



**Keroka Highway Service Station v Ogot (Environment & Land Case  
1356 of 2014) [2023] KEELC 19805 (KLR) (30 August 2023) (Judgment)**

Neutral citation: [2023] KEELC 19805 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1356 OF 2014**

**EK WABWOTO, J  
AUGUST 30, 2023**

**BETWEEN**

**KEROKA HIGHWAY SERVICE STATION ..... PLAINTIFF**

**AND**

**MAURICE ODONGO OGOT ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed a Complaint dated 13<sup>th</sup> October 2014 seeking for the following orders against the Defendant.
  - a. An order of eviction over the defendant, agents, licensees or any other person whosever from the Plaintiff's parcel of land reference number LR No.NBI/BLK/97/0759/152 Tassia Estate.
  - b. A permanent injunction restraining the defendant by themselves, their servants, agents, tenants, licensees and/or any person whosever from being, remaining, entering in, continuing in occupation, erecting, constructing, continuing with the construction of any structures whatsoever on the Plaintiff's parcel of an order of eviction over the defendant, agents, licensees or any other person whosever from the Plaintiff's parcel of land reference number L.R. NO.NBI/BLK/97/0759/152 Tassia Estate.
  - c. General damages for trespass.
  - d. Costs of this suit with interest thereon.
  - e. Any other or further relief that this honourable court may deem just to grant.



2. The defendant upon service contested the suit and filed a statement of defence dated 18<sup>th</sup> December 2014 seeking for dismissal of the Plaintiff's suit with costs.

### **The Plaintiff's case**

3. It was the Plaintiff's case that it is the bonafide/rightful owner of the parcel of Land LR No. NBI/BLK 97/0759/152 Tassia estate, Nairobi, which land it purchased from the NSSF after fulfilling all the requirements and paying the requisite purchase amount in full.
4. The Plaintiff averred that the defendant who had been initially offered to purchase the property defaulted in payment of the required amount.
5. It was the Plaintiff's case that despite several demand notices from the NSSF and other public notices which were made in the local daily newspapers the defendant still never fulfilled the purchase requirements.
6. The Plaintiff further stated that failure to fulfill the sale requirements of the NSSF prompted the repossession of the parcel of land from defendant.
7. The Plaintiff averred that after repossession vide a letter of offer it was invited to purchase the property by the NSSF which it did.
8. It was also averred that the defendant herein has entered into and has continued to remain on the plaintiff's said parcel of land LR No NBI/BLK 97/0759/152 Tassia Estate, Nairobi without any just or lawful claim to the land.
9. It was further averred that the defendant's aforementioned acts amounted to and constitute acts of trespass on the Plaintiff's property and are infringement of the Plaintiff's right to quiet use and enjoyment of its land and premises.
10. By reason of the matters aforesaid, the Plaintiff states that it has been deprived of the use and enjoyment of its land and has thereby suffered and continues to suffer loss and damages.
11. During trial, Abdirizak Hullo a Director of the Plaintiff Company testified as PW1 and the sole Plaintiff's witness. He adopted his witness statement and relied on his bundle of documents as part of his evidence in chief.
12. It was the testimony of PW1 that he bought the property known as L.R. No. NBI/BLK 97/0759/152 Tassia Estate from the National Social Security Fund (NSSF) and paid Kshs 1,226,460/-. NSSF acknowledged receipt of the monies vide a letter dated 18/12/2013. He also stated that the Defendant was informed that the plot NBI/BLK 97/0759/152 Tassia Estate had been repossessed and sold to the Plaintiff and the Defendant was requested to leave. He urged the court to grant the prayers sought.
13. On cross-examination by Counsel for the Defendant, he stated that he never visited the property before purchasing the same and he did not know whether it was occupied. He also stated that it was only the NSSF who could confirm whether or not the Defendant had completed payment.
14. On further cross-examination, he stated that NSSF had already given a letter to evict the Defendant and he did not know why the Defendant was still on the land.
15. In re-examination he stated that he did not have any claim against NSSF since they had given him all the necessary documents to confirm that he is the owner of the property. He also reiterated that he was never conned by NSSF while purchasing the property. He further stated that NSSF had the right to repossess the property.



