



**Royal Tulia Estate Limited v Attorney General & 2 others (Environment & Land
Petition E005 of 2024) [2025] KEELC 607 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION E005 OF 2024
EK MAKORI, J
FEBRUARY 12, 2025**

BETWEEN

ROYAL TULIA ESTATE LIMITED PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

COUNTY LAND REGISTRAR, KILIFI 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT

JUDGMENT

1. The Petition dated 21st March 2024, where the Petitioner seeks the following reliefs:
 - a. A declaration that the double registration of the suit properties, being Chembe/Kibabamshe/363 and 364, was and is unconstitutional, unlawful, and prejudicial to the Petitioner’s fundamental right to the enjoyment of the suit properties as the registered owner.
 - b. A declaration that the Petitioner is entitled to due compensation based on the present value of the land, which has been assessed at the sum of Kenya Shillings Two Hundred and Ten Million (Kshs 210,000,000/=). This assessment is based on specific criteria or valuation methods, which are considered fair and just in the current market conditions.
 - c. Judgment be entered for the sum of Kshs. 210,000,000/= is the compensation for the double registration of the suit properties Chembe/Kibabamshe/363 and 364.
 - d. Special damages for the sum of Kshs. 9,952,551/=.
 - e. A declaration that the Respondents have flagrantly violated Articles 10 and 40 of *the Constitution* of Kenya, 2010, as read with Section 75 of the former Constitution (repealed).
 - f. Costs of the suit plus interest at the court rate.



- g. The Court issues such orders and gives such directions as it may deem fit to ensure justice delivery.
2. The Respondents filed Grounds of Opposition in response to the Petition, raising the following grounds:
- a. That the petition is bad in law, incompetent, and misconceived.
 - b. That the petition is vexatious and an abuse of the court process.
 - c. That the Petition is fatally defective for not having any annexures in its supporting affidavit.
 - d. That the Supporting affidavit is contra Rule 9 of the Oaths and Statutory Declaration Rules that requires annexures to affidavits to be securely sealed with the commissioner's seal and marked with serial letters for identification.
 - e. That the deponent of the supporting affidavit, Benaglia Claudio, has not annexed any Board resolution authorizing him to swear the affidavit on behalf of the company.
 - f. That the Petitioner has not annexed any current Certificate of Incorporation of the Company to confirm the legal status of the company.
 - g. That the deponent has not annexed any up-to-date CR-12 form to confirm that he is indeed a director of the Petitioner.
 - h. That the Petitioner was declared the owner of Land Title No. Chembe/Kibabamshe/363 and Chembe/Kibabamshe/364 vide a judgment of this court in Malindi Environment and Land Court Civil Suit Number 5 of 2014: Royal Tulia Estate Ltd v. County Land Registrar, Kilifi and others.
 - i. That the Petitioner still holds a valid title at the Lands Registry and hence cannot sue the Respondents for compensation.
 - j. That a court judgment given on a dispute concerning ownership of land is given in rem, and where the court determines that a specific person is the true owner, the court's decision establishes the rights in the land as against all possible claimants, not just the parties involved in the case.
 - k. That according to the land records and as deposed by the Land Registrar in the case mentioned above, the title held by the Petitioners herein is valid and has not been invalidated.
 - l. That the Petitioner is claiming for reliefs that had already been dismissed through the judgment dated 7th September 2024, as he had failed to adduce evidence to prove its claims on loss of earnings.
 - m. That if the Petitioner was aggrieved with the judgment dated 7th September 2024, he should have applied for an appeal or review of the said judgment and not raised similar issues in this present petition.
 - n. That the matter of duplication of titles has already been referred to the Directorate of Criminal Investigation for investigations. Until the same is finalized, the Petitioner holds a valid title to the suit properties.
 - o. That the consent entered between the Petitioner and the Interested Party dated 25th March 2024 is not a legal document to confer title to the property.



