



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT THIKA

ELC CIVIL SUIT NO. E157 OF 2022

**SAFARICOM INVESTMENT CO-OPERATIVE LIMITED.....
PLAINTIFF**

VERSUS

**LUCY NYAMBURA KARIUKI.....1ST
DEFENDANT**

**MUMBI KARIUKI.....2ND
DEFENDANT**

JUDGMENT

1. Following the filing of a Plaint dated 19/12/2022 the Plaintiff sought the following orders from Court:

(a) A declaration that the Plaintiff is the registered and absolute owner of all that parcel of land known as **KIAMBAA/RUAKA/7133.**

(b) A declaration that the Plaintiff is entitled to the exclusive and unimpeded right of possession, occupation, use and development of all that parcel of land known as **KIAMBAA/RUAKA/7133.**

(c) An order of permanent injunction restraining the Defendants, either by themselves, their agents, servants and/or personal representatives from entering, trespassing into, and or interfering with the

Plaintiff's use and development of **KIAMBAA/RUAKA/7133**, the construction works by the Plaintiff and its Contractor, MC BUILDERS LIMITED and or their agents on the suit property.

(d) General damages for trespass.

(e) Costs of this suit.

2. The Defendants despite having been served with summons to enter appearance, failed, neglected and or refused to take part in the proceedings.
3. The Court directed on 04/02/2025 that the Defendants should be served via substituted service and on 24/04/2025, vide the Daily Newspaper of even date the Defendants were served with Summons. The Process Server one Stephen Kinuthia swore an Affidavit of Service dated 28/04/2025 where he deponed this fact.
4. From the first appearance in Court on 20/12/2022, the Defendants never entered appearance in Court necessitating the Plaintiff to request Judgment against the Defendants under Order 10 Rule 4 of the Civil Procedure Rules on 10/02/2023 which request was however not granted.
5. On 16/02/2023, however all parties were in Court and the Defendants appeared in person. The Court explained to them the right to legal representation and also encouraged parties to try Alternative Dispute Resolution (ADR). Defendants were given up to 2/05/2023 to file their responses.
6. On 15/05/2023 when the parties appeared in Court and the Defendants who were appearing in person sought for a

Kikuyu Interpreter, the Court secured an interpreter for the Defendants. The Defendants sought time to file documents. The Defendants sought for more time to file their responses and documents that they will rely on at trial.

7. At the next appearance in Court on 21/09/2023, the Defendants were represented by **Ms. Kinuthia Advocate** who had however failed to serve her Notice of Appointment and so the Court directed her to file the notice but also referred the parties to the Deputy Registrar for pre-trial conference (PTC). When the parties next appeared in Court, the Defendants were absent including their Counsel and the Plaintiff requested for a hearing date given the numerous Court appearances where the Defendants were not complying with Court orders which had directed them to file their pleadings.
8. The Court fixed the matter for hearing and directed that the Defendants be served via substituted service and since they never attended the hearing the matter proceeded undefended.

Brief Background

9. The Plaintiff claims to be the absolute and registered proprietor of all the parcel of land known as **KIAMBAA/RUAKA/7133** situated within Garacharage area, Kiambu County. He claims to have acquired nine parcels of land from different proprietors, being Title Numbers **KIAMBAA/RUAKA/1291, 1082,5897, 5898, 1297, 4104, 4105, 4106** and **3484**.

10. According to the Plaintiff, the titles were transferred to it and title deeds issued on 1/02/2018. It had the intention of developing low-cost housing project on the nine parcels upon amalgamating the nine parcels into one parcel. That through the mutation registered on 17/03/2022 the nine parcels were amalgamated and a new title issued as **KIAMBAA/RUAKA/7133** and a change of user approval granted on 14/10/2022.
11. Upon obtaining the approval the Plaintiff entered into a construction contract of 210 units with MC Builders for a contract of Kesh 588,639,058.
12. That at the onset of the construction, the Defendants attacked the workers claiming ownership of an unidentified portion of the property without presenting the Plaintiff nor the administration with any documents of proof of the claim.
13. Following the violent attacks, the Plaintiff claims to have suffered loss and damage which he lists as follows;

Particulars of Loss and Damage

- a) The Plaintiff has been deprived the quiet enjoyment and use of the suit property.
- b) The Plaintiff is incurring costs by paying the contractor for idle equipment and machinery on site.
- c) The Plaintiff has offered the units for sale to its members, customers and clients on OFF-PLAN basis with delivery time of the units being time-bound in the offer letters/contractors. The Defendants' conduct will delay the completion of construction. As a

consequence, the Plaintiff runs the risk of breaching the terms of sale regarding completion of construction.

d) The approvals granted to the Plaintiff limits construction period to three years. With the continued delay in construction, this period is likely to expire before the Plaintiff completes the construction.

14. It is the Plaintiff's case that despite reporting the Defendants to the Police they could not act without a Court order. Necessitating the filing of this suit.

Plaintiff's Case

15. The Plaintiff testified as **PW1- Jared Osoro Nyabwoka** and stated that he worked for SIC Investment Society Limited before it was known as Safaricom Investment Cooperative Limited. He adopted his witness statement as his evidence in chief and he also adopted his list of documents dated 19/12/2022 containing ten (10) documents which are:

- i. A copy of Title No. KIAMBAA/RUAKA/7133.
- ii. Copies of Title Nos. KIAMBAA/RUAKA/1291, 1082. 5897,5898, 4104, 4105, 4106 &3484.
- iii. The Mutation Form dated 9th March 2022.
- iv. The Agreement and Conditions of contract for building works dated 8th March 2022.
- v. The NEMA approval dated 9th June 2022.
- vi. The construction permit dated 30th June 2022.
- vii. The letter of authority to commence development dated 30th June 2022.

