



**Hassan v Chief Land Registrar & another (Environment & Land Case 88 of 2014) [2024] KEELC 13987 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13987 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 88 OF 2014  
LN MBUGUA, J  
DECEMBER 17, 2024**

**BETWEEN**

**NUH ABDILLE HASSAN ..... PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced this suit by a plaint dated 28.1.2014 and amended on 24.2.2014 where he avers that he is the registered owner of parcel LR No. 3734/482 pursuant to a grant registered as Grant Number IR 141689 (The “1<sup>st</sup> Grant”), of which he charged the title to First Community Bank. He however unearthed that the 1<sup>st</sup> defendant had issued a parallel title of the same property to a company known as Somak Travels Limited, hence the (“the 2<sup>nd</sup> Grant”) which charged the property to the Bank of Baroda.
2. He avers that the conduct of the 1<sup>st</sup> defendant in issuing the 1<sup>st</sup> Grant to him in the existence of the 2<sup>nd</sup> Grant is unlawful and amounts to negligence, dereliction of duty and misrepresentation. He also contends that on diverse dates in the month of January 2014, policemen and other persons claiming to be security officers evicted his employees from the suit property thereby causing him loss of ksh. 175,113,880/= which he particularized as special damages.
3. The plaintiff therefore seeks judgement against the defendants jointly and severally for;
  - a. A declaration that the grant issued to the plaintiff over the property known as LR No. 3734/482 located within Nairobi registered as Grant Number IR 141689 (the “1<sup>st</sup> Grant”) is the valid and indefeasible title.
  - b. A declaration that the plaintiff is entitled to indemnity and compensation.



- c. Indemnity and compensation in favour of the plaintiff for the sum of ksh.175,113,880/=
  - d. Cost of the suit.
  - e. Any other relief that the court may deem just and justifiable.
4. The defendants opposed the suit vide their statement of defence dated 6.11.2014 in which they denied allegations levelled against them in the plaint. They also contend that the plaintiff was not the registered proprietor of the suit land and that he was the author of his own misfortune as he did not seek to establish the root of the title before committing himself.
  5. During the trial, the plaintiff called 2 witnesses to advance his case, where he testified as PW1. He adopted his witness statement dated 28.1.2014 as his evidence in chief. He also produced 11 documents from his bundle dated 28.1.2014 as P. Exhibit 1-11 and one document from his supplementary list dated 27.11.2014 which was marked for identification.
  6. In his evidence, PW1 avers that he is the registered owner of the suit property pursuant to a letter of allotment issued by the Department of Lands dated 30.8.2008. That in order to obtain finances for developing the property, he charged the title to First Community Bank adding that he is paying outgoings in that respect but the charge has not been discharged.
  7. He is aware that his title has never been challenged by any person in any court of law and as such, it remains valid thus he had a legitimate expectation that all persons would uphold and respect rights arising from the said registration.
  8. That he investigated the title due to suspicion after being approached by strangers claiming they wanted to purchase the suit parcel, adding that he was able to establish that the 2<sup>nd</sup> defendant issued a parallel title of the suit property to a company known as Somak Travels Limited the (“the 2<sup>nd</sup> Grant”) which charged the title to the Bank of Baroda.
  9. That upon realizing that there are 2 titles over the same property, he instructed his advocates to write the letter dated 9.1.2014 to the 2<sup>nd</sup> defendant to inquire on the status of the 2<sup>nd</sup> Grant, but no response was forthcoming. He avers that issuance of the 2<sup>nd</sup> grant in the subsistence of the 1<sup>st</sup> one was unlawful, illegal and irregular and it was issued by way of dereliction of duty, malice and open manifest of negligence with the aim of divesting him of the suit property.
  10. In cross –examination, PW1 averred that he was informed by a friend that the suit land was vacant and ownerless, thus he applied for it and was issued with an allotment letter after paying the requisite fees, following which he was issued with a title. He averred that he was later summoned by flying squad to Nairobi area where he was threatened and he then found out that the suit land had a parallel title issued to Somak Travels Limited.
  11. He stated that he went to Ardhi house and was told to see the 2<sup>nd</sup> defendant’s chairman. That when he went to the chairman’s office the next day, he found flying squad in his office and he was told that Somak Limited is the owner of the suit land. He was then advised to go to court and claim compensation. He stated that the same events took place when he visited the Chief Land Registrar’s office.
  12. PW1 also stated that before purchasing the suit land, he did visit it and found it was vacant but Somak Limited later claimed it but he did not sue it, nor search its name at the company’s registry because he was threatened.
  13. He also stated that the last time he visited the suit property was in the year 2014 and he found 6 town houses under construction with police protection but he does not know who developed the land.



