



**Said (Suing as Trustee of Seif Bin Salim Trust) v Goshen International Ltd & 9 others (All Those Unknown Persons Operating Business Stalls on Land Reference Numbers MIP X/175 TO 216 Inclusive); County Government of Mombasa (Interested Party) (Environment and Land Case E098 of 2022) [2024] KEELC 6114 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6114 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIRONMENT AND LAND CASE E098 OF 2022**  
**NA MATHEKA, J**  
**SEPTEMBER 26, 2024**

**BETWEEN**

**SEIF SAID SEIF ALIAS SAIF SAID SAIF AL- BUSAIDY (SUING AS TRUSTEE OF SEIF BIN SALIM TRUST) ..... PLAINTIFF**

**AND**

**GOSHEN INTERNATIONAL LTD ..... 1<sup>ST</sup> DEFENDANT**  
**ABDIKADIR OSMAN ..... 2<sup>ND</sup> DEFENDANT**  
**JOSEPH NDABA ..... 3<sup>RD</sup> DEFENDANT**  
**MOURINE LUMUMBA ..... 4<sup>TH</sup> DEFENDANT**  
**STELLA ADHOCH ..... 5<sup>TH</sup> DEFENDANT**  
**JAFFAR YASSIN ..... 6<sup>TH</sup> DEFENDANT**  
**TRIZZER CHERUSTA ..... 7<sup>TH</sup> DEFENDANT**  
**VIRGINIA NJOROGE ..... 8<sup>TH</sup> DEFENDANT**  
**STEVEN MURENGE ..... 9<sup>TH</sup> DEFENDANT**  
**MUNIRA MUSYOKA ..... 10<sup>TH</sup> DEFENDANT**

**ALL THOSE UNKNOWN PERSONS OPERATING BUSINESS STALLS ON LAND REFERENCE NUMBERS MIP X/175 TO 216 INCLUSIVE**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... INTERESTED PARTY**