- viii. Notification of approval of development permission change of user granted on 14th October 2022.
- ix. Notice of publication in the Kenya Gazette by NEMA dated 22nd September 2022.
- x. Gazette Notice No. 12791 dated 21st October 2022.

16. The Court directed the Plaintiff to file written submissions. The submissions filed are dated 15/11/2025 and I have read and considered the same in writing my Judgment.

Analysis and Determination

17. The Plaintiff moved this Court by way of a Plaint dated 19/12/2022, seeking a declaratory order of ownership over the suit property known as **KIAMBAA/RUAKA/7133**, an order for permanent injunction against the Defendants, and general damages for trespass. Despite the history of this matter, characterized by the Defendants' initial appearances in person and subsequent representation by Counsel, the Defendants ultimately failed to file any defense or join issue with the Plaintiff's claim.

18. The matter proceeded to hearing undefended. However, it is a long-standing principle of law that a Plaintiff's case does not succeed merely because it is unopposed. The burden of proof remains constant. As provided under Sections 107 and 108 of the Evidence Act (Cap 80), he who alleges must prove. The Plaintiff bears the legal burden to lead evidence that will convince the Court on

a balance of probabilities that they are entitled to the reliefs sought.

19. In light of the pleadings, the witness testimony, and the documentary evidence placed before this Court, to effectively resolve this dispute, the Court identifies the following issues for determination:

- i. Whether the Plaintiff is the lawful registered proprietor of the suit property;*
- ii. Whether the Defendants' actions amount to trespass;*
- iii. Whether the Plaintiff is entitled to the reliefs sought;*
- iv. Who should bear the costs of the suit?*

20. On ownership and indefeasibility of title, the Plaintiff's case is anchored on the sanctity of title. PW1 produced the original Certificate of Title for **KIAMBAA/RUAKA/7133** and a history of the constituent parcels (**KIAMBAA/RUAKA/1291, 1082, 5897, 5898, 1297, 4104, 4105, 4106 and 3484**).

21. Under Section 24(a) of the Land Registration Act, registration vests absolute ownership in the proprietor. Section 26(1) further mandates that such title shall be prima facie evidence of absolute ownership. This principle was echoed by the Court of Appeal in **Arthi Highway Developers Limited v West End Butchery Limited & 6 Others [2015] eKLR** where the Court emphasized:

"The registration of a person as the proprietor of land is a solemn act of state. The title issued thereafter is an indefeasible document that can only be challenged on the grounds of fraud or

misrepresentation to which the person is proved to be a party."

22. The Plaintiff has demonstrated a seamless transition from individual parcels to an amalgamated title, backed by a registered Mutation Form and change of user. In the absence of any defense or evidence of fraud, this Court finds the Plaintiff's title to be valid and absolute.

23. While the Supreme Court in the case of **Dina Management Limited v County Government of Mombasa & 5 Others [2023] KLR** discusses the limits of indefeasibility, if the land was public land originally, it acknowledges the solemnity of the registration process.

24. Trespass is an injury to possession. **Halsbury's Laws of England (4th Edition, Vol 45)** notes that any entry upon land in the possession of another without a legal right is a trespass. Here, the Plaintiff has established both ownership and possession through its contractor, MC Builders Limited.

25. The Defendants, despite being given ample opportunity to file their defense and even being provided with a Kikuyu interpreter to ensure they understood the proceedings, chose to stay away. In **Park Tower Limited v Moses Chege & 7 Others [2014] eKLR** the Court held:

"Where a party is the registered owner of land, any person who enters the land without the owner's permission or a Court order is a trespasser, and the law will protect the registered owner's right to quiet enjoyment."

The violent interference with the Plaintiff's workers, as testified by PW1, constitutes a clear act of trespass.

26. The Plaintiff seeks a permanent injunction. The test for such an order is whether the Plaintiff has a legal right and whether that right is being continuously infringed upon. Given the substantial investment of **Kshs 588,639,058**, the Plaintiff risks irreparable loss if the Defendants are not restrained.

27. Regarding damages, **Black's Law Dictionary (10th Edition)** defines general damages as those that the law presumes to flow from a wrong. While the suit is undefended, the Plaintiff must prove the loss. The delay in a time-bound project for 210 units clearly causes financial strain and loss of use.

Final Determination

28. The Plaintiff has proved its case on a balance of probabilities. Although the Defendants failed to defend the suit, the Plaintiff presented a sound case supported by verifiable documentary evidence.

29. Accordingly, I enter Judgment for the Plaintiff against the Defendants for:

a) A declaration that the Plaintiff is the registered and absolute owner of KIAMBAA/RUAKA/7133.

b) A declaration that the Plaintiff is entitled to the exclusive and unimpeded right of possession, occupation, and development of the suit property.

c) An order of permanent injunction restraining the Defendants, their agents, or representatives from entering, trespassing, or interfering with the Plaintiff's use and construction works on the suit property.

d) General damages for trespass awarded at Kshs 1,500,000/-.

e) Costs of this suit.

Orders Accordingly.

DATED, SIGNED AND DELIVERED IN THIKA VIA MICROSOFT TEAMS THIS 4TH DAY OF MAY, 2026.

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**MOGENI J
JUDGE**

In the presence of:

Mr. Muturi holding brief for Mr. Wanjohi for the Plaintiff
1st and 2nd Defendants - Absent
Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**