity of their titles and I am of the view that they have established a prima facie case.
12. If this court fails to maintain the status quo as it is now and the titles are cancelled the defendants may take the titles away from the plaintiff and thus deny them land which they have been living on for long periods and developed and thus, in my opinion, that may occasion the plaintiffs irreparable harm.
13. In the foregoing, I find that it is necessary to issue the orders ought if only to examine the merits of the plaintiffs' suit. Consequently, I dispose of the application dated 10/6/2025 by issuing the following orders:
 - a. The respondents shall maintain the status quo of the suit properties known as LR No 20098 Malindi (CR 84859) LR number 20099 Malindi (CR 84814) and LR Number 20100 Malindi (CR 84815) prevailing as at the date of the issuance of this order both on the ground and in the land register pending the hearing and determination of the suit;
 - b. The parties shall file and serve their trial bundles, witness statements and lists of witnesses and documents, the plaintiffs within 21 days and the defendants within 42 days, the timelines running concurrently, and the matter shall be listed for mention for pretrial on 24/3/2025;
 - c. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 28TH DAY OF JANUARY 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

