



Al-Guthmy & 8 others v Said Bin Seif Properties (2016) Limited & 4 others; Said Bin Seif Properties (2016) Limited & 2 others (Plaintiffs to the Counterclaim); Karama (Defendant to the Counterclaim) (Environment and Land Case 236 of 2020) [2025] KEELC 5463 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 236 OF 2020**

SM KIBUNJA, J

JULY 23, 2025

BETWEEN

MOHAMED OMAR AL-GUTHMY & 8 OTHERS PLAINTIFF

AND

SAID BIN SEIF PROPERTIES (2016) LIMITED & 4 OTHERS & 4 OTHERS DEFENDANT

AND

SAID BIN SEIF PROPERTIES (2016) LIMITED PLAINTIFF TO THE COUNTERCLAIM

SHARIFA AHMED BUSAIDY PLAINTIFF TO THE COUNTERCLAIM

SEIF SAID SEIF BUSAIDY & AKRAM SAID SEIF BUSAIDY (BOTH SUING AS ADMINISTRATORS OF THE ESTATE OF SAID SEIF BIN SALIM) PLAINTIFF TO THE COUNTERCLAIM

AND

SAID KARAMA DEFENDANT TO THE COUNTERCLAIM

JUDGMENT

1. The plaintiffs in the main suit filed their claim through the plaint dated the 21st December 2020, seeking for inter alia permanent injunction against defendants in respect of increasing rent of the plaintiffs' houses on Mombasa/Block XLV/54, suit property; declarations that transfer of the suit property to 1st defendant was illegal, unconstitutional, null and void; order that 1st defendant's title over the suit property be cancelled; declaration that the plaintiffs have become owners and should be registered as



such of the portions of the suit property where their respective houses are erected, and in the alternative a declaration be issued that the plaintiffs are entitled to purchase and acquire their respective portions of the suit property based on the valuation and assessment done by National Land Commission; and costs. The record confirms that 1st to 8th plaintiffs and the 1st to 3rd defendants entered a consent dated 10th May 2022, that was filed in court on the 11th May 2022, and adopted as a court order settling the claim between the concerned parties on the 13th June 2022. On that same date, the court granted the parties 30 days to see whether they would reach a consent with the 9th plaintiff but there was no settlement. The parties were directed to comply in respect of the 1st to 3rd defendants' counterclaim within the various timelines given but none was filed.

2. The 1st to 3rd defendants, who will herein after be referred to as the 1st to 3rd plaintiffs respectively, filed their amended statement of defence and counterclaim dated the 16th November 2022, against the 9th plaintiff, herein after referred to as the defendant, seeking for orders that:

- a. A declaration that the 1st, 2nd, and 3rd defendants are entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as Title No. Mombasa/Block XLV/318.
- b. A declaration that the 9th plaintiff whether by themselves or their servants or agents or otherwise howsoever are wrongly, illegally in occupation of the suit property Title No. Mombasa/Block XLV/318 and accordingly trespassers on the same.
- c. An injunction restraining the 9th plaintiff whether by themselves or their servants or agents or otherwise howsoever from remaining or continuing in occupation of the suit property, Title No. Mombasa/Block XLV/318.
- d. An order directing the 9th plaintiff, at his costs, and within ten (10) days of the order or within such other time as the court deems fit, to demolish their structures erected on Title No. Mombasa/Block XLV/318 failing which the 1st, 2nd, and 3rd defendants be at liberty to demolish the same at the 9th plaintiff's costs.
- e. Mesne profits.
- f. Costs; and
- g. Interest on (e), (f) & (g) above at court rates from the date of filing suit herein until full payment thereof.
- h. Any other of further relief this honourable court may deem fit to grant in the 1st defendant's favour."

3. The 1st to 3rd plaintiffs inter alia avers that they were and still are owners of Mombasa /Block XLV/54, on which they had verbally allowed the plaintiffs in the main suit at their request to build semi-permanent and or permanent structures thereon; that by notice in writing dated 31st December 2020, the 1st to 3rd plaintiffs terminated the verbal lease agreement and notified the occupants on the said land to quit and give vacant possession of the properties by 15th January 2021; that despite the notice lapsing the occupants failed to vacate or deliver vacant possession and instead continued to sublet their structures to other tenants, thereby denying the 1st to 3rd plaintiffs their lawful entitlement and economic benefits; that the 1st to 3rd plaintiffs intended to grant leases over the property to other interested parties but were unable to do so, and have suffered losses, and hence this counterclaim.



