



**Rayit & 2 others v Rayit (Environment & Land Case E159 of 2023)
[2024] KEELC 4828 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4828 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E159 OF 2023**

**JA MOGENI, J
JUNE 13, 2024**

BETWEEN

AVTRA S RAYIT 1ST PLAINTIFF

KAMALJIT S RAYIT 2ND PLAINTIFF

KULWANT KAUR RAYIT 3RD PLAINTIFF

AND

RAJINDER SINGH RAYIT DEFENDANT

JUDGMENT

1. The Plaintiffs instituted a suit vide a Complaint dated 19/05/2023 and sued the Defendant seeking the following orders:
 - i. That this Honourable court do issue an eviction order against the Defendant, his servants, agents, employees, heirs and dependants or any other person claiming through him from Plot Number LR. 1870/Ix/59 Muthithi Road.
 - ii. That the honourable court do order the Defendant to forthwith deliver up the title of the property known as Plot Number LR. 1870/Ix/59 Muthithi Road to the 3rd Plaintiff.
 - iii. Spent.
 - iv. That the O.C.S. Parklands Police Station be ordered to provide security and assistance during the enforcement of the orders above.
 - v. Any other relief that this court may deem fit to grant.
2. The suit is opposed. The Defendant entered appearance on 19/05/2023 and filed a Defence dated 12/10/2023.



3. Upon pleadings being closed, the suit proceeded by way of viva voce evidence. Both the Plaintiffs and the Defendant called one witness each who testified on 23/04/2024.

Plaintiffs' Case: -

4. The Plaintiffs' case centers on the administration and rightful ownership of the estate of the late Tarsem Singh Rayit, particularly concerning Plot Number LR. 1870/X/59 on Muthithi Road, Westlands. The 1st and 2nd Plaintiffs, along with the Defendant, are administrators of the estate, while the 3rd Plaintiff, their mother, is the absolute beneficiary as stipulated in the will. A mediated agreement reached in 2017 and affirmed by Justice Stella Mutuku in 2022 designated the three sons as joint administrators, with the 3rd Plaintiff having final authority.
5. However, the Defendant has allegedly trespassed and occupied the property illegally, allowing various businesses to operate on the premises without the 3rd Plaintiff's consent. This has resulted in noise pollution, property damage, and the 3rd Plaintiff being unable to enjoy her property. The Defendant's actions have led to disturbances and violent altercations, prompting the 1st and 2nd Plaintiffs to attempt to clear the property and evict illegal occupants. Despite multiple requests, the Defendant has refused to vacate and has been aggressive towards the 3rd Plaintiff.
6. The Plaintiffs are concerned that if the Defendant is not evicted, he will continue to allow unauthorized access to the property, further undermining the 3rd Plaintiff's rights. They assert that the Defendant's highhanded approach denies their mother peaceful possession of her property. Given her advanced age and upcoming travel, the Plaintiffs seek the immediate eviction of the Defendant and his agents to prevent further damage and ensure the 3rd Plaintiff's constitutional rights are upheld. They argue that their suit is in the best interest of justice and should be prioritized to prevent ongoing prejudice against the 3rd Plaintiff's property rights.

Plaintiffs' Evidence: -

7. PW1 – Avar Singh Rayit adopted his witness statement dated 9/11/2023 together with a list of documents dated 10/11/2023 and produced them as his evidence in chief and exhibits. It was his testimony that they are looking for justice for the 3rd Plaintiff. She is not getting her full rights. He wants the Court to grant their prayers in the Plaint. The Defendant has been mismanaging the properties which has resulted in the 3rd Plaintiff not laying a hand on any income. They would want the 3rd Plaintiff to get the documents the Defendant is holding and the money, proceeds from the suit property to be deposited with I&M Bank from the KCB Bank. They would like the Defendant to get out of the suit property.
8. During cross-examination, PW1 testified that he knows the property is LR 1870/IX/59 located on Muthithi Road. His prayers do not include the I&M and KCB bank accounts, as the plaint is about the property. The registered owners are his father and grandfather, as shown in the document at pages 23-25 of the Defendant's title. His mother is not the registered owner. There are three administrators: himself, the Defendant, and the 2nd Plaintiff. The 1st Plaintiff resides in Australia, the 2nd Plaintiff stays in England along with their mother, and only the Defendant resides in Kenya. Before they migrated, they all lived together in the same house on the suit property. The Defendant continues to stay in the same house with his wife and children.
9. In the succession case, there is a pending ruling, and the matter has not been concluded under succession cause no. 204 of 2007. They froze the KCB account, which is in the name of the deceased person's estate, the late Tarsem Singh Rayit. PW1 wrote to KCB to freeze the account since 2022, and