### **The Defendant's case**

16. The Defendant averred that he is the sole and absolute proprietor of the suit property. He has a residential house on the said suit premises which he occupies with his family. He is also in the process of constructing another residential house thereon.
17. The Defendant averred that he purchased the suit premises in a Tenant Purchase Scheme from the NSSF and regularly made payments to the fund.
18. The Defendant also denied ever defaulting in payment to the fund. It was also averred that the Plaintiff by its own admission either colluded with the Fund managers in attempted fraud through 'land grabbing' or was a victim of the fraud of its money by the Fund Managers.
19. The Defendant averred that he cannot be a trespasser on his own property and the Plaintiff's quest for injunctive remedies, eviction and damages was misplaced.
20. During trial, two witnesses testified in support of the Defendant's case, Maurice Odongo Ogot the Defendant as DW1 and Daniel Bosire DW2.
21. Maurice Odongo Ogot DW1 relied on his witness statements dated 18<sup>th</sup> December 2014 and further witness statement dated 3<sup>rd</sup> June 2021 together with his bundle and further bundle of documents that were on record as his evidence in chief.
22. On cross-examination by Counsel for the Defendant, he stated that he had not yet finished paying for the property when the suit papers were filed. He also stated that he was not aware of any repossession of the property by NSSF. He further stated that there was no evidence that NSSF had sold the property to a third party.
23. On further cross-examination, he stated that he had made payments but was yet to conclude the same. He also stated that the document for extension of time towards the payment of the purchase price was served upon him when the suit had already been filed. He also stated that he contested NSSF's decision to repossess and sell the property to a third party and even sought audience with Mr. Atwoli who was then a Board member at NSSF and was advised to file a case in court. He also stated that Kenya National Human Rights Commission (KNHRC) wrote to NSSF indicating that the property belonged to him. He denied being a trespasser to his own land.
24. When re-examined, he stated that he was informed by one Mr. Obeid a Manager at NSSF to remain in the property because the land belonged to him. He also stated that the payments that he made to NSSF were not receipted and it became extremely difficult to deal with NSSF. He also stated that there was an agreement made between Tassia Residents and NSSF which was presided over by the Ministry of Lands and that the agreement stated that NSSF was to extend the repossession period for a further period of 18 months.

### **The Evidence from NSSF.**

25. Pursuant to Section 22(b) and 23 of the [Civil Procedure Act](#) which empowers the court either on its own motion or on an application by any party to issue summonses to persons whose attendance is required either to give Evidence or to produce documents or such other objects as aforesaid, this Court on its own motion issued summons to the Managing Trustee, NSSF to produce the register for L.R. NO NBI/BLK/97/0759/152 Tassia Estate in its custody. The court was also guided by Section 173 of the [Evidence Act](#) which empowers a Judge or a Magistrate, in order to obtain proper evidence, to ask



any question, in any form, at any time, of any witness, or of the parties about any fact and to order the production of any document or thing.

26. In compliance with the said summons, Tobias Ombado a Tenant Purchase Officer attended court and testified on behalf of NSSF. He produced the entire file and documentation in respect to L.R. No NBI/BLK/97/0759/152 Tassia Estate which was in the custody of NSSF. He stated that according to their records, the suit property was allocated to the Defendant in 2003 and he failed to clear the outstanding purchase price and as a result of which the property was repossessed and sold to the plaintiff. He produced the entire register and file relating to the suit property which was in the custody of NSSF.
27. On cross examination by counsel for the Plaintiff he stated that according to their records, the Plaintiff is the legitimate owner of the suit property.
28. On cross examination by counsel for the Defendant, there could have been other payments made by the Defendant towards the purchase price which had not been reflected in their records.