4. There was no defence filed to the counterclaim and the hearing proceeded through formal proof.
5. During the hearing on the 23rd July 2024, the plaintiffs called Saif Said Al-Busaidy, director in 1st plaintiff, who testified as PW1, and he adopted his witness statements dated the 14th June 2021 and 18th June 2024 as his evidence in chief. He relied on their filed list of documents dated the 14th June 2021, and further list of documents dated 21st November 2022. It was his testimony that Mombasa/Block XLV/54 was registered in the names of the 1st and 2nd plaintiffs and that the defendant was still in occupation of a portion thereof. That the claim by the defendant, who was the 9th plaintiff in the main suit, should be dismissed with costs, and their counterclaim against him be allowed. He added that the 1st to 8th plaintiffs in the main suit have since bought their respective portions of the suit property, and their claim settled and a consent filed.
6. At the closure of the plaintiffs' case, the court directed that submissions be filed in 30 days, and set a mention date for 17th October 2024. On that date, Mr. Egunza advocate for the defendant [9th plaintiff] and Ms. Waithera for Obinju for the plaintiffs attended court. The proceedings of that day confirms that the court record for proceedings after 9th April 2024 were missing from the file. Another mention for 3rd December 2024 was fixed to give the registry time to trace the missing pages of the handwritten proceedings. On that day the court heard counsel for the parties and referred the file to the Deputy Registrar to investigate the matter. The record show that the counsel for the parties appeared before the Deputy Registrar on 3rd December 2024 and 12th February 2025, and during the subsequent mention of 26th February 2025, the court was informed that the missing pages of the proceedings had been found. The court proceeded to direct the Deputy Registrar to have the matter investigated thoroughly and a comprehensive report filed. I have seen statements on the record taken from the following staff members:
 - a. Peris Maina, PJ No. 23XX7.
 - b. Omar Yare.
 - c. Zachary Onsoti, PJ No. 81XX9.
 - d. L. Ombiri, PJ No.43XX9.
 - e. Patrick M. Thuku.
 - f. Japheth Ojwang.
 - g. Esther Macharia, PJ No. 30XX4

I have also seen the Deputy Registrar's Report dated 20th March 2025, that inter alia states that the matter had been reported to Police/DCI for investigations and to the Mombasa Law Courts LMT for further deliberations. The court on 25th March 2025 proceeded to give further directions on filing and exchanging submissions and fixed the suit for mention on 23rd June 2025, when today's judgement date was set. I will leave the issue of the pages that went missing and later were recovered to the Deputy Registrar and the police to follow up and if anyone is found culpable, appropriate action be preferred.
7. The learned counsel for the 1st to 3rd plaintiffs filed his submissions dated 16th October 2024, which the court has considered. No submissions were filed by the defendant.
8. The issues for determinations in the 1st to 3rd plaintiffs' counterclaim by the court are as follows:
 - a. Whether the plaintiffs are the registered proprietors of the suit property.



- b. Whether the defendant has any legal or beneficial interests over the suit property or part thereof.
 - c. Whether the plaintiffs are entitled to any of the prayers in the counterclaim.
 - d. Who pays the costs?
9. The court has carefully considered the averments on the counterclaim, oral and documentary evidences tendered by PW1, submissions by the learned counsel for plaintiffs, superior courts decisions cited and come to the following conclusions:

- a. From the documentary evidence in the form of copies of title deeds, specifically for the parcels relevant to the issues in the counterclaim, to wit, Mombasa/Block XLV/54 & 318, filed by the plaintiffs and produced as exhibits through PW1, a director to the 1st plaintiff, the said parcels are registered in the names of Said Bin Seif Properties (2016) Limited and Sharifa Ahmed Busaidy, who are the 1st and 2nd plaintiffs respectively. As the defendant did not file any defence to the counterclaim, the plaintiffs' claim of ownership of the said properties and their rights as proprietors remains unchallenged. Section 26 of *Land Registration Act* chapter 300 of Laws of Kenya provides inter alia that the certificate of title issued by the Registrar upon registration;

“.....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.”