only deposits have been made with no withdrawals. Rental income is being deposited into the KCB account. The I&M Bank account is in the name of the company authorized by the 3rd Plaintiff, and withdrawals were managed by the Defendant and PW1 until they removed the Defendant from the I&M Bank account when he opened the KCB account. The last withdrawal from the I&M account was in 2020. Since 2020, the Defendant has had no connection to managing the I&M account.

10. Rayit Management Ltd has the 1st, 2nd, and 3rd Plaintiffs, as well as the Defendant and his sister, as directors. In 2023, a resolution was passed to remove the Defendant from the I&M Bank account, but he was not invited. Deposits in the I&M Bank account come from two properties. These same issues have been dealt with in the proceedings before the succession court.
11. In re-examination, PW1 testified that the first letters of grant were issued in the Defendant's name. The Defendant has not transferred any property since 2006 and is still holding onto the documents. In 2016, they managed the account together without issues, but after six years, the Defendant started taking money from the tenants without involving the others. Following mediation, the Defendant refused to recognize the 3rd Plaintiff's authority. In 2022, a fresh grant was issued, but the property has still not been distributed. They have requested the documents as seen on page 46 of the Plaintiff's documents. The property is registered in his grandfather and father's names, and his father allocated it absolutely to the 3rd Plaintiff, as indicated in paragraph 2 of the will. The Defendant is misusing the property by renting it out, preventing the 3rd Plaintiff from accessing her property. Consequently, she issued a notice for the tenants to vacate, as seen on page 48. The will's paragraph 5 shows the properties allocated to the Defendant. The I&M Bank account was opened in 2015 with the Defendant as a signatory, while the KCB account was opened solely by the Defendant in 2020. They wrote to freeze the KCB account because the Defendant acted alone, despite being joint administrators. The Defendant has withdrawn up to 1.3 million shillings, as shown on pages 54-56. The Defendant leased the property without consulting the joint administrators or the 3rd Plaintiff. The resolution produced by the Defendant at page 3 of their documents contains forged signatures. They wrote to the registrar, as seen on pages 57-58 of the Plaintiff's bundle. The 3rd Plaintiff is aware of the ongoing court proceedings.
12. After hearing the testimony of the one witness, the Plaintiffs' case was closed.

Defendant's Case: -

13. The Defendant denies the Plaintiffs' factual allegations, though he acknowledges certain details about their roles as estate administrators and the mediated agreement. He clarifies that he was initially appointed as the Executor of his late father's estate, with the 1st and 2nd Plaintiffs later added as joint Executors via a Grant from the Family Court in Succession Cause No. 204 of 2007. The Defendant confirms that the 3rd Plaintiff is the absolute beneficiary of the estate per the will, but her proprietary interest is pending the conclusion of the succession cause and the transfer of property into her name. The suit property is registered in the joint names of the late Pritam Singh and Tarsem Singh.
14. The Defendant admits to the mediated agreement reached on 17/07/2017, where it was decided that he, along with the 1st and 2nd Plaintiffs, would administer the estate jointly under the 3rd Plaintiff's authority. This agreement was affirmed by Justice Stella Mutuku on 22/02/2022. The Defendant states that he has lived on the property since 1984 and continues to do so with his family, while the Plaintiffs moved abroad. He claims to have diligently performed his duties as Executor, depositing rental income into an estate account at Kenya Commercial Bank, and alleges that the 1st and 2nd Plaintiffs have attempted to undermine his role by harassing tenants and redirecting rent to a separate account at I&M Bank.



