



**Hirsi v Kiplimo (Environment and Land Case E464 of 2024)
[2025] KEELC 5290 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5290 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E464 OF 2024**

**CG MBOGO, J
JULY 16, 2025**

BETWEEN

BURHAN JIMALE HIRSI PLAINTIFF

AND

DAVID KIPLIMO DEFENDANT

JUDGMENT

1. Vide Plaintiff dated the 13th November, 2024 and filed in court on even date, the plaintiff prays for judgment against the defendant for:
 - a. A declaration that the Plaintiff is the lawful owner of the property known as referred to as Parcel Number Nairobi/block 69/262 situated along Sudi Road, South B in Starehe Sub County in Nairobi County measuring 60 by 140 (hereinafter "the suit land") all belonging to the Applicant.
 - b. An order of permanent injunction to restrain the Defendant by themselves, its agents, servants and or employees or anyone claiming authority from them from entering, remaining, trespassing, constructing or in any other manner howsoever, interfering with the Plaintiff's peaceful ownership, enjoyment of use of his parcel known as Parcel Number Nairobi/block 69/262 situated along Sudi Road, South B in Starehe Sub-County, Nairobi County measuring 60 by 140 (hereinafter "the suit land") all belonging to the Applicant and a perpetual injunction to restrain the Defendant by themselves, agents, servants and employees from further trespassing and constructing, in any other manner that interferes with the occupation and enjoyment of the Plaintiff's land.
 - c. Costs and Interests.
2. The plaintiff has averred that he has been the proprietor of that parcel of land known as Nairobi/Block 69/262 situated along Sudi Road, South B in Starehe Sub-County, Nairobi County measuring 60 by



140 (hereinafter “the suit property”) and which was leased to him on or about the year 1993 by Nairobi City County.

3. The plaintiff further averred that lease instrument/agreement was registered by both the Nairobi City County Government and the Ministry of Lands back in the year 1993.
4. The plaintiff went on to aver that he has since developed sections of the suit property after obtaining the requisite approvals from the local authorities.
5. The plaintiff further averred that the defendant herein together with his goons are on the verge of forcefully trespassing into the his parcel of land and that they have continuously stolen his construction materials and equipment that were on the suit property thus denying him quite possession and enjoyment of his land.
6. The defendant herein neither entered appearance nor filed any statement of defense despite being served with summons and thus the matter proceeded as undefended suit.
7. When the matter came up for hearing on about the 6th March, 2025 Burhan Jimale Hirsi, who is the plaintiff proceeded to adopt his witness statement dated the 13th November, 2024 as his evidence in chief.
8. The plaintiff further proceeded to produce his bundle of documents dated 9th December, 2024 as P.Exhibit numbers 1 to 10 respectively.
9. The plaintiff also filed a further affidavit dated the 9th December, 2024 containing title number I.R 63547 and urged the court to enter judgment in his favour as per the plaint.
10. In his written submissions dated the 13th March, 2025 the counsel for the plaintiff raised three issues for determination as follows;
 - i. Whether the Plaintiff is the true and *bona-fide* proprietor of land parcel Number Nairobi / Block 69/262 situated along Sudi Road, South B in Starehe Sub County, Nairobi County measuring 60 by 140?
 - ii. Whether this Honourable Court should be pleased to issue permanent injunction orders restraining the Defendant whether by themselves, servants, or agents from entering, constructing, dealing, disposing interfering, harassing, trespassing or interfering with the Applicant’s quiet possession and land use of land parcel Number Nairobi /Block 69/262 situated along Sudi Road, South B in Starehe Sub County, Nairobi County measuring 60 by 140?
 - iii. Who should bear the costs of the suit?
11. With respect to the first issue, the counsel for the plaintiff cited the provisions of Article 40 of *the Constitution* of Kenya, 2010, which provides as hereunder:-
 40.
 - (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property
 - (a) of any description; and
 - (b) in any part of Kenya.
 - (2) Parliament shall not enact a law that permits the State or any person—



- (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that
 - (i) requires prompt payment in full, of just compensation to the person; and
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

12. The counsel submitted that the plaintiff herein is the *bona fide* owner of the suit property. The counsel further submitted that by virtue of the provisions of Section 107 of the [Land Registration Act, 2012](#), the applicable law in this suit is the *Registered Land Act* Chapter 300 Laws of Kenya [Repealed].

13. The learned the counsel for the plaintiff further cited the provisions of Sections 27 and 28 of the repelled *Registered Land Act* and placed reliance in the cases of [Denis Noel Mukbulo & Another v Elizabeth Murungari Njoroge & Another](#), CA No. 298 of 2013, [Alice Chemutai Too vs Nickson Kipkurui Korir & 2 Others](#) [2015] eKLR and [Munyu Maina v Hiram Gathiba Maina](#), Civil Appeal No. 239 of 2009.

14. The counsel for the plaintiff submitted that the plaintiff has shown unbroken chain of title and that he is the true owner of the suit property.

15. On the second issue, the plaintiff's counsel relied on the case of [Kenya Power & Lighting Co. Limited v Sheriff Molana Habib](#) [2018] eKLR.

16. On the third issue, counsel for the Plaintiff cited page 94 of the Judicial, it has on [Civil Procedure](#), 2nd Edition, 2011 by Justice Kuloba where the author stated thus:

“Costs are {awarded at} the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise...”

17. He also submitted that the Plaintiff has since demonstrated that he is the *bona-fide* registered and lawful owner of the land number Nairobi/Block 69/262 as he has all the requisite ownership documents.



The counsel added that the Plaintiff's right to hold and own the suit property will be deprived if an order of permanent injunction is not granted.

18. The counsel further relied in the case of *Haraf Traders Limited v Narok County Government* [2022] eKLR.
19. Having evaluated the evidence and the submissions filed, I will adopt issues number (i) and (ii) as framed by the plaintiff's counsel.
20. As earlier on observed in this judgment, this matter proceeded as undefended suit. However the court is obliged to determine if the plaintiff's case is made out against the defendant in order to grant the reliefs sought in the plaint.
21. The plaintiff herein primarily relies on lease agreement entered into on the 11th August 1993 between himself and the then City Council of Nairobi as well as the certificate of title I.R No. 63547 issued to him on 4th December 2024. Clause [a] of the lease agreement shows that the parcel of land known as Block 69/262 had not been surveyed at the time of entering into the lease agreement..
22. The plaintiff further provided a document titled "annexure" BJH -6b which he did not explain whether it was a survey map or a deed plan. Of importance to note is that the plaintiff did not produce any allotment letters and Part Development Plan [PDP] issued to him, if any, by the then City Council of Nairobi. He neither produced a letter of offer from Commissioner of Lands to show that he [plaintiff] accepted the offer thus leading to the issuance of the certificate of title. He did not inform the court when the suit property was surveyed. All what he did was to throw the certificate of title to the court and demanded to be declared as the registered proprietor thereof.
23. As the matter stands, there is no approved survey plan nor a deed plan to show how the plaintiff came to be the registered proprietor of the suit property. Whereas the defendant has not challenged the root of the title that the plaintiff holds as was the case in *Munyu Maina v Hiram Gathiba Maina*, Civil Appeal No. 239 of 2009, the burden of proof lay on him to show that he acquired his title regularly and proceed orally.
24. I hold that the plaintiff did not lay before this court the evidence of how he came to be registered as a proprietor of the suit property. In the absence of such evidence, there is a *lacuna* of what transpired between the signing of the lease agreement and issuance of the title document. I am not satisfied that the plaintiff is the true and *bona fide* proprietor of land parcel number Nairobi/Block 69/262 situated along Sudi Road, South B in Starehe Sub-County, Nairobi County measuring 60 by 140.
25. It follows therefore that the plaintiff is not entitled to an order of permanent injunction to restrain the defendant whether by himself, servants and agents from entering, trespassing or interfering with the plaintiff's possession and use of parcel number Nairobi/Block 69/262 situated along Sudi Road South B in Starehe Sub County Nairobi measuring 60 by 14.
26. The upshot of the foregoing, is that I am not satisfied that on a balance of probabilities, the plaintiff has a cause of action as against the defendant. In the circumstances, I hereby proceed to dismiss his suit.
27. The plaintiff shall bear his own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 16TH DAY OF JULY, 2025.

HON. MBOGO C. G.

JUDGE



In the presence of:

Mr. Benson Agunga - Court Assistant

Mr. Mark Wanyanga for the Plaintiff