### **The Plaintiff's Submissions**

29. The Plaintiff filed written submissions dated 15<sup>th</sup> August 2022 through Ayieko Kangethe & Co. Advocates. Counsel outlined four issues for determination; whether the property belongs to the defendant, whether there is trespass, whether there was conversation and whether the Plaintiff is entitled to the reliefs sought.
30. It was submitted that, the defendant had made a down payment of Kshs 50,000/- on the 23<sup>rd</sup> December 2008 and produced receipts proving the same as DExb 6. It was also submitted that the defendant had testified that at the time of making the deposit, the purchase price had not been determined yet in his list of documents dated 18<sup>th</sup> December 2014, he had produced DExb3-a Copy of National Social Security Fund letter dated 26/7/2005, which clearly states the amount the plot would be sold was Kshs 800,000/- and the period of the payment installments clearly indicated as not more than 6 months from August 2005.
31. It was submitted that since making the deposit, the defendant never made any other payments and remained in arrears until the next deposits he made to the National Social Security Fund TPS account, in regards to the property, on the 19<sup>th</sup> September 2013. According to the Plaintiff's submissions, the defendant had failed to show any receipts from National Social Security Fund proving purchase of the property prior to the Plaintiff's acquisition of the property. The Plaintiff also submitted that he found it curious that the defendant had purportedly made a bank deposit to National Social Security Fund TPS on the 9<sup>th</sup> of December 2014 being fully aware that the property's ownership had changed to the Plaintiff in a bid to frustrate the Plaintiff's effort and delay the court process of the already launched suit against him. Curiously too the purported deposit slip was never authenticated and never receipted by NSSF as was with the Plaintiff's case.
32. It was further submitted that the defendant despite being fully aware that the property had been sold to the Plaintiff and of the ongoing demand and suit for his eviction from the property, a suit he had also entered appearance in, purportedly went ahead and made a bank deposit on the 9<sup>th</sup> of December 2014 to a National Social Security Fund TPS account in an attempt to deny the Plaintiff vacant possession of its property.
33. It was submitted that the defendant testified that there was a mutual agreement dated 18/06/2013 for extension of payment up to 31/12/2014 and produced as exhibit DExb7- a copy of an agreement. The purported agreement was also referred to by the Defendant's second witness as an agreement between National Social Security Fund and various groups, amongst them Tassia Self Help group however the



said agreement was dated 18/06/2013 and signed on 16/06/2013. As if that irregularity is not enough, it was not signed by any representative of the NSSF and only had the signatures of four people under Tassia Residents. The agreement also had only a “received” stamp dated 2<sup>nd</sup> June 2021 from NSSF indicating that NSSG had been served the said document on the 2<sup>nd</sup> of June 2021, eight years after the date of the alleged agreement.

34. Counsel for the Plaintiff also submitted that the Plaintiff had produced PEXb 3 a copy of receipts from National Social Security Fund and PExb4 letter of confirmation in proof of purchase dated 18<sup>th</sup> December 2013 proving rightful acquisition and legal ownership to the property LR No NBI/BLK 97/0759/152 Tassisa Estate. On the other hand, the defendant has failed to show any proof of ownership towards the property LR No NBI/BLK 97/0759/152 Tassia estate. The defendants only claim to ownership of the said property are bank deposit slips he made and a statement of account showing arrears. Despite being requested by NSSF in letter produced as exhibit PExh 5 dated 12<sup>th</sup> March 2014, to submit the original payment receipts to facilitate refunds of the payments he made to the fund, the defendant continued to ignore the directive and illegally occupied the property.
35. It was submitted that the defendant purportedly made the bank deposit to the National Social Security Fund TPS account after NSSF had already repossessed the property and the property sold to the Plaintiff. The repossession amounted to rescission of any contract between NSSF and the defendant.
36. The Plaintiff argued that, the only remedy available to the defendant was a claim for refund of any money paid to NSSF. Reference was made to PEXh 5 being letter from NSSF instructing the defendant to submit the original payment receipts to facilitate refunds of the payments he made to NSSF.
37. It was also submitted that the Plaintiff prays that its constitutional right to property be protected, because, since purchasing the property on 18<sup>th</sup> December 2013, it has been deprived off the use and enjoyment of its land and has thereby suffered and continues to suffer loss and damages.
38. On whether the Defendant is trespassing on Plaintiff’s property, it was submitted that the defendant was informed of the sale and ownership of the property LR NO NBI/BLK 97/0759/152 Tassia Estate and directed to vacate the premises on the 12<sup>th</sup> of March 2014 after numerous demand notices and public notices by NSSF.
39. It was also submitted that the Plaintiff testified that despite various notices and indications by the Plaintiff to the defendant of its intent to occupy the said property, the defendant has been defiant and even went to purportedly claim that he intended to build on the premises in an attempt to ensure the Plaintiff does not enjoy quiet possession of its property. There was no proof presented to court that there was any permanent structure in fact it is the defendant’s own admission that the structure on the property is not a permanent one.
40. Reliance was placed to the case of *John Chumia Nganga v Attorney General & Another* (2019) eKLR.
41. It was submitted that the defendant in his adopted witness statement dated 18<sup>th</sup> December 2014, testified that he was building an even bigger residential house on the property, despite being fully aware of the repossession and sale to the Plaintiff and the Plaintiff’s intention to occupy its property.
42. It was further submitted that the defendant’s conversion of the Plaintiff’s property has enabled him benefit and continue to benefit much to the dismay of the Plaintiff, denying it the profitable use of the property.
43. The Plaintiff also submitted that it was entitled to general damages for trespass and costs of the suit.