15. While he admits to running businesses and permitting other entities on the property without the 3rd Plaintiff's consent, the Defendant justifies this as part of his executorship duties and asserts that the premises have been maintained adequately. He emphasizes that the suit property has been his home for 40 years and that his occupancy does not hinder the 3rd Plaintiff's peaceful possession, as she does not reside in the country. The Defendant requests that the suit be dismissed with costs.

Defendant's Evidence: -

16. DW1 – Rajinder Singh Rayit adopted his witness statement dated 12/10/2023 together with a list of documents dated 12/10/2023 and produced them as his evidence in chief and exhibits 1-4.
17. In cross-examination, DW1 testified that he was the sole administrator from 2006 to 2017 through a mediation agreement. During this period, he did not transfer the property due to disputes, but he did not produce any evidence. Paragraph 2 of the will stated that the property belongs to his mother. The will does not state that DW1 is a beneficiary of the suit property, as ownership is his mother's. The letters/documents related to the suit have not been released because there is an ongoing court case. They could not undertake the transfer because of digitization at the Lands Registry and the impact of the COVID-19 pandemic. He testified that his mother is being manipulated. Exhibit 3, paragraph 5 of the plaintiff's documents, shows that he has property allocated to him which he has already transferred to his name. He added that he inherited businesses from his late father and runs them from the suit property, where he set up mechanics and a car garage. He claimed he received verbal authority from his mother in 2018. It is not true that the 3rd plaintiff told him to stay on the suit property for only two years. When they returned from England, they removed the garages and mechanics. He has verbal authority from his mother. The I&M Bank account was in existence, and as an executor, he opened a KCB account after consulting with his lawyer. The statement on page 54 shows withdrawals made from the KCB account, which he considers management/administrative costs as an executor of the estate. Although ordered by the court to provide statements, he never did. He has never transferred money to the 3rd plaintiff and is not sidelining the other administrators.
18. In re-examination, he testified that he has not seen any authorization from his mother regarding the handling of the I&M Bank account nor any statement showing how his mother is benefiting from it. As at the day of the hearing, he could not operate the KCB account because they received a letter indicating that there are three executors, but the I&M Bank account has no such restrictions. DW1 was not informed when he was removed from the I&M Bank account. He has not sold any properties belonging to the deceased.
19. With that evidence, the Defendant closed his case.
20. After hearing, parties closed their respective cases and the Court gave directions of filing of written submissions on 23/04/2024.

Submissions: -

21. The Court gave directions on filing of written submissions on 23/04/2024 and both parties duly submitted, which I have considered. The Plaintiffs filed written submissions dated 13/05/2023 on the even date and the Defendant filed written submissions dated 24/05/2024 on the even date.

Issues For Determination: -

22. The Court has now carefully read and considered the pleadings, the submissions filed by both parties together with the evidence adduced by the Plaintiffs and the Defendant and I find the issues for determination are as follows.



- i. Whether the Plaintiffs are entitled to the orders sought.
- ii. Who should bear the costs of this suit?

Analysis And Determination

Whether the Plaintiffs proved their case to be entitled to the orders sought.

23. It is evident that the right to own and acquire property in Kenya is premised under Article 40 of the Constitution of Kenya, 2010. Further, a certificate of title is prima facie held to be evidence of ownership of the stated land as provided for in Section 26(1) of the Land Registration Act. However, the said ownership can be challenged on grounds 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.
24. According to Clause 2 of the deceased's will, the 3rd Plaintiff is the absolute beneficiary of the estate of the late Tarsem Singh Rayit. It is undisputed that the 3rd Plaintiff is the rightful beneficial owner of the suit property known as LR. 1870/IX/59 Muthithi Road, Westlands. While the Defendant argues that his mother's proprietary interest must await the conclusion of Succession Cause No. 204 of 2007 and the formal transfer of the property into her name, it is clear that the suit property is registered in the joint names of the late Pritam Singh (their grandfather) and the late Tarsem Singh (their father). The ownership of the property by the late Tarsem Singh is not in question.
25. All parties herein acknowledge that the 3rd Plaintiff is the absolute beneficial owner of the suit property. Therefore, it is my considered view that the late Tarsem Singh Rayit had the rights of land ownership, which pending the outcome of Succession Cause No. 204 of 2007, extends to the 3rd Plaintiff, as she has been bequeathed all his real and personal estate absolutely. No evidence has been presented to me indicating that the validity of the will dated 31/05/2005 has been successfully contested in a Court with the requisite jurisdiction.
26. Section 24 of the Land Registration Act 2012 states that 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 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.
27. Section 26 of the Land Registration Act, 2012 provides;
 - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor 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



