



**Rajeh & another (Suing as the Executors of the Estate of the Late Rajesh Mulji Manji Bhundia) v Bhundia & 4 others (Environment & Land Case 89 of 2020) [2024] KEELC 13686 (KLR) (11 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13686 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 89 OF 2020  
NA MATHEKA, J  
DECEMBER 11, 2024**

**BETWEEN**

**KIRAN RAJEH ..... 1<sup>ST</sup> PLAINTIFF  
DHRUV RAJESH MULJI BHUNDIA ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE EXECUTORS OF THE ESTATE OF THE LATE RAJESH MULJI  
MANJI BHUNDIA**

**AND**

**KAMAL HEMRAJ BHUNDIA ..... 1<sup>ST</sup> DEFENDANT  
ABDUL REHMAN AL-AMOODI ..... 2<sup>ND</sup> DEFENDANT  
RICHMOND HOLDINGS LIMITED ..... 3<sup>RD</sup> DEFENDANT  
LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiffs allege that the late Rajesh Mulji Bhundia is the registered co-owner of L.R. No. MN/I/2434 holding in common with his two deceased brothers; the late Hemraj Mulji Bhundia and the late Ramesh Mulji Bhundia. They aver that the three brothers agreed that the late Hemraj would hold title and other ownership documents to the suit property and that they all built two maisonette on the suit property where the late Hemraj and the late Rajesh owned separate maisonettes and the late Ramesh built a flat on top of both maisonettes. He further stated that they each lived separately with their families but jointly used common areas such as parking, stair case, water tanks and so forth. Further, he averred that the late Hemraj passed away on 8<sup>th</sup> March 2003 upon which his estate devolved to his two sons; Kamal Hemraj Bhundia and Ajay Hemraj Bhundia who were confirmed as legal administrators of



the late Hemraj's estate and issued with a certificate of confirmation of grant on 30<sup>th</sup> November 2012. The plaintiffs also claimed that Ramesh Mulji Bhundia passed on sometime in 2016 and that before the two deceased brothers had passed, the late Hemraj had deposited the title deed of the suit property in a family safe in Bank of Baroda and that soon after obtaining the above grant, the 1<sup>st</sup> defendant accessed the title deed without knowledge of the late Ramesh and the late Rajesh.

2. The plaintiffs aver that sometime in 2012, the late Rajesh received information that the 1<sup>st</sup> defendant had been granted a loan by money lenders and that he was being pushed to use the title deed as security, however on 31<sup>st</sup> July 2012 the late Rajesh was informed of an attempted fraudulent sale by the 1<sup>st</sup> defendant to the 3<sup>rd</sup> defendant which prompted the late Rajesh's wife; Kiran Rajesh Bhundia to register a caveat claiming proprietary interest. About 6 years later on 19<sup>th</sup> March 2018, the plaintiffs claimed that the late Rajesh conducted a search and found that his wife's caveat had been removed by the Land Registrar on 26<sup>th</sup> September 2012 and replaced with caveat by the 3<sup>rd</sup> defendant. He protested the removal and the Land Registrar reinstated the late Rajesh' wife's caveat on 17<sup>th</sup> October 2018 and was issued with a search of even date as confirmation it had been placed. The plaintiffs claimed that the records at the 4<sup>th</sup> defendant was missing at the time of filing the plaint herein and that the 1<sup>st</sup> and 2<sup>nd</sup> defendant connived with police officers and even threatened with physical harm which forced the late Rajesh and his family out of the suit property. Previously, the 2<sup>nd</sup> defendant had changed locks of the main entrance gate, chased the late Rajesh's guards and recruited new ones as well as installing CCTV cameras. As a result, the plaintiffs pray as follows: -
  - a. A Declaratory judgment that the Plaintiffs as a co-owner in equal shares, and is entitled to unrestricted use, access, occupation and enjoyment of Plot No. MN/I/2434 together with the improvements therein.
  - b. A Declaratory Judgment that the 3<sup>rd</sup> defendant, their agents, servants and/or any person acting on their instructions do not have any lawful proprietary interests in Plot MN/1/2434 and in particular the 1/3 portion owned by the Plaintiff.
  - c. A Declaratory Judgment that the 2<sup>nd</sup> defendant their agents, assignees, servants and/or any person acting on their instructions do not have any lawful proprietary interests in Plot No. MN/I/2434 and in particular the 1/3 portion owned by the plaintiffs.
  - d. A permanent injunction restraining the defendants, whether by themselves or their servants or agents or otherwise howsoever, from further harassing, threatening, intimidating or in any way inhibiting the late Rajesh 's peaceful access, use, occupation and enjoyment of Plot No MN/I/2434 together with improvements therein.
  - e. An Order for eviction/vacant possession to issue against the 2<sup>nd</sup> defendant their agents, assignees, servants and/or any other person acting on their instructions to forthwith vacate the premises on Plot No. MN/I/2434 situated in Mombasa Municipality within Mombasa County.
  - f. An order directing the 3<sup>rd</sup> defendant to forthwith lift/withdraw the caution registered against Plot No. MN/I/2434 on account of purchaser's interest and in default the 4<sup>th</sup> defendant be ordered and compelled to forthright withdraw the caution.
  - g. An Order directing the 4<sup>th</sup> defendant to forthwith issue a certificate of title to the Plaintiffs that reflects the late Rajesh 's proprietary interests in Plot No. MN/I/2434.
  - h. Officer commanding Nyali Police Station to ensure compliance with this Honourable Court's orders.