## The Defendant's submissions

44. The Defendant filed written submissions dated 4<sup>th</sup> October 2022 together with further submissions dated 28<sup>th</sup> April 2023. The same were filed through Mugambi Mungania & Co. Advocates. The Defendant's submissions addressed the following issues; Whether the Plaintiff has locus against the defendant, who is the lawful purchaser, whether there was any repossession or whether the alleged repossession was regular.
45. It was submitted that the Plaintiff does not have locus standi to institute this suit against the defendant. The Plaintiff's claim is based on its alleged purchase of the plot from NSSF. The Plaintiff is not a registered proprietor of the land. The defendant had earlier purchased the plot from NSSF in which transaction the Plaintiff was not a party. On examination of witnesses, the Plaintiff confirmed not having sued NSSF from whom it allegedly alone bought the suit premises. The documents tabled before this Honourable Court indicate that the Plaintiff allegedly entered agreements with NSSF and not the defendant who had earlier bought the same suit premises from NSSF. In support of this position, Reliance was made to the case of *Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co Ltd* [1915] Ac 847.
46. The Defendant further argued that the Plaintiff has no capacity, moral or legal, to question or define or interpret the contract between the defendant and NSSF. The Plaintiff cannot be seen to interfere with or benefit from the NSSF – defendant contract yet the Plaintiff isn't a party. Thus, from a purely legal standpoint, the Plaintiff should have sued NSSF to deliver possession to itself and not the defendant.
47. On who is the lawful purchaser it was submitted that notwithstanding the matter of locus standi, evidence leads on a balance of probabilities that the defendant is the bona-fide purchaser of the suit premises. The Defendant had been the owner and in possession of the suit premises from 2003 having, like so many others, bought it from persons masquerading as owners and thereafter the true owner – NSSF- sought to regularize the status. There is no doubt that the defendant applied and was issued with a certificate of ownership for the suit premises. After that, NSSF and Tassia Plot Owners association entered into an agreement named Tenant Purchase Scheme of 2009 through which members/existing occupiers/plot owners would complete payment for their plots in 120 months effective from the year 2009, that is up to the year 2019.
48. The Defendant contended that he had commenced payment in 2008 and completed payment for his plot in the year 2014. The cash deposit slips and the final one dated 9<sup>th</sup> December 2014 for Kshs 1,118,460.00) shows that the defendant completed payment for his plot.
49. It was further contended that NSSF had not denied the defendant's claim including the full payment or taken any legal action to dispossess the defendant of the suit premises. Indeed, the defendant testified that officers at NSSF did tell him not to worry about any third parties purporting to claim the suit premises and should continue to reside thereon and that NSSF has not sought to disturb his ownership/quiet possession.
50. On whether there was any repossession or whether the alleged repossession was regular it was submitted that the Plaintiff is not entitled to the prayers sought as the alleged repossession was non –existent or was irregular, illegal and unconstitutional for the above reasons that the Plaintiff has no locus standi against the defendant, and in any case that the defendant had purchased the suit premises from NSSF which purchase was and remains valid.



