

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELCLC NO. E010 OF 2025

(Formerly Mombasa ELC No. E014 of 2025)

CHRISTOPHER MELIKI KALINGE

PLAINTIFF

=VERSUS=

DIRECTORATE OF CRIMINAL INVESTIGATION TAVETA...1ST

DEFENDANT

THE REGISTRAR OF TITLE, TAVETA2ND

DEFENDANT

JUDGMENT

1. This judgment arises from a suit instituted by the Plaintiff vide a Plaint dated 17th February 2023, subsequently amended on 18th June 2025. The Plaintiff, **Christopher Meliki Kalinge**, seeks the following reliefs against the Defendants, namely the **Directorate of Criminal Investigations Officer (D.C.I.O.) Taveta Police Station and the Land Registrar, Taveta**: a permanent injunction restraining the Defendants, their agents, servants or any person acting on their behalf from trespassing into, revoking the title deed, transferring, constructing structures, cultivating, cutting trees, disposing of, subdividing,

surveying or dealing in any manner adverse to the Plaintiff's parcel of land known as **TAITA TAVETA/KIMALA MATA/1400**; an order directing the D.C.I.O. Taveta Police Station and the Land Registrar Taveta to return the Plaintiff's title deed illegally taken and retained; costs of the suit; and interest on costs.

2. The suit was heard on the basis of the Plaintiff's oral testimony and documentary evidence, the Defendants' Statement of Defence and the evidence of the Land Registrar as DW1.

The Plaintiff's case

3. The Plaintiff avers that he is the registered proprietor of **Land Parcel No. TAITA TAVETA/KIMALA MATA/1400** measuring approximately 90.54 hectares. He avers that he has been in uninterrupted occupation and user of the suit property since 1982, having been allocated the land by the area Chief.
4. On or about 15th November 2022, unknown persons broke into his house on the property, removed the door and stole items. He reported the incident at Taveta Police Station under OB No. 20/15/2020.
5. The investigating officer demanded and took possession of the Plaintiff's original title deed, which has never been

returned despite repeated demands. The Plaintiff maintains that the Defendants have no lawful basis for retaining the title deed and that their actions amount to unlawful interference with his proprietary rights.

6. The Plaintiff testified as PW1 and adopted his witness statement dated 17th February 2023 together with two bundles of documents dated 17th February 2023 and 30th July 2024. He produced photographs depicting his livestock, mature coconut and mango trees, bananas and other farming activities on the suit land; an inventory dated 17th November 2022; a photocopy of the confiscated title deed; a letter dated 3rd April 1995 from the Adjudication Officer, Kimala/Mata Adjudication Section; a letter dated 21st September 2006 addressed to the Divisional Land Adjudication/Settlement Officer; a receipt dated 31st January 2007; and handwritten proceedings of the Land Adjudication Board dated 17th July 1989.

7. According to the Plaintiff, the 1989 proceedings resolved a dispute between the Plaintiff and one Jackson Leshami Sambu in the Plaintiff's favour, declaring that the land remained under Plot No. 1400 in the Plaintiff's name. No appeal was lodged against that decision.

8. The Plaintiff testified that the suit land was demarcated in 1986, that he has resided thereon since 1982 without interruption until the November 2022 break-in, and that he has planted trees and bananas and keeps livestock. He stated that the investigating officer informed him that another person was claiming the land, yet no charges were ever preferred against him and the title deed was never returned.
9. Under cross-examination, PW1 maintained his long occupation and the absence of any prior claim to the land. In re-examination, he reiterated that his house was broken into and that the police retained the title deed on the strength of an unsubstantiated claim.

The Defendant's case

10. The Defendants, in their Statement of Defence dated 20th March 2023, denied any break-in or trespass and averred that a complaint had been received alleging that the Plaintiff had illegally acquired the suit land. They contended that the title deed was detained for reasons disclosed to the Plaintiff.

11. At trial, the sole defence witness, **Siema Mwanguni (DW1)**, the Land Registrar Taveta, produced the defence bundle of documents dated 13th December 2023. She confirmed that the title deed stands in the Plaintiff's name alone, though the green card opened in March 2017 refers to the Plaintiff "and others (group)". No list of the alleged co-owners was produced, and DW1 conceded that no complaint had been lodged at the Land Registry concerning the suit property and that she was unaware of any court proceedings touching on ownership.
12. She further conceded that all adjudication documents ought to be copied and placed in the parcel file and that she could not explain the absence of the Plaintiff's adjudication records from the file.
13. She also stated that the adjudication officer would be better placed to clarify the position regarding any alleged co-owners. The investigating police officer did not testify.

Written submissions of the parties

14. The Plaintiff filed written submissions dated **17th March 2026**. He framed three issues: (1) whether he has proved ownership of the suit land; (2) whether a permanent injunction should issue against the Defendants; and (3) whether he is entitled to the reliefs sought. Counsel

submitted that the Plaintiff's title deed, historical adjudication documents, long occupation and unchallenged testimony establish ownership.