14. He produced an original title to the suit land issued on 21.11.2012 and stated that he was claiming ksh.17.5 million and relies on a 2014 valuation.
15. In re-examination, PW1 stated that there was no evidence to indicate that his title is not genuine, reiterating that the same has never been cancelled and that he did charge the same to the First 1<sup>st</sup> Community Bank. Thus he wants compensation due to the wrong doings of the defendants.
16. The plaintiff's 2<sup>nd</sup> witness was Hubert Mwangi Kamau, a valuer, who told the court that he prepared a report dated 12.2.2014 in relation to the suit land, pointing out that the suit property had an open market value of ksh.175 million in year 2014 and ksh.150m forced sale adding that the current value would be ksh.250 million as the property has appreciated. He produced his report as P. Exhibit 12.
17. In cross-examination, PW2 averred that he didn't conduct a search of the title to the suit parcel, as he was made to understand that what was important was the value and not ownership, adding that he would not know if the title had encumbrances as he relied on the title provided and that he is not aware that the owner of the suit land is Somak Limited.
18. He averred that in the year 2014, he visited the suit land and found that it was developed with 6 town houses, but he did not know who the developer was. He contends that the purpose of the valuation report was to advise the client on the open market as well as the forced value.
19. In re-examination PW2 stated that the property is in an active set up where there are other comparable properties, so the current market value is Ksh.250 million.
20. The defendants' sole witness was Charles Kipkurui Ngetich, a Deputy Chief Land Registrar with the Ministry of Lands. He adopted his witness statement dated 4.5.2022 as his evidence in chief and produced 5 documents from a list dated 21.9.2015 as D. Exhibit 1-5. He avers that as per records held by the Ministry of lands, the suit property was registered to Finance and Investment Corporation Limited under certificate of Title Number I.R 13966 presented on 3.6.1957 on the strength of a Deed Plan Survey plan No. 56007 prepared on 19.2.1955.
21. He pointed out that there have been several entries on that title as follows;
  - i. Abdul Ghafur Sheikh on 10.1.1967
  - ii. African Coffee Company Limited on 13.7.1967
  - iii. Muthiga Limited on 16.2.1970
  - iv. Ravinder Singh and Shatilal Bhagwanji Malde on 16.2.1970.
  - v. Kaheti General Traders on 14.3.1994
  - vi. Sukhader Singh Laly on 20.9.2000
  - vii. Somak Travel Limite don 4.3.2002
22. The title of the suit property produced by DW1 as an exhibit reflects the history of registration dating as far back as year 1957. He also stated that the title contains numerous other entries including charges and discharges over a span of 58 years.
23. He further avers that upon examination of the title presented by the plaintiff, it shows that the grant was created on the strength of the Land Survey Number 56007 on 1.8.2008 and the survey plan is dated 19.2.1955. That they invited the plaintiff to appear before the Principal Registrar of Titles to shed



more light on his title and produce supporting documents but he did not appear, thus they referred the matter to Criminal Investigations Department.

24. In cross-examination, DW1 stated that the title in his documents is owned by somak ltd and that it has an entry reading; “charged to 1<sup>st</sup> Community Bank” adding that the contents thereon are correct. He stated that the charge by the plaintiff was a forgery but he is not aware whether he was ever charged in any court. He could not recall summoning the plaintiff to present his title.
25. In re-examination, DW1 stated that summons are usually sent by the office and that he saw the plaintiff’s title which is fake since records at the Ministry of Lands indicate Somak as the registered owner of the suit land.
26. The plaintiff filed submissions dated 6.11.2024, arguing that he complied with all processes preceding issuance of his title, thus he is a bona fide purchaser and his title is protected under Section 27 of the *Land Registration Act, 2012*. To this end, he relies on the case of *Torino Enterprises Limited v Attorney General* [2023] KESC 79 (KLR), *Dina Management Limited v County Government of Mombasa & Others* [2023] KESC 30 (KLR) as well as the case of *Munyu Maina v Hiram Githiha Maina Civil Appeal No. 239 of 2009* [2013] eKLR.
27. He cites the case of *Embakasi Properties Limited & Safe Cargo Limited v Commissioner of lands & Attorney General* [2019] KECA 1001 (KLR) to submit that it has been consistently acknowledged that the law on the registration of titles in Kenya is based on the Torrens System adding that government bears the responsibility for the maintenance and accuracy of the register such that in the event of a significant failure, the government may be liable for damages and is obligated to provide compensation to affected parties.
28. It is argued that issuing a parallel title constituted a breach of the fundamental insurance principle central to the Torrens system. The court is urged to consider not only the lost opportunity, cost and loss of income but also the expenses incurred by the plaintiff in litigation as well as inconveniences suffered due to the defendants’ actions.
29. The defendants were granted up to 23.11.2024 to file submissions, but there was no compliance with the aforementioned direction.