28. By dint of the above provisions, the 3rd Plaintiff, by virtue of Tarsem Singh Rayit (deceased)'s last will dated 31/05/2005, has the right to have the title protected by this Court. The Courts are therefore mandated by statute to consider a title document as prima facie evidence of ownership to land and as conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case, the title produced shows that the suit property is registered in the joint names of Pritam Singh (deceased) and Tarsem Singh Rayit (deceased). Pritam Singh (deceased) was their grandfather and Tarsem Singh Rayit (deceased) was their father. It has been submitted that Pritam Singh (deceased) passed away on 23/02/1994 and the late Tarsem Singh Rayit passed away on 26/01/2006. That when their grandfather passed away, the suit property was passed to their father. In their late father's will dated 31/05/2005, clause 2 expressly states that subject to clause 7 hereof and subject to the payment from thereout of all the deceased's just debts, funeral and testamentary expenses, he gives and bequeaths the residuary of all his real and personal Estate whatsoever and wheresoever held and situate unto his wife Kulwant Kaur Riyit absolutely. The parties herein agree that the 3rd Plaintiff is the absolute beneficial owner as per the said will.
29. Among the rights to be enjoyed by a registered owner of any land is the right for peaceful and quiet enjoyment of the land he owns, in other words the rightful owner to the land has a right to possession, occupation and use of the suit land.
30. The Plaintiffs contend that the Defendant has been running various businesses on the premises and permitting various entities to run their businesses in the property without the consent of the rightful owner the 3rd Plaintiff herein. As a result, the property has been subjected to noise pollution and damage as no repairs or maintenance has been done to the property over the years. The 3rd Plaintiff herein is quite elderly (79 years old) and cannot enjoy use of the property despite the fact that she is the absolute beneficiary of the estate. The Defendant does admit that he has been running various businesses on the premises and permitting various entities to run their businesses in the property without the consent of the 3rd Plaintiff. However, he contends that he has been doing so in his capacity as an executor of the estate of his late father and the premises have been maintained to best possible standards considering the nature of the businesses being run by the occupant tenants.
31. The Plaintiffs have submitted that at the time of filing this suit, the 1st Plaintiff, the 2nd Plaintiff and the Defendant were co-administrators of the estate of the late Tarsem Singh Rayit. However, there was an application pending determination by Hon. Lady Justice Maureen Odero by the 1st and 3rd Plaintiffs seeking revocation of grant. That on 6/05/2024, the Court delivered its ruling revoking the grant issued to the 1st Plaintiff, the 2nd Plaintiff and the Defendant and issued a fresh one in the name of the 1st and 2nd Plaintiff. Even though this might be seen as potentially helpful evidence to this case, the Court cannot use this evidence produced in the written submissions filed by the Plaintiffs at page 2-30 of the Plaintiff's list of authorities. It is trite law that new issues cannot be raised in submissions. See *Republic v Chairman Public Procurement Administrative Review Board & another Ex-Parte Zapkass Consulting and Training Limited & another* [2014] eKLR. Submissions are not pleadings. There is no evidence by way of affidavits to support the submissions. To this end, I shall only rely on the evidence filed when this suit was filed.
32. I have perused the mediation agreement dated 27/07/2017 reached between the 1st Plaintiff, the 2nd Plaintiff and the Defendant together with the 3rd Plaintiff. The same confirms that the parties agreed that pursuant to the last will of the late Tarsem Singh Rayit dated 31/05/2005, the sons have agreed that the three of them will be the joint trustees and executors of the said will and that all decisions regarding the administration of the estate and especially the power to call or convert the real estate by sale or otherwise into cash will be made through mutual consultation and agreement of all the parties.