15. He argued that the Defendants failed to prove the identity of any "others" or any illegality in the issuance of the title, and that the green card entry was at best a typographical error incapable of defeating a registered title.

16. On the injunction, counsel urged that the Plaintiff's peaceful possession had been disrupted by the unlawful retention of the title deed and the break-in, warranting permanent restraint.

17. The Defendants filed no written submissions.

Issues for determination

18. Having considered the pleadings, evidence and submissions, the Court frames the following issues for determination:

i) Whether the Plaintiff has proved ownership of Land Parcel TAITA TAVETA/KIMALA MATA/1400.

ii) Whether the Defendants unlawfully retained the Plaintiff's title deed.

iii) Whether the Plaintiff is entitled to a permanent injunction restraining the Defendants from

interfering with the suit property and to the costs of the suit.

Analysis and Determination

Issue 1:

Whether the Plaintiff has proved ownership of Land Parcel TAITA TAVETA/KIMALA MATA/1400

19. The Plaintiff produced his certificate of title as prima facie evidence of ownership. **Section 26(1) of the Land Registration Act, 2012** provides that a certificate of title shall be taken by all courts as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner, subject only to encumbrances noted thereon, and the title shall not be challenged except on the grounds of fraud or misrepresentation to which the proprietor is a party or where the certificate was acquired illegally, unprocedurally or through a corrupt scheme.

20. It is now well settled that where a registered proprietor's root of title is challenged, it is not enough to dangle the instrument of title as proof of ownership. The Supreme Court in **Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023)** emphatically held that a title derived through a process that

fails to comply with legal requirements cannot enjoy the status of indefeasibility.

21. The Court of Appeal had earlier expressed the same principle in **Munyu Maina v Hiram Gathiha Maina [2013] eKLR**, stating that a registered proprietor must establish the legality of the acquisition of title when the root is impugned. The Environment and Land Court has consistently applied these authorities, requiring proof of the root of title through the adjudication process, demarcation, registration and subsequent dealings.

22. In the present case, the Plaintiff went far beyond merely producing the title deed. He traced his root of title to the adjudication process conducted in the Kimala/Mata Adjudication Section in 1986. The letter dated 3rd April 1995 from the then Adjudication Officer, Mr. Franklin Nyakuni, and the handwritten proceedings of the Land Adjudication Board dated 17th July 1989 conclusively resolved a dispute in the Plaintiff's favour, declaring Plot 1400 to remain under his name. No appeal was lodged against that decision.

23. Under the Land Adjudication Act (Cap 284), once the adjudication register is finalised and the statutory appeal period under Section 29 expires without challenge, the determination becomes conclusive and the jurisdiction of the

courts is ousted in respect of the recorded rights as stipulated under Section 30.

24. The Plaintiff's evidence of demarcation in 1986, the 1989 Board decision, the 2006 letter directing maintenance of status quo pending investigation which investigation never disturbed his possession, and his continuous occupation and development of the land since 1982 stand un rebutted.

25. The Defendants' only challenge rested on the green card notation "Plaintiff and others (group)". Yet DW1, the Land Registrar herself, admitted under cross-examination that no list of the alleged co-owners exists in the parcel file, that no complaint had ever been lodged at the Registry, that the Plaintiff's title deed bears only his name, and that she could not explain the absence of the Plaintiff's adjudication records from the file.

26. The Defendants called no adjudication officer and produced no evidence of fraud, misrepresentation or illegal acquisition by the Plaintiff.

27. The investigating police officer, who allegedly acted on a complaint of illegal acquisition, did not testify. In the absence of any cogent evidence from the Defendants, the Plaintiff's title, supported by the historical adjudication

record and long user, remains indefeasible. The burden of proving illegality lay squarely on the Defendants and was not discharged as per Sections 107-109 of the Evidence Act, Cap 80.

28. The Court finds that the Plaintiff has proved, on a balance of probabilities, that he is the absolute and indefeasible owner of Land Parcel **TAITA TAVETA/KIMALA MATA/1400**.

Issue 2:

Whether the Defendants unlawfully retained the Plaintiff's title deed.

29. From the evidence tendered during trial, it is clear that the Plaintiff's title deed was surrendered to the police during investigation of a reported break-in. No warrant was produced, no charges were ever preferred against the Plaintiff, and the title deed has been retained to date.

Article 40(1) of the Constitution of Kenya 2010

guarantees the right to property, which may be limited only by law and to the extent that the limitation is reasonable and justifiable in an open and democratic society.

30. The retention of a citizen's title deed by police without a court order or any demonstrated lawful basis constitutes an unjustified interference with proprietary rights.
31. DW1 confirmed that the Land Registrar does not hold the original title and offered no statutory justification for its continued detention by the police. The failure of the investigating officer to testify leaves the Defendants' justification wholly unsubstantiated.
32. The Court finds that the 1st Defendant unlawfully retained the Plaintiff's title deed without any lawful justification.