- p. That the government, through the Respondents, was not a party to the consent and was never served with the same; hence, it cannot be bound by what was done behind the curtains. The consent may be interpreted as being a willful gift between the parties.
- q. That by gifting the Interested Party with its title, the Petitioner should not ask this court to punish or reprimand the Respondents for what it deems fit to do in exercising its exclusive rights on its properties in issue.
- r. That the Land Registrar is not in possession or aware of any such gift as envisioned by the consent dated 25th March 2024, as no legal documents have been presented to the Land registry for gift transfer registration or cancellation of the Petitioner's title.
- s. That this Petition is premature for speculating that the Land Registrar will cancel the Petitioner's valid title, the action of which is not in the mind of the Land Registrar and has not been exhibited by the Petitioner itself.
3. The Petition was canvassed through written submissions. From the materials placed before me, the issues that fall for the determination of this Court are whether in a fair and just manner:
- i. The Respondents have infringed on the rights of the Petitioner to own property
 - ii. The Petitioner is entitled to the orders sought in the petition.
 - iii. Who shall bear the costs of the suit?
4. Mr. Mwanzia, learned counsel for the Petitioner, submits that It is not in dispute that the Petitioner is the lawful owner of the suit properties. This fact is well captured in the judgment delivered in Malindi ELC Case No. 5 of 2014: Royal Tulia Estate Ltd v. County Land Registrar, Kilifi & others.
5. He contends that Article 40 (3) of *the Constitution* provides that:
- “The State shall not deprive a person of property of any description, or 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 public purpose or in 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.”
6. He avers that despite the Respondents allocating land in favor of the Petitioner, the same parcel was allocated in favor of other third parties, as captured in the order dated 25th March 2024. In his view, the act of double allocation of land amounts to constructive deprivation of the Petitioner's land. The Petitioner is, therefore, entitled to compensation/ indemnification.



7. He placed reliance on the Supreme Court's decision in *Attorney General v. Zing Ltd (petition 1 of 2020)* [2021] KESC 23 (KLR) (Civ) (3 December 2021) where the Supreme Court stated as follows:

“The main controversy, resolves around the legality or otherwise, of the manner in which the Government went about acquiring portions of the suit property and conferring title over the same, in favor of third parties. The only way the Government would deprive the Respondent of part or all of its property was through compulsory acquisition, in conformity with the provisions of article 40 (3) of *the Constitution* and the procedure stipulated in the Land Acquisition Act (now repealed), which was the applicable law at the time. Towards this end, can it be said that the Government acquired the portion of the suit property compulsorily? The facts on record do not point that way. Being the custodian of the Land Registrar and the guarantor of titles emanating there-from, the Government was actually aware that the suit property was privately owned by the Respondent.”
8. In his view, in light of the order issued on 25th March 2024 in Malindi ELC Case No. 5 of 2014, *Royal Tulia Estate Ltd v. Land Registrar, Kilifi & 8 others*, the question of liability of the Respondent was settled. What remains here is the assessment of the quantum of damages.
9. On the quantum of damages, he contends that the Petitioner provided valuation reports and bundles of receipts supporting the Petitioner's claim. The said evidence has not been controverted by the Respondents at all. Therefore, he urged the court to allow the Petition dated 21st March 2024, as prayed.
10. Conversely, Mr. Ojwang learned state counsel, for the Respondent submits that the Petitioner has not denied that it owns Land Titles Chembe/Kibabamshe 363 and 364. That is the position even at the Kilifi Lands Registry. The same position was cemented by the judgment of this court in Malindi Environment and Land Court Civil Suit Number 5 of 2014: *Royal Tulia Estates Ltd v County Land Registrar, Kilifi & others*.
11. He asserts that compensation only arises when one's right to ownership has been infringed or deprived of their rights. In this case, he believes the Petitioner deprived itself of its land in favor of a third party by gifting him their property, which cannot qualify for the compensation of the Petitioner by the Respondent.
12. He foresees collusion between the Petitioner and the third parties to pave the way for compensation when the title and rights of ownership in the suit property still inheres in him by dint of the judgment of this Court in Malindi Environment and Land Court Civil Suit Number 5 of 2014: *Royal Tulia Estates Ltd v County Land Registrar, Kilifi & others*.
13. Mr. Ojwang distinguishes the authority cited by the Petitioner - *Attorney General v Zinj Limited* [2021] KESC 23 (KLR). In that case, the government issued duplicate titles to, among others, the Department of Defence and squatters who encroached on the suit land. In this Petition, the Petitioner holds a valid title to the suit property and has physical possession. However, recently, it chose to gift a third party its title without the Respondents' involvement, who could have either okayed or stopped awarding the gift. As such, the Petitioner is to blame for what it did. The critical questions this court should ask itself are: why did the Petitioner consent to leave the suit properties to third parties who presented themselves as lawful owners of the suit property? Why didn't they verify the titles with the Respondents? Why haven't they registered a transfer in favor of the third parties? Why haven't they handed over physical possession of the suit properties despite the consent suggesting the third party immediately take over possession of the suit properties? Who is fooling who?