- i. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable court may deem fit and just to grant.
  - j. Any other or further relief the Honourable Court may deem fit and just to grant.
3. The 1<sup>st</sup> defendant denied all the allegations and alleged that the late Rajesh has a 1/3 share of the suit property while the 3<sup>rd</sup> defendant has 2/3 share of the same. He is adamant that the late Rajesh is enjoying use of his 1/3 share of the suit property just like the 3<sup>rd</sup> defendant is enjoying his 2/3 share of the suit property. He claimed that together with the co-administrator, they finalized their duties and transferred ownership to the rightful beneficiary and that he neither sold or transferred any share to the 3<sup>rd</sup> defendant nor used it as security anywhere. He also alleged that he never colluded with the 2<sup>nd</sup> defendant and that the 2<sup>nd</sup> defendant was never a caretaker. He was however aware that the 2<sup>nd</sup> defendant is a director and shareholder of the 3<sup>rd</sup> defendant. He further alleges that the late Rajesh is in use of his share through a tenant who is occupying his share.
4. In the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' amended Defence, they denied all the allegations in the plaint and stated that they bought the 2/3 share from the respective legal owners and not the 1<sup>st</sup> defendant. They turned the tables on the late Rajesh and claimed that he is the one using goons and police to cause untold grief and disruption and has even installed as a tenant one of the co-accomplices of his son who tried to steal from him. That the 2<sup>nd</sup> defendant is now living on the suit property as Director/ Shareholder of the 3<sup>rd</sup> defendant and cannot be evicted and the orders to lift caution have been overtaken by events. In their counterclaim they stated that the late Rajesh is not making contribution towards the maintenance of the suit property and that one of his reasons for leaving the property and installing a tenant is that the same has been run down and has roof leakages, old plumbing system, electrical faulting of the perimeter wall and so forth. The vacation by the late Rajesh left them to shoulder the burden of repairs including installation of WIFI and CCTV and forced them to incur costs of Kshs 12,500,000. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant therefore prayed that the suit be dismissed and instead prayed for: -
  - a. The defendant be ordered to refund in full the 1<sup>st</sup> plaintiff in the counter claim his share of the contribution without delay, together with interest at a compounding rate of any late payment and an injunction /lien be placed against his one third (1/3) share on Plot No. MN/I/2434 (C.R NO. 15662) stopping any dealing with the same until such time that the refund has been paid in full.
  - b. In the meantime and with immediate effect, until such time that the Defendant shall have made refund and committed to paying its share of the on-going costs of upkeep of the suit property, the Court do order that the Defendant, either directly or through his family, friends, agents, employees or anyone claiming any right from or through him, be and is thereby restricted from accessing, using, interfering or enjoying any part or portion of the suit property in whatsoever manner so as not to be able to benefit in any way whatsoever whilst at the expense of the late Rajesh in the Counter-Claim.
  - c. The 2<sup>nd</sup> plaintiff being the majority shareholder shall be defacto caretaker of the property clearly owning two thirds (2/3) interest in the property; the defendant do contribute his share of maintenance in a prompt manner.
  - d. If the 4<sup>th</sup> defendant in the main suit is ordered to issue a Title, the same must remain in the custody of the majority shareholder being the 2<sup>nd</sup> plaintiff.