Issue no. 3,

Whether the Plaintiff is entitled to a permanent injunction restraining the Defendants from interfering with the suit property and to the costs of the suit

33. The Plaintiff sought for several reliefs as enumerated in his amended plaint dated 18th June 2025.
34. In respect to the permanent injunction sought, it is noteworthy that a permanent injunction is an equitable

remedy granted to prevent the violation of a legal right where damages would not be an adequate remedy. The Plaintiff, having established ownership and long exclusive possession, has demonstrated a clear legal right. The break-in, the unexplained retention of the title deed and the Defendants' failure to restrain or prosecute the alleged trespassers have left the Plaintiff's enjoyment of the suit property vulnerable.

35. This court has repeatedly granted permanent injunctions to registered proprietors to restrain trespass and adverse dealings once title and possession are proved, as the Plaintiff has done here. For instance, in **Maina v Waweru & 2 others (Environment and Land Appeal 10 of 2023) [2025] KEELC 791 (KLR) (19 February 2025)**, the court granted a permanent injunction together with an eviction order restraining the defendants from trespassing upon and committing any acts upon the plaintiff's registered parcel of land after proof of title and possession.

36. Similarly, in **Mount Robbin Limited v Toza (Environment and Land Case 51 of 2020) [2025] KEELC 5854 (KLR) (29 May 2025)**, the court issued a permanent injunction restraining the defendant, its agents and servants from trespassing on and continuing to

excavate the plaintiff's registered property. No countervailing public interest or equitable consideration militates against the grant of the injunction sought.

37. Turning to the question of costs, the Plaintiff has succeeded on every issue framed for determination. The Defendants mounted a defence that was entirely unsubstantiated. They failed to produce any list identifying the alleged "others" noted on the green card, called no adjudication officer to explain the alleged discrepancy in the adjudication records, and crucially failed to call the investigating police officer who retained the title deed.

38. DW1, the Land Registrar herself, conceded under cross-examination that the Plaintiff's title deed bears only his name, that no complaint had ever been lodged at the Registry, and that she could not account for the absence of the Plaintiff's 1986/1989 adjudication documents from the parcel file.

39. The Defendants filed no written submissions and offered no justification for their conduct. This occasioned wholly unnecessary litigation and expense to the Plaintiff in vindicating his indefeasible title.

40. **Section 27 of the Civil Procedure Act, Cap 21,** vests this Court with discretion to award costs, and the

general rule is that costs follow the event unless there are compelling reasons to depart from it. The Supreme Court in **Dina Management Limited v County Government of Mombasa & 5 others (Supra)**, while dealing with proprietary rights, underscored that a party who successfully vindicates his legal rights ought not to be penalised by being left out of pocket.

41. The Court of Appeal had earlier affirmed the same principle in **Munyu Maina v Hiram Gathiha Maina (Supra)** holding that the successful litigant is entitled to costs as of right where the opponent has failed to discharge the evidential burden placed upon him.

42. This court has consistently applied this rule in similar suits involving unlawful interference with registered titles. There are no circumstances in this case that would justify depriving the successful Plaintiff of his costs. The Defendants' conduct, including the unexplained retention of the title deed and the failure to prosecute any alleged trespassers, further justifies an award of costs against them.

43. The Court finds that the Plaintiff is entitled to a permanent injunction restraining the Defendants, their agents, servants or any person acting on their behalf from trespassing into, revoking, transferring, constructing on,

cultivating, cutting trees on, disposing of, subdividing, surveying or otherwise dealing adversely with the suit property.

44. The Court further finds that the Plaintiff is entitled to the costs of the suit.

Final orders

45. In conclusion, this court is satisfied that the Plaintiff has proved his case to the required standard and judgment is hereby entered in favour of the Plaintiff against the Defendants as follows;

- i) A permanent injunction be and is hereby issued restraining the Defendants by themselves, their authorised agents, servants and/or any other person acting on their behalf from trespassing into, revoking the title deed, transferring, constructing structures, cultivating, cutting of trees, disposing of, subdividing, surveying and/or dealing in any other manner adverse to the Plaintiff's parcel of land known as TAITA TAVETA/KIMALA MATA/1400.**
- ii) The 1st Defendant is hereby directed to return to the Plaintiff his original title deed for Land Parcel TAITA TAVETA/KIMALA MATA/1400 within**

fourteen (14) days from the date of service of this decree upon them.

iii) The Defendants shall pay the Plaintiff the costs of this suit.

It is so ordered.

Dated, Signed and Delivered Virtually at Voi this 21st day of April 2026.

**E. K. WABWOTO
JUDGE**

In the presence of:-

Mr. Otwere for the Plaintiff.

Ms. Ambesta for the Defendants.

Court Assistants: Mary Ngoira and David Ngoosa.