51. Further, the defendant was neither aware of any repossession nor notified of such intention and only came to learn of illegal motives by strangers when this suit was instituted and strangers tried to push him and his family out of the suit premises.
52. The Defendant also referred to Article 40(1)(2) (3) of *the Constitution* which is salient on protection of property rights and ought to be an anchor in determination by any court of law. Reliance was placed in the case of Hellen Wachuka Njoroge v Attorney General & another (2016) eKLR. held as follows:
53. The Defendant in his submissions also challenged the testimony of Tobias Ombado who testified on behalf of NSSF on the following grounds;
  - i. The said witness did confirm that the file he brought with him to the court (but also carried it away with him) was incomplete and did not comprise all documents that affected the suit property. Other documents especially those that affected other purchasers including the Defendant were not in that file yet they are relevant to the contract between the parties. Such documents include but are not limited to letters dated 26<sup>th</sup> July 2005 and 14<sup>th</sup> October 2005 from the Managing Director of NSSF which form part of the Defendant's exhibits. The upshot is that the witness did not have the full facts before court. In brief, he was possessed of and did not tender to the Honourable Court the full and correct evidence.
  - ii. Besides other facts that he confirmed in the Defendant's favour, the Defendant had 120 months (10) years from 1<sup>st</sup> September 2009 to complete payment of the purchase price (as per the statement printed on 25<sup>th</sup> January 2012 produced by the defendant). Thus, the Defendant had up to the year 2019 to complete full payment and he completed full payment on 9<sup>th</sup> December 2014 as per the last of the receipts produced in court. All the monies due to NSSF had been received by NSSF in the bank account provided by a staff member of NSSF and those receipts were in that file tendered in court though the witness attempted in vain to conceal that part with a view to prejudice the defendant's case.
  - iii. From his demeanor, the witness was biased against the Defendant. He made every effort to suppress evidence in favour of the Defendant while asserting without any basis those in favour of the Plaintiff. For instance, he did not have a full information of NSSF – Defendant's relations between 2006 and 2014 and those documents referred to above yet he purported to make conclusions only because they would favour the Plaintiff.
  - iv. The witness confirmed that NSSF had not evicted or even visited the suit property hence it had not repossessed the property. NSSF had not taken any legal action against the Defendant neither had any dispute between the NSSF and Defendant if any been presented in court and determined.
  - v. NSSF has not pleaded in any court of law, testified to support her claims and her case weighed on against that of the Defendant. The terms of the relations between the duo may not be determined in a forum where both aren't parties.
  - vi. No resolution from NSSF had been tendered to demonstrate that the Board of Trustees had resolved to repossess or take any legal action against the Defendant and this Honourable Court should be cautious and not make



assumptions that the lawfully authorized organ of NSSF had made this or that decision in absence of anything expressly stating so emanating from the trustees.

54. The Defendant concluded his submissions by urging the court to dismiss the Plaintiff's suit in its entirety with costs.

### **Analysis and Determination**

55. I have considered the pleadings, the evidence adduced and written submissions filed by the parties herein and the issues arising for determination are as follows:
- i. Who is the bonafide and legal owner of L.R. No. NBI/BLK/97/0759/152 Tassia Estate Nairobi.
  - ii. Whether the Plaintiff is entitled to the reliefs sought.

### **Issue No I**

#### **Who is the bonafide and legal owner of L.R. No. NBI/BLK/97/0759/152 Tassia Estate Nairobi**

56. The Plaintiff testified that following an invitation to purchase the suit property, he paid full the purchase price and produced PExh 2 a letter inviting the Plaintiff to buy the property. The Plaintiff also testified that it is the bonafide/rightful owner of suit property since 18<sup>th</sup> December 2013 and produced PExh 4 a confirmation letter from NSSF. The Plaintiff also produced PExh 5 letter of confirmation of ownership dated 12<sup>th</sup> March 2014 addressed to the Defendant informing him of the Plaintiff's acquisition of the property and instructing the Defendant to vacate the property and further advising the Defendant to submit his receipts for purpose of refunding the payments made.
57. On this issue, the Defendant testified that the suit property was allocated to him by Tassia Plot Owners Association upon payment of the requisite membership amount. He was issued with certificate No. 147 of Plot No. 152 and was registered with the NSSF Tenant Purchase Scheme and he was allocated Account No. 37302241 for future payments of the balance of the suit property.
58. It was also the Defendant's testimony that NSSF is yet to transfer the suit premises to either the Plaintiff or the Defendant. Daniel Bosire who testified as DW2 also testified that the Defendant is the sole owner of the suit premises. He further stated that in 2015, the Office of Tassia Plot Owners Association through their Chairperson sent a letter dated 22<sup>nd</sup> June 2015 to NSSF confirming that the Defendant was the rightful owner of the suit property.
59. The Defendant also produced copies of cash deposit slip showing payments made of Kshs 50,000/- on 19<sup>th</sup> September 2013, Kshs 12,000/- on 8<sup>th</sup> October 2014 and Kshs 1,118,460/- on 9<sup>th</sup> December 2014.
60. During the hearing of the suit, none of the parties called any witness from NSSF to clarify as to who is the legitimate owner of the suit property. This prompted the court under Sections 22 (b) and 23 of the *Civil Procedure Act* to issue summons to the Managing Trustee NSSF or any other person instructed by him to attend and give evidence or to produce documents in respect to the NSSF position on the matter. This court was also guided by Section 173 of the *Evidence Act* which empowers a Judge or a Magistrate in order to obtain proper evidence to ask any question in any form at any time of any witness or to the parties about any fact and to order the production of any document or thing. This discretion must be exercised only in exceptional circumstances and with great caution and this court considered



this as an exceptional case that justifies the exercise of the said court's discretion in order to do justice between the parties and determine the dispute with finality.

