



REPUBLIC OF KENYA



KENYA LAW
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**Isiolo Printing Press v Godana & 21 others (Environment & Land Case
014 of 2021) [2023] KEELC 18856 (KLR) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18856 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISILOLO
ENVIRONMENT & LAND CASE 014 OF 2021**

PM NJOROGE, J

JULY 17, 2023

**I DO FIND THAT THE PLAINTIFF HAS ON A BALANCE OF
PROBABILITIES PROVED HIS CASE AGAINST THE DEFENDANTS.**

BETWEEN

ISILOLO PRINTING PRESS APPELLANT

AND

ROBE GODANA 1ST DEFENDANT
ISAIAH KOBIA 2ND DEFENDANT
JULIUS MWENDA 3RD DEFENDANT
FRANCIS GITONGA 4TH DEFENDANT
CYPRIAN NKUNGUA KARU 5TH DEFENDANT
SARAH KANARIO 6TH DEFENDANT
LILIAN KANYIRU 7TH DEFENDANT
ELIZABETH MUTEA 8TH DEFENDANT
ZIPPORAH KANANU 9TH DEFENDANT
JOYCE KATUMWA 10TH DEFENDANT
SAMSON MUTUA KATHURIMA 11TH DEFENDANT
DOUGLAS LIOBONKUTI ALIAS GALGALU BONAYA 12TH DEFENDANT
LAWRENCE MUTWIRI KINGARU 13TH DEFENDANT
DOMINIC JALLA WAKO 14TH DEFENDANT
SILAS THURANIRA MAINGI 15TH DEFENDANT



GIDEON MAINGI	16 TH DEFENDANT
CHIEF JOSHUA	17 TH DEFENDANT
PETER NGECHU	18 TH DEFENDANT
MAMO HAPPI GAME	19 TH DEFENDANT
HARON MURITHI MUCHAI	20 TH DEFENDANT
DOUGLAS KIOGORA KINOTI	21 ST DEFENDANT
COUNTY GOVERNMENT OF ISIOLO	22 ND DEFENDANT

JUDGMENT

1. By a further amended Plaintiff dated June 3, 2022 the Plaintiff prays for Judgement against the defendant jointly and severally for:
 - a. A declaration that the plaintiff is the owner of Land Parcel Number Isiolo Block7918/558 measuring approximately 2.001 hectares. Pursuant to the Grant No IRN 4771 issued pursuant to the *Registration of Titles Act*, Chapter 281 of the Laws of Kenya (Repealed). (a) (aa) An Order directing the defendants jointly and severally to vacate that the defendants give the plaintiff vacant possession of do vacates LR NO. Isiolo Block7918/558 forthwith or and in default thereof they be forcefully evicted therefrom.
 - b. An order of permanent injunction restraining the Defendants jointly and severally whether by themselves, their agents, assigns and/or legal representatives or anyone under their behest, directive or authority from doing any further acts wastage of the plaintiff's land including but not limited to entering, remaining on, quarrying, digging foundations, constructing, fencing, cultivating, alienating or any other way whatsoever interfering with the Plaintiff's said land Parcel No Isiolo Block7918/558 rights to the property.
 - c. An order that the 1st to the 22nd defendants be hereby ordered to pull down, demolish and remove the permanent, semi-permanent structures and/or perimeter wall (s) that are trespassing and/or encroaching on all that parcel of land known as Isiolo Block7918/558 measuring approximately 2.001 hectares belonging to the plaintiff within fourteen (14) days of the making of the order herein and failure to do so the Plaintiff be at liberty to do the same at the Defendants' costs.
 - d. Mesne profits and damages for trespass.
 - e. Costs of the suit.
 - f. Interest on (c) and (d) at Court rates.
2. The 3rd to 21st defendants were served via substituted service through an advertisement in the Standard Newspaper on July 15, 2022. On November 7, 2022 the 3rd to 21st defendants' case was dismissed in terms of Order 12 of the *Civil Procedure Rules*.
3. Despite notice having been properly served upon the defendants they did not participate in the hearing which was scheduled to take place on November 7, 2022.