14. In his view, Respondents have not deprived the Petitioner of any property to warrant issuing reliefs sought significant compensation. The plaintiff extended a gift to third parties in exchange for filing suit to be compensated by the Attorney General, who recognizes the Petitioner as the legitimate owner of the suit properties herein.
15. Mr. Ojwang further states that even the consent suggested that the Petitioner would sue the Attorney General for compensation regarding multiple allocations of the suit properties. The Attorney General is only a legal adviser to the government. In Malindi ELC 5 of 2014, the Attorney General was sued as the third Defendant, while the Land Registrar was sued as the first Defendant. The consent was null and void for suggesting to sue the wrong party.
16. For the special damages Mr. Ojwang submitted, there is no evidence of the same having demonstrated that the documents attached to this Petition are for striking out. Special damages require that they be specifically pleaded and strictly proved.
17. I need not discuss the petition's competency, as Mr. Ojwang invited me to do, but I propose to proceed to its merit immediately.
18. As submitted for the Respondents by Mr. Ojwang, this is not the first time the petitioner has been before this court seeking similar reliefs - in Malindi Environment and Land Court Civil Suit Number 5 of 2014: Royal Tulia Estates Ltd v County Land Registrar, Kilifi & others - reported as Royal Tulia Estates Limited v County Land Registrar - Kilifi & 6 others [2022] KEELC 4772 (KLR), the Petitioner had sought:
 - a. Cancellation of the Title documents in Plot Nos. 363 and 364 situate in Chembe/Kibabamshe, Kilifi issued to Reuben Kiraga and Davidson Matano respectively.
 - b. . A declaration that the Plaintiff is the registered owner of Plot Nos. 363 and 364 situate in Chembe/Kibabamshe, Kilifi.
 - c. A Permanent Injunction do issue restraining the Defendants from interfering with the Plaintiff's use, ownership and utility of Chembe/Kibabamshe/363 and 364.
 - d. Compensation for Loss of User in the sum of Kshs. 193, 818, 240.00.
 - e. Interest on d) above at such rate and for such period of time as this Honourable Court may deem fit to grant.
 - f. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant
 - g. . Any such other or further relief as this Honourable Court may deem appropriate.
19. After an elaborate hearing by this Court (Odeny J.), found for the Petitioner in this manner:

“There is no proof that the suit parcels of land were revoked of cancelled and further that there has been no tangible evidence that they were acquired fraudulently. This is a case of double allocation but the latter leases issued pursuant to the task Force Report were found to be null and void. The plaintiff's title ranks in priority to the leases that were issued to the 4th and 5th defendants.

96. I therefore come to the conclusion that the Plaintiff is the absolute and indefeasible owner of the suit property hence entitled to enjoy the rights of an



absolute owner of the property as provided by Section 24 and 25 of the [Land Registration Act](#).