### **Determination**

30. The plaintiff’s case is that he is the registered owner of parcel LR No. 3734/482 pursuant to a Grant registered as IR No. 141689 (The “1<sup>st</sup> Grant”) which he alleges to have charged to 1<sup>st</sup> Community bank. He contends that he has since unearthed that the 2<sup>nd</sup> defendant issued a parallel title to the same property to a company known as Somak Travels Limited the (“the 2nd Grant”) and that the said entity charged the property to the bank of Baroda.
31. The 1<sup>st</sup> and 2<sup>nd</sup> defendant’s position is that the title held by the plaintiff is a forgery while the one registered to Somak Travels Limited is the legitimate title.
32. The court has considered the evidence put forward by the rival parties and the issue falling for consideration is whether plaintiff’s title should be affirmed by this court or in the alternative, whether the plaintiff is entitled to compensation to the tune of Ksh.175 million in Damages.



33. In the case of Jennifer Nyambura Kamau v Humphrey Mbaka Nandi [2013] eKLR, the Court of Appeal stated as follows in relation to proof;
- “Section 107 and 109 of the Evidence Act places the evidential burden upon the appellant to prove that the signature on these forms belong to the respondent. Section 107 of the Evidence Act provides that “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” Section 109 stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence..... The burden lies on that person who would fail if no evidence at all were given on either side”.
34. The plaintiff’s letter of allotment was apparently made pursuant to the provisions of the Government Lands Act (now repealed) and was allocated by the government. Under the aforementioned statute, such an allocation related to unalienated public land; See Registered Trustees of Sheik Bayed Bin Sultan Al Nahyan v Pelican Engineering & Construction Company Limited & 4 others (Environment & Land Case 639 of 2015) [2024] KEELC 6534 (KLR) (3 October 2024) (Judgment). In the cited case, the court gave an account of how the process of allocation was conducted starting with the step of making the Application.
35. In the case at hand, there is no evidence to indicate that the land was un alienated Government land available for allocation. What more, there is no evidence that the plaintiff made any formal application for the said land. As it were the land in question was already private land hence not available for allocation.
36. On the allotment, plaintiff’s letter of allotment dated 30.8.2008 is referenced “Residential Plot LR No.3734/482-Nairobi”. The said letter was conditional as the plaintiff was required to pay stand premium of ksh.36,000/= and other fees all totaling to ksh.43,240/= within 30 days of the letter. The plaintiff was also required to accept the conditions of allotment. However the plaintiff did not tender any evidence indicating that he complied with the aforementioned conditions.
37. In addition, the letter of allotment clearly referred to a surveyed and registered parcel, for emphasis-LR No. 3734/482. There is no evidence indicating that the plaintiff conducted due diligence, by way of a search to establish the ownership and even the existence of the said parcel. In the circumstances, the plaintiff cannot certainly be termed as a bonafide purchaser.
38. In Samuel Kamere v Land Registrar, Kajiado [2015] KECA 664 (KLR) the court held that:
- “Accordingly, having failed to conduct a proper due diligence on the ownership of the suit property, or prove of how he acquired his title, we find that the appellant has not demonstrated that he was a bonafide purchaser.”
39. Looking at the title presented by the plaintiff (1<sup>st</sup> Grant), it was issued on 27.6.2012 and curiously indicates that the plaintiff was the 1<sup>st</sup> registered owner. Had the plaintiff done due diligence, he would have discovered that several interests had been registered on the said title, dating as far back as 1957!
40. On the other hand, the title exhibited by the defendants shows that a transfer to Somak Travel Limited was entered against the suit title on 4.3.2002. The plaintiff’s title was issued to him on 27.6.2012 thus due diligence would have helped the plaintiff to discover that the transfer to Somak Travel Limited from one Sukhaler Singh in fact preceded his registration. DW1 confirmed that it was the record held by the ministry of lands and his evidence was uncontroverted.



41. Pursuant to Gazette Notice No. 762 issued on 28.1.2011, a provisional title was issued to Somak Limited having lost their original title. The said gazette Notice was published even before the plaintiff became registered on 12.2.2012 thus again, had he done due diligence, he would have discovered that the suit land had been registered to the entity known as Somak Limited and was therefore not available for allocation.
42. I find that the process leading up to issuance of title to the plaintiff is irregular hence unlawful. On the other hand, the parallel title presented by the defendants has an unbroken chain of interests registered against the title showing how it was 1<sup>st</sup> registered on 3.6.1957 all the way to the current ownership. While Article 40 of the Constitution provides for the right to property, it is not absolute as Article 40 (6) does not extend protection to property acquired unlawfully. The title held by the plaintiff was acquired irregularly and therefore cannot be protected under the law. On the same breadth, this court cannot give an award in compensation as that would in essence amount to sanctifying unlawful processes.
43. The court is also guided by the decision of the Supreme Court in Dina Management Limited v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR), (a case cited by the plaintiff) where it was held that:
- “Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible...”.
44. In the end, I find that the plaintiff has not proved his case on a balance of probabilities, the suit is hence dismissed. Each party is to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>th</sup> DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Cohen Amany for Plaintiff

Motari for Defendant

Court Assistant: Vena