61. Tobias Ombado, a Tenant Purchase Scheme Officer testified on behalf of NSSF. He stated that the suit property was allocated to Maurice Odongo Ogot the Defendant herein in 2003 by Tassia Group Leaders upon which he was expected to complete the payment within 90 days from the time of allocation. The defendant did not finalize payment within the stipulated period and a notice to defaulters including the defendant was issued for repossession. He also stated that the fund proceeded to repossess the property and sold it to the Plaintiff who paid fully the purchase price and was given ownership of the suit property in December 2013.
62. When cross-examined by Counsel for the Plaintiff he stated that the Plaintiff is the legitimate owner of the suit property and the Defendant had already been notified of the same.
63. When cross-examined by Counsel for the Defendant he stated that he was not working with NSSF at the time the Defendant was initially allocated the property. He also stated that there was no evidence from the records available at NSSF that indeed the Defendant had finalized making all the payments. He also stated that the Plaintiff was allocated the plot after purchasing the same when it was repossessed.
64. I have carefully considered the evidence that was adduced. While it was the Defendant's contention that the period for completion of payment was extended upon an agreement entered between NSSF and Tassia Residents to which he was a member, the court upon perusing the said agreement noted that the same was not signed by any officials from NSSF. The agreement dated 16<sup>th</sup> June 2013 which at clause one had reported to extend the notice of repossession for a further period of 18<sup>th</sup> Months from 1<sup>st</sup> July 2013 to December 2014 had only been executed by Four Tassia Residents who included the Defendant. There was no evidence adduced to the effect that NSSF did accept the said extension. In this regard I wish to refer to the case of *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands & 2 Others* [2014] eKLR where it was held that;  
  
"I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days. He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer as stipulated in the letter of allotment Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the plaintiff. This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent."
65. In view of the foregoing, it is the finding of this court that indeed the Plaintiff is the rightful owner of the suit property.

## **Issue No. 2**

### **Whether the Plaintiff is entitled to the relief's sought.**

66. The Plaintiff has sought for an eviction order against the Defendant, an order for permanent injunction and general damages for trespass. This court having made a finding that the Plaintiff is the rightful owner of the suit property it is also satisfied that the Plaintiff's claim against the Defendant is proved and the Plaintiff is entitled to the reliefs sought.



67. In respect to the general damages of trespass, the Plaintiff referred to the following cases which the court has considered; *Park Towers Limited v John Mithamo Njiika & 7 others* (2014) eKLR, *Philip Aluchio v Crispinus Ngayo* (2014) eKLR and *John Chumia Nganga v Attorney General & Another* (2019) eKLR.
68. The Plaintiff did not however submit on any figure or amount which would have been considered as adequate damages for trespass. In view of the foregoing, I will refrain from making any award on the same.
69. On the issue of costs, cost is at the discretion of the court and considering the circumstances of this case, I will direct that each party shall bear own costs of the suit.

#### **Final Orders.**

70. In the end, this court having been satisfied that the Plaintiff has proved its case against the defendant on a balance of probability, I hereby enter Judgment for the Plaintiff against the Defendant as follows: -
- i. An order of eviction of the Defendant, his agents, licensees or any other person whosever from the L.R. Number NBI/BLK 97/0759/152/Tassia Estate within 90 days from today.
  - ii. An order of permanent injunction is hereby issued restraining the Defendant, his agents, servants, agents, tenants, licensees or any other person claiming under him from being, remaining, entering, continuing in occupation, erecting, constructing of any structures on L.R. No. NBI/BLK 97/0759/152 Tassia Estate.
  - iii. Each party to bear own costs of the suit.

Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF AUGUST, 2023.**

**E.K. WABWOTO**

**JUDGE**

In the presence of:

Mr. Kangethe for the Plaintiff.

Mr. Mugambi for the Defendant.

Court Assistant – Caroline Nafuna.