- e. In case the defendant wishes to sell his share, he shall offer the same to the majority shareholder who shall have the first right of refusal over such share, subject to a fair and transparent valuation conducted by joint Valuers appointed by the respective owners.
  - f. In case the majority is unable to purchase the Share then the majority must consent to the sale to a 3<sup>rd</sup> party.
  - g. Costs of the Counter-Claim to the plaintiffs in the Counter-Claim.
5. The 4<sup>th</sup> and 5<sup>th</sup> defendant stated that on 27<sup>th</sup> July 1987, the late Hemraj, the late Ramesh and the late Rajesh were registered owners of the suit property as owners in common each holding 1/3 share of the suit property and that on 24<sup>th</sup> December 2019 Kasarbai Hemraj Bhundia transferred 1/3 share of the suit property to the 3<sup>rd</sup> defendant. They further state that the caveat dated 31<sup>st</sup> July 2012 was registered on 9<sup>th</sup> August 2012 by Kiran Rajesh Bhundia claiming licensee interest in respect of Rajesh Mulji Bhundia and it is still in place.
  6. Two witnesses testified on behalf of the plaintiff's case and 2 witnesses testified for the defendant's case. The parties filed their submissions which the court has considered. Having considered the pleadings, testimony of witnesses and rival submissions by counsel, the issues for determination are:
    1. Who are the owners of the suit property?
    2. Whether the plaintiffs have been stopped from accessing their suit property?
    3. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendant's counterclaim has merit?
  7. According to the oral testimony by PW1 the case is not about access to the suit property, they are disputing the sale of the late Ramesh share to the 3<sup>rd</sup> defendant. It is the admission by PW 1 that he has no dispute with the late Hemraj's share sold to the 3<sup>rd</sup> defendant. The defendants are not even disputing the 1/3 share of the plaintiff. The plaintiff testified that the late Rajesh Mulji Manii Bhundia his father is the registered co-owner of Plot No. MN/ 1/2434 situated in Mombasa Municipality within Mombasa County, having acquired it jointly with his two brothers, the late Hernraj Mulji Bhundia and the Late Ramesh Mulji Bhundia, as owners in common each holding one-third (1/3) share. It is not disputed that the late Hernraj Mulji Bhundia share was sold to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant s. What is in dispute is the share of the Late Ramesh Mulji Bhundia. The plaintiff claims it was illegally transferred to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant who now owns 2/3 shared. That the plaintiff's father had bought it as per the deed of settlement however the same is not signed.
  8. Having produced a certificate of title, establishing that the 3<sup>rd</sup> defendant as the registered proprietor of two-third (2/3) share of the suit property. A certificate of title is conclusive evidence of proprietorship and I find that they are the two-third (2/3) share indefeasible owner of the suit property. Section 26 of the *Land Registration Act* states;
 

“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.”

9. The plaintiff has stated that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants fraudulently acquired title to the suit property and prayed to court to cancel the title and rectify the register. To succeed in claiming fraud, the plaintiff not only needs to plead but also particularize it by laying out water tight evidence upon which the court would make such finding. It is therefore trite law that any allegations of fraud must be pleaded and strictly proved. I am guided by the Court of Appeal in case of *Kuria Kiarie & 2 Others vs Sammy Magera* (2018) eKLR where it was held:

“The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria –vs- Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA (as he then was) states as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

10. The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules. As regards the standard of proof, this court in the case of *Kinyanjui Kamau vs George Kamau* (2015) eKLR expressed itself as follows;

“...it is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo –vs- Ndolo* [2008]1 KLR (G & F) 742 wherein the court stated that: “...we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in Criminal Cases...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

11. The plaintiff is challenging title to the suit property and claims that he is entitled to the one-third (1/3) share which belonged to the late Ramesh Mulji Bhundia. That the 2<sup>nd</sup> and 3<sup>rd</sup> defendant s fraudulently procured the registration of the title of his share to themselves. He did not call any other witness to corroborate this evidence. PW2 a tenant on his share of the suit premises confirms that he is in occupation of the plaintiff’s part of the property.

12. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant s as the registered proprietors are protected by the doctrine of indefeasibility of title as established under the Torrens system of registration anchored on Section 26 of the [Land Registration Act](#). Their share on the title to the suit property as a registered proprietor remains indefeasible unless it is shown the title was obtained through fraud or misrepresentation and proved they are party to that fraud. The plaintiff did not present any evidence before the court to challenge the 2<sup>nd</sup> and 3<sup>rd</sup> defendant ’s title to the suit property within the confines of the law. I find that the 2<sup>nd</sup> defendant a Director and Shareholder of the 3<sup>rd</sup> defendant purchased the two-third (2/3) share of the suit property legally. The unsigned deed of settlement produced by the plaintiff is not proof of



ownership. I find that the plaintiff has failed to prove his case on a balance of probabilities and it is dismissed.

13. The overwhelming testimony by all witnesses show that the plaintiff has not been denied access but rather is disputing the one-third (1/3) share of the late Ramesh to the 3<sup>rd</sup> defendant as he had bought it as per the unsigned deed of settlement at page 50 of their plaintiffs list of documents. I find that both parties ought to contribute their share of the on-going costs of upkeep of the suit property. It is not clear who or what has been paid towards maintenance in the past and the same cannot be awarded. The other prayers in the counter claim must fail for reason that they are against the proprietary rights enshrined by article 40 of *the Constitution*. I find that the defendants have failed to prove their counter claim on a balance of probabilities and it is dismissed. Each party is to bear their own costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 11<sup>TH</sup> DAY OF DECEMBER 2024.**

**N.A. MATHEKA**

**JUDGE**