4. PW1, Mutuma Angaine, a director of the Plaintiff Company asked the court to adopt his witness statement dated November 21, 2017. The court did so.
5. The said Witness statement is reproduced here below; -
 - a. The plaintiff is a duly registered company in Kenya as evidenced by item 23 of its documents to be relied upon.
 - b. I am the managing director of Isiolo Printing Press Ltd, the plaintiff herein.
 - c. I am duly authorized to appear, plead, sign and/or otherwise deal with this case on behalf of the plaintiff herein by virtue of being one of the directors of the plaintiff, and/or by way of the resolutions dated October 26, 2013 and April 20, 2015 all of which have been duly filed in the plaintiff list of documents. (See part E, Item 24 and 26 of the plaintiff's list of documents to be relied upon).
 - d. The plaintiff is the owner of land parcel No. Isiolo Block7918/558 measuring approximately 2.001 hectares which land the plaintiff acquired by way of a 99-years leasehold vide starting from May 1, 1991 *vide* grant No IRN 4771 issued pursuant to the registration of Titles Act, Cap 281 Laws of Kenya (Repealed).
 - e. The said Grant was duly obtained following all the relevant legal procedures as evidenced by the plaintiff's list of documents to be relied upon, Section A, items 1 to 14.
 - f. At the time of the said acquisition, none of the defendants and/or their agents occupied the plaintiff's said land (or any part thereof) neither were they carrying out any activities thereon.
 - g. The plaintiff has been paying the relevant monies to the relevant authorities in respect of the said land as evidenced by the plaintiffs list of documents to be relied upon, Section B items 15 and 16 thereof.
 - h. In or about April 2013, the defendant's started interfering illegally with the plaintiff's said land by, among others, carrying quarrying activities thereon and putting up some structures thereon without the plaintiff's consent and/or authority.
 - i. This prompted the plaintiff to write complaint letters to the Isiolo County Secretary and the Isiolo County Government (by Items 17 to 19 on part C of the plaintiff's documents to be relied upon).
 - j. Copies of photographs of the defendants illegally actions/structures were taken (see item 20), and the police visited the area to establish the perpetrators of the said activities, (see item 21). The plaintiff retained the services of a surveyor to re-confirm the boundaries of the plaintiff's land as evidenced by item 22 of the plaintiff's documents.
 - k. We pray for relief as stated in the plaint to enable the plaintiff continue enjoying it proprietary rights over its said land.

Dated 21/10/2017

6. This statement was adopted as PW1's evidence in chief. As the defendants did not participate in the proceeding, there was no cross-examination. The plaintiff's case was closed. At the same time, the court closed the defence case as the defendants were absent.
7. In his witness statement, PW1 explains that the suit land was allocated to the plaintiff after the plaintiff had satisfied all legal requirements. A 99 years lease was issued to it starting May 1, 1991 *vide* grant



No LRN 4771 issued pursuant to the then [Registration of Titles Act](#) Cap 281 Laws of Kenya (now repealed). PW1 explains that the plaintiff has been paying all monies to the relevant authorities in respect of the suit land as evidenced by its list of documents.

PW1, explained that about April, 2023, the defendants started interfering illegally with the plaintiff's land by, inter alia, carrying out quarrying activities and putting up structures thereon without the plaintiff's consent and/or authority. Despite reporting to police and complaining to the Isiolo County Secretary and the Isiolo County Government, the 3rd to 21st defendants did not stop their illegal actions on the plaintiff's land.

In his oral evidence, PW1 felt that the 23rd defendant, the County Government of Isiolo, which had authority of all planning matters within Isiolo County had condoned the illegal activities perpetrated by the other defendants.

8. In his written submissions, Advocate Michael Ngunjiri for the plaintiff submitted that the defendants did not participate in the hearing of this suit despite service upon them of court documents and hearing notice. He prayed that their defence cases be dismissed under Order 12 of the [Civil Procedure Rules](#). This court notes that on November 7, 2022, the defence case concerning the 3rd to 21st defendants were dismissed in terms of Order 12 of the [Civil Procedure Rules](#). The court opines that the only reason the cases concerning the 1st, 2nd and 22nd defendants were not dismissed in terms of Order 12 of the [Civil Procedure Rules](#) was because the plaintiff's advocate had not included them in his prayer to have the cases of the absent defendants be dismissed in terms of Order 12 of the [Civil Procedure Rules](#).
9. The plaintiff's advocate submitted that the plaintiff had proved that he was the lawful owner of the suit land Parcel No Isiolo Block 918/558 measuring approximately 2.0 Hectares; that the defendants had been in unlawful user, occupation and illegal misuse of the plaintiff's property by virtue of trespass; that the defendants should be evicted forthwith and that any costs during the apposite eviction should be borne by the defendants; that an order of permanent injunction should issue, that the defendants should pay mesne profits and damages for trespass and that the court should issue an order of demolition of the structures that have been built on the property by the defendants and that the defendants should pay costs and interest.
10. Regarding the question of mesne profits and damages for trespass, the plaintiff's advocate proposes a figure of Kshs 10,000,000/= given that the defendants have jointly and severally benefited from the plaintiff land and concerning the 22nd defendant, after it had irregularly purported to have acquired the plaintiff's land, had been collecting rent and rates from the plots it had purportedly allocated to the 1st to 21st defendants. The advocate submitted that as a result of the 22nd defendant's illegal action to purport to allocate the plaintiff's land to the 1st to 22nd defendants, it should be condemned to pay the suggested damages amounting to Kshs 10,000,000/=.