## JUDGMENT

1. The plaintiff is the registered proprietor of the following land parcels which are as a result of a Subdivision of Mombasa/Block XX/79. The plots are: Mombasa/Block XX/175, Mombasa/Block XX/176Mombasa/BlockXX/177,Mombasa/BlockXX/178,Mombasa/BlockXX/179,Mombasa/BlockXX/180,Mombasa/BlockXX/181,Mombasa/BlockXX/182,Mombasa/BlockXX/183,Mombasa/BlockXX/184,Mombasa/BlockXX/185,a/BlockXX/188,Mombasa/BlockXX/210,Mombasa/BlockXX/211,Mombasa/BlockXX/212,Mombasa/Block XX/213,Mombasa/Block XX/214,Mombasa/Block XX/215Mombasa/Block XX/216 (hereinafter as suit properties). These suit properties have been leased to lessees who have constructed permanent commercial buildings. It is the plaintiff's case that there exists a service/access lane measuring 15 feet i.e. 4.572m of width in between the block of suit properties as seen from the Survey Plan Folio No. 44 Register No. 3 of Subdivision No. 182-216 Section XX. The Topo-cadastral survey on titles Mombasa/Block XX/175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 188, 210, 211, 212, 213, 214, 215, 216 by Edward Kiguru on 13<sup>th</sup> June 2022 illustrated that the container shops were next to Mombasa/Block XX/175, 176, 185, 184, 182, 211 and 210. The survey report prepared by Edward Kiguru Land Surveyors concluded that the container shops were all encroaching on the road reserve i.e. the access road that was meant to be enjoyed by the lessees of the suit properties.
2. It is the 1<sup>st</sup> defendant's defence that the said container shops were constructed with the prior authorization, consent, knowledge, invitation and request of the county government of Mombasa and not on the suit properties as alleged by the plaintiff. The county government of Mombasa, as the interested party maintained that the access road is for human traffic and not vehicles and as such belongs to the general public. It was urged that the said road was in a deplorable situation, they were then cleaned up and to maintain them as such, the county government contracted the 1<sup>st</sup> defendant to construct semi-permanent structures sometime in 2015. The county government contended that they then relocated street vendors, hawkers and small business traders to the said structure to improve their business environment and sustain entrepreneurship while at the same time generating income for the county.
3. This court has carefully considered the appeal and submissions therein. 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.”
4. 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.
  5. Be that as it may, an access road is a road reserve which is an overriding interest within the meaning of Section 28 of the *Land Registration Act*. The access road measures 15 feet i.e. 4.572m of width in between the block of suit properties as seen from the Survey Plan Folio No. 44 Register No. 3 of Subdivision No. 182-216 Section XX. The Topo-cadastral survey on Mombasa/Block XX/175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 188, 210, 211, 212, 213, 214, 215, 216 by Edward Kiguru on 13th June 2022 illustrated that the container shops were next to Mombasa/Block XX/175, 176, 185, 184, 182, 211 and 210. The plaintiff has maintained that the shops have blocked access to the buildings and in turn, caused loss to the plaintiff who has been denied the full use and enjoyment of the suit properties and continues to pose a safety hazard in case of an emergency like fire.
  6. It has been demonstrated by the County that one of its functions as per Legal Notice No. 2 of 2016 (*Transition to Devolved Governments Act*) is to manage and develop county roads as well as control reserved for county roads and access to roadside developments. The access road in question is therefore managed by the county government of Mombasa, DW2, Paul Manyala the County Director of Land and Planning informed the court that the access road measures 5 meters. He contended that out of the 5 meters only two meters were occupied by the stalls and that the remaining 3 meters could be used in case of an emergency. He claimed that the plaintiff was dumping waste on the access road and it was the county that cleaned it up. The temporary stalls on the access road currently are licensed to hawkers which was a solution to the county’s challenge of hawkers and street vendors.
  7. The court has looked at the Topo-cadastral survey on Mombasa/Block XX/175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 188, 210, 211, 212, 213, 214, 215, 216 and has also studied the google map of the suit properties [https://www.google.com/maps/search/Turkana+Road,+Mombasa/@4.0599707,39.6706998,18.25z?authuser=0&entry=tту&g\\_ep=EgoyMDI0MDkwOC4wIKXMDSoASAFQAw%3D%3D](https://www.google.com/maps/search/Turkana+Road,+Mombasa/@4.0599707,39.6706998,18.25z?authuser=0&entry=tту&g_ep=EgoyMDI0MDkwOC4wIKXMDSoASAFQAw%3D%3D). The court notes that there are two blocks of plots. The first block has Plots 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 184, 336 and 188 which are between Turkana Road and Digo Road with Haile Selassie Road and Hospital Street on both ends. On this first block of plots, the shops have been constructed in front of Plots 175, 176, 184, 185 and 182. The second block has Plots 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, and 216 which are between Turkana Street and Msanifu Kombo Road with Haile Selassie Road and Hospital Street on both ends. On this second block of plots, the shops have been constructed in front of Plots 210 and 211. It is evident that all the plots are not landlocked and have access paths with alternative access roads which are passable and accessible. For the first block of plots, access can be made from either Digo Road or Turkana Street while the second block can be accessed from Turkan Road or Msanifu Kombo Road.
  8. The evidence before the court shows the access road is managed, developed, upgraded, rehabilitated and controlled by the county government of Mombasa. The survey maps presented before the court as well as the latest Google Maps confirm that there are alternative access roads which the plaintiff can use to access suit properties. The access road is reported to be 4.571m as per the plaintiff, the county claims it is 5 meters and only 2 meters have been used to construct the stalls. According to the county’s



planning officer, DW2 the access road still serves the public as it was meant to and that the county has maintained it well as per its mandate. The certificates of title held by the plaintiff were issued in 2022 after the stalls were constructed by the 1<sup>st</sup> defendant under a private-public partnership with the county government.

9. I find that the access roads in question are vested with the county government of Mombasa. In this instance, the county sought to manage the said access road, which in their view was being used as a dumping site, a fact that has not been denied by the plaintiff. The county government put up container stalls as a way of rehabilitating and managing the access roads. The plaintiff insists the stalls have blocked the entrance to the suit properties, however from the maps presented by their surveyor there are alternative access roads. I therefore find that the alleged injuries suffered by the plaintiff are speculative. The rehabilitation undertaken by the county government has benefited the public including the plaintiff, the access road is now not only clean and organized for human traffic but also beneficial to the County.
10. I find that the plaintiff has not demonstrated that the said stalls have caused its tenants any inconvenience or loss that would warrant the court to order for the stalls to be demolished, if anything the county has assured the court that the remaining area of the access road is enough for the suit properties to be accessed in case of an emergency. Consequently, I find that the plaintiff has failed to prove his case on a balance of probabilities. I dismissed with costs to the 1<sup>st</sup> defendant and the interested party.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**N.A. MATHEKA**

**JUDGE**

