



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC NO. E062 OF 2022**

**KENNEDY MUYE MWANG'OME.....PLAINTIFFS**

**VERSUS**

**DHAHABU LAND LIMITED.....DEFENDANTS**

**JUDGMENT**

- 1.** The plaintiff herein filed this suit vide a plaint dated 4th November, 2022, seeking land ownership declaratory and permanent injunctive orders as well as general damages against the defendant in respect of the suit premises, being Plot No. Magarini/Baricho/Dakacha/1499 following acts of trespass and/or encroachment onto the plaintiff's parcel of land, aforementioned in October, 2022. The plaintiff also seeks costs.
- 2.** The pleadings herein, including the summons to enter an appearance, were served on the defendant, but it failed to enter an

appearance or file a defense. As a result, the matter proceeded to a formal proof hearing once the Court was satisfied that proper service had been effected.

3. The plaintiff testified on November 25, 2025, as PW1, adopting his statement dated November 24, 2025. He also submitted the documents listed in his List of Documents dated November 4, 2022. Notably, the certified copies of the title deed and an official search certificate of the suit premises, produced as PEx-1 and PEx-2, to prove ownership of the suit premises.
4. On trespass evidence, acts of trespass and/or encroachment on the suit premises, the plaintiff produced an OB and a survey report as PEx-3 and PEx- 4, respectively. With the said evidence, the plaintiff seeks the court's intervention to restrain the defendant from further acts of trespass and to obtain a declaration that he owns the suit premises. He further seeks damages for the defendant's acts of trespass and costs of the suit.
5. From the materials and submissions placed before me, the issues that I frame for the determination of this suit are whether the plaintiff has proved his case on a balance of probabilities to warrant the orders sought.

6. As submitted by the plaintiff under Section 26 of the Land

Registration Act, 2012, a registered Certificate of Title serves as conclusive evidence of absolute and indefeasible ownership, meaning that it's strong proof of ownership is not easily challengeable, except for fraud, misrepresentation, or illegal/corrupt acquisition, a principle which has been reinforced by the courts requiring deep due diligence into the land's history. See **Mwamule Company Limited v Chief Land Registrar & 2 others [2025] KEELC 4684 (KLR)** where this court held:

*“Section 26 (1) of the Land Registration Act articulates the principle of indefeasibility of title, asserting that once a proprietor's title is registered, it remains protected unless compelling evidence demonstrates that it was acquired through fraudulent, misrepresented, or corrupt practices involving the proprietor. This assertion is substantiated by a series of judicial precedents, as effectively cited by the counsel representing the parties, see for example - Rutongot Farm Ltd v Kenya Forest Services & 3 Others [2018] eKLR, Thomas Mose Kenyena v Arvindhandra Himatlal Mehta & 2 others [2022] eKLR, and Republic v Land Registrar Taita Taveta District & another [2015] eKLR.”*

7. The plaintiff here presented evidence of ownership of the suit property through certified copies of a title deed and an official

search, aiming to persuade the Court to grant the prayers sought herein.

**8.** He also presented evidence of the defendant's acts of trespass and/or encroachment onto the suit property in the form of a police OB and survey reports. The defendant did not participate in the matter, despite being served, making the plaintiff's case undefended. Since general damages for trespass are typically awardable in such cases, the plaintiff requests that the court allow the suit, including an award of damages as pleaded herein, per the decision in **Gakuria & another v Mwangi & 4 others [2025] KEELC 1014 (KLR)**, which holds that a successful litigant who proves acts of trespass is entitled to nominal damages, even if no actual loss has been suffered. I will award Kshs 500,000/- under this head as nominal damages for trespass.

**9.** On a balance of probabilities, the plaintiff has proved his case, and I will issue the following final orders:

**a) A declaration is hereby issued confirming that the plaintiff is the registered owner of title No. Magarini/Baricho/Dakacha/1499, which measures approximately 214.91 hectares, as shown in the title document presented herein.**

**b) A permanent injunction is hereby issued restraining the defendants, their agents, servants, employees, legal representatives, or anyone claiming interest, from subdividing, trespassing, entering, uprooting, putting up beacons, grading access roads, remaining, or dealing in any manner with the suit property to the detriment of the ownership rights of the plaintiff.**

**c) General Damages for trespass assessed at Kshs 500,000/-**

**d) Costs and interest at court rates.**

**Dated, signed, and delivered electronically in Nyeri on this 9th day of April, 2026, in the absence of the parties, with Mr. Kenga having been notified of the judgment date. CA Kendi present.**

**E. K. MAKORI**

**JUDGE**