The plaintiff's advocate proffered the case of [Philip Ayaya Aluchio Versus Crispus Ngayo](#) [2014] eKLR where Obaga J, held as follows;

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of damages? It has been held that the measures of damages for trespass is the difference in the value of the plaintiff's property immediately after the trespass or the costs of restoration whichever is less. See *Hostler Versus Green Park Development Co* 986 SW 2d 500 (No App 1999”.

The plaintiff's advocate says that as the valuation in the court record places the valuation of the suit land as on April 28, 2018 as Kshs 106,000,000/= the costs of restoring the land after extensive quarrying would require a substantial investment. Furthermore, the costs of demolishing the structures erected



in the suit land would also be substantial. The advocate proffered the case of *John Sebastian Mbaya & Another Versus Samuel Koskei Too* [2018] eKLR, where in similar circumstances, general damages for trespass were awarded. The advocate also proffered the case of *Rhoda S Kiitu Versus Jiangxi Water and Hydrogen Construction Kenya Limited* [2019] eKLR where a sum of Kshs 10,000,000/= was awarded after the defendants had harvested an extensive amount of murram after quarrying the Plaintiff's land. The advocate opined that the facts of this case are similar to the facts of this case and feel that the amount of Kshs 10,000,000/= was awarded even through the Plaintiff's land was in a rural area whereas the suit land in this case is in a town and therefore has a higher value as it was near Isiolo International Airport. The advocate concluded that if the court was inclined to award either general damages for trespass and/or mesne profits, then he urged the court to award general damages for trespass of Kshs 10,000,000/=.

11. I do find that the plaintiff has on a balance of probabilities proved his case against the defendants. The following orders are issued;
- a. A declaration is hereby issued that the plaintiff is the owner of Land Parcel No. Isiolo Block7918/558 measuring approximately 2.001 hectares owned by it pursuant to Grant No IRN 4771 issued pursuant to the Registration of Titles Act, Chapter 281 of the Laws of Kenya (now repealed).
 - b. An order is hereby issued directing the defendants to jointly and severally vacate the defendants LR No Isiolo Block7918/558 forthwith OR/AND in default thereof to be forcefully evicted there from
 - c. An order of permanent injunction is hereby issued restraining the Defendants jointly and severally, whether by themselves, their agents, servants, assigns and/or legal representatives or anyone under their behest, directive or authority from doing any further acts wastage of the plaintiff's land including but not limited to entering, remaining on, quarrying, digging foundations, constructing, fencing, cultivating, alienating or in any other way whatsoever interfering with the plaintiff's said land Parcel No Isiolo Block7918/558 rights to the property.
 - d. An order is hereby issued that the 1st to the 22nd defendant be hereby ordered to pull down, demolish and remove the permanent, semi- permanent structures and/or perimeter wall (s) that are trespassing and/or encroaching on all that parcel of land known as Isiolo Block79/18/558 measuring approximately 2.001 hectares belonging to the plaintiff within fourteen (14) days of the making of the order herein and failure to do so the plaintiff be at liberty to do the same at the Defendants costs.
 - e. Damages for trespass are awarded to the plaintiff to be paid as follows;
 - a. Sum of Kshs 8,000,000/= to be paid by the 22nd defendant the County Government of Isiolo, and the other defendants to jointly pay the sum of Kshs 2,000,000/= to the plaintiff.
 - f. Costs shall follow the event and are awarded to the plaintiff by the defendants jointly and severally.
 - g. Interest on (e) and costs are awarded to the plaintiff from the date of delivery of this Judgement.

DELIVERED IN OPEN COURT AT ISIOLO THIS 17TH DAY OF JULY, 2023 IN THE PRESENCE OF:

Court Assistant; Balozi



Miss Mbogo holding brief for Ngunjiri for the Plaintiff.

Other Parties absent.

HON. JUSTICE P.M NJOROGE

JUDGE