97. On the last issue as to whether the plaintiff is entitled to compensation by the 1st and 3rd Defendants in the sum of Kshs. 193,818,240.00, being the projected loss of user and alleged compulsory acquisition of the suit premises, counsel for the plaintiff submitted that the takeover of the plaintiff's parcels of land amounted to compulsory acquisition. There was no evidence of the allegation of compulsory acquisition and there are elaborate procedures laid down on how compulsory acquisition is done. Land that is compulsorily acquired by the government is for public use and not to be allocated to individuals.
98. The Plaintiff claimed loss of user but did not lead any evidence to prove the means and/or finances for carrying out the alleged grandiose project with an income of over Kshs 193 Million. The plaintiff in his pleadings and evidence in chief stated that he took possession immediately upon purchase, put up a gazebo, a toilet and a watchman's house, there was no order stopping him from carrying out any developments as he was in possession. There was further no evidence that he had been deterred from carrying out the proposed development by the defendants. The plaintiff did not produce any approved plans or projection of how much it would make when the construction is complete. I find that this limb of the plaintiff's claim has not been proved and is therefore declined.
99. I have considered the pleadings, the submissions by counsel and the relevant authorities and make the following specific final orders:
 - a. An order is hereby issued for the cancellation of the Title documents in Plot Nos. 363 and 364 situate in Chembe/Kibabamshe, Kilifi issued to Reuben Kiraga and Davidson Matano respectively.
 - b. A declaration is hereby issued that the Plaintiff is the registered owner of Plot Nos. 363 and 364 situate in Chembe/Kibabamshe, Kilifi.
 - c. A Permanent Injunction is hereby issued restraining the Defendants from interfering with the Plaintiff's use, ownership, and utility of Chembe/Kibabamshe/363 and 364.
 - d. The plaintiff is entitled to costs of the suit."

20. In a turn of events, the Petitioner moved this Court (Njoroge J.) on 14th February 2024 in the same matter and recorded the following consent without involving the Respondents herein who were parties:

“IT IS HEREBY ORDERED:

1. That the firm of Mutisya Mwanzia and Ondeng Advocates be and is hereby granted leave to come on record on behalf of the Plaintiff in place of the firm of Binyenya Thurairia & Co. Advocates.



2. That the issue of costs be sorted out in the usual manner at a taxation through appointment.
 3. THAT it is hereby ordered by consent;
 4. The matter between the Plaintiff/ Respondent and Interested Party be marked as settled with no orders as to costs.
 5. The Interested Party to enjoy the peaceful occupation of L.R No. Chembe / Kibabamshe / 363 and L.R No. Chembe / Kibabamshe / 364.
 6. The Plaintiff to sue the 3rd Defendant/Respondent for Compensation with regards to multiple allocation of L.R No. Chembe / Kibabamshe / 363 and L.R No. Chembe / Kibabamshe / 364.
 7. The Plaintiff's application by way of Chamber Summons dated 13th September, 2023 be and is hereby withdrawn with no orders as to costs."
21. The Respondents maintain that the action by the Petitioner without their involvement was unlawful and cannot bind the government and that the Petitioner had voluntarily gifted his property, which it was in possession of, and the Court had ruled for him. Besides, to date, the suit property is registered in its name and the Petitioner is in occupation. I agree that this petition is strange as the Respondents cannot be accused for that the courts already remedied. Instead of enjoying the fruits of the judgment of this Court – the Petitioner has opened another new and uncharted war front with an appetite for compensation from the government. I cannot see how his right to own property under Article 40 of *the Constitution* has been infringed – in fact, in contrast – his rights to own property were pronounced to have been violated and the same remedied by the judgment in the case above. This petition represents an abuse of the court process as submitted by the respondents. There is no deprivation of the Petitioner's right to own property, and the Zinj Limited Case (supra) is not applicable. In the former case, the Court made a clear finding that there was no compulsory acquisition or deprivation of the Petitioner's land by the government – it was double allocation by scrupulous land officials who already were charged in court, and the suit properties were restored to the Petitioner. This, then, is, at best, a spurious claim.
22. The upshot is that the current petition represents an abuse of the court process and is hereby dismissed with costs to the Respondents.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 12TH DAY OF FEBRUARY 2025.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Mwanzia, for the Petitioner

Mr. Ojwang for the Respondents

Happy: Court Assistant