The defendant did not tender any evidence in support of his claim in the main suit, and his averments on the plaint remains mere allegations without proof, and incapable of being a challenge to the plaintiffs' title to the two properties detailed above.

- b. Further, the defendant opted not to file any defence to the plaintiffs' counterclaim that was a suit against himself. Though the plaintiffs' claim therefore remains unchallenged, they have proceeded to present both documentary and oral evidence through PW1 that the suit properties are registered in their names. They have also shown that they had terminated the oral lease they had with defendant to a portion of the suit property, and the notice had lapsed without him complying. They have further shown that the eight other people who had jointly initiated the main suit against the plaintiffs in the counterclaim and others have since settled by purchasing their specific portions, but that defendant had not and had not vacated. I therefore find that the plaintiffs have discharged their obligations to prove their claim against the defendant as required by sections 107 to 109 of the *Evidence Act* chapter 80 of Laws of Kenya
- c. The plaintiffs, as the registered proprietors of the suit properties, are under sections 24 and 25 of the *Land Registration Act* entitled to the interests and rights of a registered proprietor. They have also shown that the continued occupation and possession of Mombasa/Block XLV/318, which is a portion of Mombasa/Block XLV/54, by the defendant without their permission or consent, is preventing them from enjoying the rights of proprietorship and



without belabouring the matter, I find the plaintiffs are entitled to the prayers (a) to (d) of the counterclaim, save that the time in prayer (d) is increased to ninety (90) days instead of ten (10) days.

- d. On the prayer for mesne profits the learned counsel submitted for Kshs.1,000,000 and relied on the decision in the case of *Mary Wanjiru Kihugu & 6 Others versus Regency Cooperative Savings and Credit Society Limited* [2021] eKLR, where Kshs.2,000,000 was awarded as general damages. I find the amount proposed to be a reasonable one and is allowed under prayer (e).
 - e. 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 directs differently. In this case, I find the costs should follow the events and award it to the plaintiffs, as sought under prayer (f).
 - f. On interest sought under prayer (g), and considering the defendant is still in possession and occupation of the said land, and it may take sometimes before he vacates or is evicted and his structure demolished, I find it fair and just to allow interests at court rates on amount awarded at prayers (e) for mesne profits and costs at prayer (f), from the date of filing the suit until full payment.
10. Flowing from the foregoing determinations on the 9th plaintiff's claim on the main suit and the counterclaim, the court finds and orders as follows:
- a. That the as 9th plaintiff has failed to tender evidence in support of his claim against the defendants in the main suit, the same is dismissed with costs.
 - b. That the plaintiffs in the counterclaim have proved their case against the defendant to the standard required of balance of probabilities. That judgement is therefore entered for the plaintiffs against the defendant as follows:
 - i. That a declaration is hereby issued that the 1st to 3rd plaintiffs in the counterclaim are entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as Title No. Mombasa/Block XLV/318.
 - ii. That a declaration is hereby issued that the defendant in the counterclaim, who was the 9th plaintiff in the main suit, whether by himself or his servants or agents or otherwise howsoever are wrongly and illegally in occupation of the suit property Title No. Mombasa/Block XLV/318.
 - iii. That an injunction is issued restraining the defendant in the counterclaim, who was the 9th plaintiff in the main suit, whether by himself or his servants or agents or otherwise howsoever from remaining or continuing in occupation of the suit property, Title No. Mombasa/Block XLV/318.
 - iv. That an order is hereby issued directing the defendant in the counterclaim, who was the 9th plaintiff in the main suit, to demolish his structures erected on Title No. Mombasa/Block XLV/318, at his costs, and within ninety (90) days from today, failing which the plaintiffs in the counterclaim be at liberty to demolish the same at his costs.
 - v. The defendant to pay the plaintiffs mesne profits assessed at Kshs.1,000,000 [one million].
 - vi. The defendant to pay the plaintiffs costs in the counterclaim.



- vii. The defendant to pay the plaintiffs interest on (v) and (vi) above at court rates from the date of filing suit until full payment.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 23RD DAY OF JULY 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiffs : M/s Waithera for Obinju

Defendant : M/s Nzau for Waswa for AG. No appearance for other Defendant

Shitemi-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA

