



**Rajab (Suing as the Director of Andalus Limited) v Abdalla & 6 others (Environment & Land Case 15 of 2023) [2024] KEELC 4673 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4673 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 15 OF 2023**

**NA MATHEKA, J**

**JUNE 13, 2024**

**BETWEEN**

**RISHARD RAMADHAN RAJAB (SUING AS THE DIRECTOR OF ANDALUS LIMITED) ..... PLAINTIFF**

**AND**

**MWINYI ABDALLA ..... 1<sup>ST</sup> DEFENDANT  
NELLY MOHAMED CHIVATSI ..... 2<sup>ND</sup> DEFENDANT  
BAHATI CHIVATSI ..... 3<sup>RD</sup> DEFENDANT  
AMINA MOHAMED CHIVATSI ..... 4<sup>TH</sup> DEFENDANT  
RUKIA MOHAMED CHIVATSI ..... 5<sup>TH</sup> DEFENDANT  
HALIMA MKAMBE CHIVATSI ..... 6<sup>TH</sup> DEFENDANT  
DZAME KIVATSI ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff avers that he is the registered owner of the two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares situated at North of Mtwapa Creek in Kilifi County. The 7<sup>th</sup> Defendants entered into an oral agreement with one Rehema Shee Ali (Naima's mother) who happened to be the previous owner and under given terms that the Defendants herein to build only temporary structures and the oral agreement may be revoked if they fail to meet the agreed terms. The Defendants herein breached the terms of the oral agreement and instead constructed permanent structures as well as failing to pay their dues which accrued and as a



result they encroached and/or trespassed into the said parcel of lands residence by themselves and/or persons authorized by themselves and that trespass is still continuing.

2. That sometimes in 2009 and 2011 respectively Naima purchased the two properties from her mother (Rehema Shee Ali) which transfer process was successful and she became the new owner. The Plaintiff avers that sometimes in 2020 he entered into agreement of sale with one Naima Sulum Abdun who was the beneficial owner of two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares situated at North of Mtwapa Creek in Kilifi County to purchase and own the above mentioned properties in which the transfer process was successful and the said properties were registered under the Company's name Andalus Limited. The Plaintiff further avers and contend that it is within the Defendants personal knowledge that they are not the registered owners of the two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares both properties situated at North of Mtwapa Creek in Kilifi County . The Plaintiff further avers that he is the registered owner of the two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares both properties situated at North of Mtwapa Creek in Kilifi County which the Defendants have invaded. The Plaintiff further avers that the Defendants illegally entry to the Suit Property and their continuity presence in the Suit Property amounts to and is trespass to the Plaintiffs land. Additionally the Defendants have deliberately refused, failed and/or ignored to demolish the said permanent structures and to render the two properties vacant of the Plaintiffs suit properties to date.
3. The Plaintiff avers that the Defendants actions are illegal and unlawful as they only amount to trespass which infringes on the Plaintiffs proprietary rights protected under the Constitution of Kenya 2010 rendering this suit necessary. The Plaintiff pray for judgment against the 1<sup>st</sup> to 7<sup>th</sup> Defendants jointly and severally for;
  - a. A Permanent Injunction issued restraining the 1<sup>st</sup> to 7<sup>th</sup> Defendants by themselves, their relatives, their agents, employees, servant and/or assigns employees, servants and/or in any manner whatsoever from cultivating, planting, constructing, deposing, leasing, selling, wasting, developing, damaging, alienating or in any other manner however interfering with the Plaintiff two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares both properties situated at North of Mtwapa Creek in Kilifi County.
  - b. An Order directing the 1<sup>st</sup> to 7<sup>th</sup> Defendants to forthwith hand over vacant possession of the two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares both properties situated at North of Mtwapa Creek in Kilifi County or in any other manner from interfering with the Plaintiffs peaceful occupation and enjoyment of the Suit Land.



- c. An Order directing the Officer Commanding Mtwapa Police Station do supervise the eviction process.
  - d. Costs and interest to this suit.
  - e. Any other relief that the Court may deem fit and just.
4. This court has considered the evidence and submissions therein. The Defendants were served but failed to attend court and the suit was undefended. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24(a) of the [Land Registration Act](#) provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 26 (1) of the [Land Registration Act](#) states as follows:

“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... 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.”
5. The law is clear 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
6. This court in considering this matter referred to the case of [Elijah Makeri Nyangw'ra v Stephen Mungai Njuguna & Another](#) (2013) eKLR where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The Judge in the case while considering the application of section 26(1) (a) and (b) of the [Land Registration Act](#) rendered himself as follows;

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

7. PW1, the plaintiff testified that he is the absolute and registered owner of the suit parcels of land (PEx2&3). That when the plaintiff bought suit property a few of the defendants were tenants in a portion of the land but stopped paying rent according to PW2 the Vendor. She narrated that the defendants have erected permanent structures contrary to the oral agreement they had entered with her mother before she took over the property sometimes in 2009 and 2011. She later sold the properties to the plaintiff in 2020. I find that the defendants' trespass and/or occupation of the suit property has interfered with the plaintiff's quite enjoyment of the property. I find that the plaintiff is the absolute



owner of the suit property and is protected by sections 24 and 26 of the [Land Registration Act](#). I find that his evidence has not been rebutted. I find that the plaintiff has proved his case on a balance of probabilities and I grant the following orders;

1. A Permanent Injunction issued restraining the 1<sup>st</sup> to 7<sup>th</sup> Defendants by themselves , their relatives, their agents, employees, servant and/or assigns employees, servants and/or in any manner whatsoever from cultivating, planting, constructing, deposing, leasing, selling, wasting, developing, damaging, alienating or in any other manner however interfering with the Plaintiff two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares both properties situated at North of Mtwapa Creek in Kilifi County.
2. An Order directing the 1<sup>st</sup> to 7<sup>th</sup> Defendants hand over vacant possession of the two properties known as C.R. 36759 being Subdivision Number 4370 (Original No. 3368/4) Section III Mainland North Measuring approximately 0.0243 Hectares and C.R. 36763 being Subdivision Number 4374 (Original No. 3368/8) Section III Mainland North Measuring approximately 0.0472 Hectares both properties situated at North of Mtwapa Creek in Kilifi County or in any other manner from interfering with the Plaintiffs peaceful occupation and enjoyment of the Suit Land within 90 days upon service of this order.
3. No order as to costs as the suit was undefended.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

**N.A. MATHEKA**

**JUDGE**

