



**Patel & another v Mwasha & 149 others (Environment & Land Case E004 of 2023) [2024] KEELC 14131 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14131 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E004 OF 2023  
EK MAKORI, J  
DECEMBER 20, 2024**

**BETWEEN**

**HARSHAD PURSHOTTAM PATEL ..... 1<sup>ST</sup> PLAINTIFF**

**NILESH PURSHOTTAM PATEL ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**FADHILI CHENGO MWASHA & 149 OTHERS & 149 OTHERS & 149 OTHERS ..... DEFENDANT**

**JUDGMENT**

1. The plaintiffs instituted this suit through a plaint dated 29<sup>th</sup> January 2023 seeking orders from this court inter alia that a declaration does issue that the plaintiffs are the registered owners of that parcel of land known as Plot No. 1 Group X Kibokoni-Malindi, Title Number Lt 37, Folio 162a, File 3190, that order do issue for the eviction of the defendants or any person or structure or development found unlawfully present in the plaintiffs' parcel of land known as Plot No. 1 Group X Kibokoni-Malindi, Title Number Lt 37, Folio 162a, File 3190 and that a permanent injunction does issue restraining the defendants jointly and severally or any person unlawfully present either by themselves, their agents, servants or otherwise whomsoever from interfering with the plaintiffs' quiet possession of land known as Plot No. 1 Group X Kibokoni-Malindi, Title Number Lt 37, Folio 162a, File 3190.
2. The defendants failed to enter appearance and or file any response to the plaintiffs' claim. This failure to respond can be interpreted as an admission of the plaintiffs' claims, per the legal principle of 'silence is consent.'
3. From the evidence, materials, and submissions placed before me, I frame the issues for this court's determination as to whether the plaintiffs are the owners of the suit property and have proved a case against the defendants jointly or severally to warrant the orders sought and who should bear the costs of this suit.



4. The plaintiffs testified that they are the lawfully registered tenants in common in equal share of that parcel of land known as Plot No. 1 Group X Kibokoni-Malindi, Title Number Lt 37, Folio 162a, File 3190 measuring approximately 375.06 acres, hereinafter referred to as the suit property, thereby establishing their rightful ownership.
5. The plaintiffs acquired the said suit property as heirs of the estate of the late Purshottam Chaturbhai Patel through an indenture of transfer registered on the 7<sup>th</sup> day of July 1998, a lawful acquisition that solidifies their claim as proprietors.
6. The plaintiffs averred that when they acquired the property after successful transmission, the suit property was vacant, with no settlers or third parties claiming or occupying it.
7. The plaintiffs further averred that in 2018, the defendants sometimes invaded and/or trespassed onto the suit property and commenced construction of temporary structures with the aim of residing on it.
8. despite being given the opportunity, the defendants failed to enter an appearance or file a response to the plaintiff's suit to controvert the plaintiffs' allegations, thereby failing to defend their actions.
9. As correctly submitted by Mr. Omondi for the plaintiffs, Section 24 (a) of the [Land Registration Act, 2012](#) Laws of Kenya provides as follows:

“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;”

10. Further, Section 26 of the [Land Registration Act](#) goes further to provide that:

“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.

11. In the case of Embakasi Properties Limited & another v Commissioner of Lands & another [2019] eKLR, the Court of Appeal held as follows:

“Although it has been held time without end that the certificate of title is: “conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof,” it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party. See section 23 of the repealed Registration of Titles Act. Section 26 of the [Land Registration Act, 2012](#), though not as emphatic as section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is prima facie evidence that the person named as proprietor is the absolute and indefeasible owner. It adds that apart from encumbrances,



easements, restrictions to which the title is subject, there is no guarantee of the title if it is acquired by fraud or misrepresentation or where it has been acquired “illegally, unprocedurally or through a corrupt scheme.”

12. From the foregoing, a Certificate of Title issued by the Registrar is a crucial document that serves as conclusive evidence of proprietorship towards the person named proprietor of the land. In this case, the plaintiffs produced a Certificate of Ownership, Indenture of Transfer, and Certificate of postal search as exhibits proving they are the registered owners of the suit property, having inherited it from their late father, Purshottam Chaturbhai Patel. This, therefore, sufficiently proves that the suit property belongs to the plaintiffs.
13. The defendants failed to appear and controverted the plaintiffs' evidence. This court then finds that the ownership of the suit property has been sufficiently proved to belong to the plaintiffs.
14. Section 25 (1) of the *Land Registration Act* provides that:
  - “(1) 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—
    - (a) to the leases, charges, and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
    - (b) to such liabilities, rights, and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”
15. The provision vests indefeasible rights on a registered owner and is free from all other interests and claims. The rights can only be defeated in the manner provided under the Act. The plaintiffs stated that the defendants had encroached and or trespassed onto the suit property and put up temporary structures. To support their claim, they produced notices of eviction, demand letters, and a copy of the survey report with a map sheet annexed that identified the existence of houses within the boundaries of the suit property. This corroborated their statements that were adopted as their evidence in chief at the time of the hearing. This is sufficient proof of trespass by the defendants onto the suit property. On the other hand, the defendants failed to respond and or controvert any of the plaintiff's averments.
16. This court finds that the plaintiffs have proved to the required standard that the defendants trespassed on their property and that they are entitled to the reliefs sought in the plaint in entirety.
17. Since this suit was undefended, I will make no orders to costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 20<sup>TH</sup> DECEMBER 2024.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Mwarumba H/B for Mr. Omondi for the Plaintiff.

Happy: Court Assistant.



In the Absence of:  
The Defendants