The final authority to implement the decisions so made will be made in writing by Külwant Kaur. The parties agree that notwithstanding the fact that Rajinder Singh is the named administrator of the estate, and holds the letters of administration thereof, he shall not carry out the powers bestowed on him by the letters of administration nor carry out any decisions or activities that may affect the estate in any way, without consultation and agreement of all the sons, with the final authority being the mother. [Emphasis added].

33. The Defendant has been accused of running various businesses on the premises and permitting various entities to run their businesses in the property without the consent of the rightful owner the 3rd Plaintiff herein. The Defendant does admit that he has been running various businesses on the premises and permitting various entities to run their businesses in the property without the consent of the 3rd Plaintiff.
34. As at 19/05/2023, the mediation agreement dated 27/07/2017 had and has not been set aside or vacated. The Court in Succession Cause No. 204 of 2007 issued a fresh grant of letters of administration on 22/02/2022 to the 1st Plaintiff, the Defendant and the 2nd Plaintiff and also acknowledged the Mediation Settlement Agreement. There is no evidence before me that this grant been revoked rather, aside from the evidence that the Plaintiffs attempted to introduce vide their written submissions filed in May 2024 which the Court will not consider. The mediation agreement dated 27/07/2017 is signed by all the parties in this instant suit. The same can be seen on page 6 of the Plaintiffs' documents. To this end, it is therefore evident that the Defendant through his own admission has acted contrary to a valid mediation agreement dated 27/07/2017 which has not been set aside or vacated.
35. The dispute herein essentially involves ownership of a parcel of land and the specific prayers sought by the Plaintiffs in the Plaint filed herein are for eviction orders to issue against the Defendant and for the Defendant to hand over the title to the suit property. These are clearly orders relating to the use, occupation and title to land and within the jurisdiction of this Court. I note that the Defendant has been issued with various eviction notices dated 26/04/2023, 6/04/2023, 11/04/2023 and 30/03/2023.
36. It is my finding that the Plaintiffs have proven their claim on a balance of probability and established that the Defendant has no legal right to remain on the suit property based on the evidence placed before this court. Consequently, I find that the Plaintiffs' suit succeeds. The Plaintiffs are entitled to the reliefs that they have sought. It also follows that the Plaint dated 19/05/2023 is merited and is hereby allowed as prayed save for prayer (iii) which is spent. Prayer (iii) seeks for a permanent injunctive order pending the hearing and determination of this application. This prayer has been overtaken by events.

Who should bear the Costs of this Suit?

37. It is trite law that costs follow the event. Section 27 of the *Civil Procedure Act* gives the Court discretion to grant costs. The successful party is always entitled to costs except in exceptional circumstances. This being a suit filed between family members, I find that exceptional circumstances exist and thus the Court finds that each party shall bear their own costs.

Disposal orders

38. Accordingly, having been satisfied that the Plaintiffs have proved their claim to the required standards, I enter judgment for the Plaintiffs against the Defendant as prayed in the Plaint dated 19/05/2023 in the following terms: -



- i. An eviction order is hereby issued against the Defendant, his servants, agents, employees, heirs and dependants or any other person claiming through him from Plot Number LR. 1870/Ix/59 Muthithi Road.
- ii. The Defendant is hereby ordered to forthwith deliver up the title of the property known as Plot Number LR. 1870/Ix/59 Muthithi Road to the 3rd Plaintiff.
- iii. The O.C.S. Parklands Police Station is hereby ordered to provide security and assistance during the enforcement of the orders above.
- iv. Each party shall bear their own costs.

39. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2024.

.....

MOGENI J

JUDGE

In the virtual presence of:

Ms. Muriuki for Plaintiffs

Mr. Koech for Defendant

Caroline Sagina - Court Assistant

.....

MOGENI J

JUDGE

