



**Mokaya & another v Omwenga (Environment & Land Case E008 of 2022)  
[2023] KEELC 21796 (KLR) (15 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21796 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE E008 OF 2022**

**JM KAMAU, J  
NOVEMBER 15, 2023**

**BETWEEN**

**SAMUEL MOKAYA ..... 1<sup>ST</sup> PLAINTIFF**

**JAIRUS E MOKAYA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WALTER OMWENGA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff Samuel Mokaya and Jairus E. Mokaya filed a suit on 25/10/2022 averring that at all material times the 1<sup>st</sup> Plaintiff has been the legitimate registered owners of L.R. No. Central Kitutu/Bogetaorio/2837 and has all along enjoyed open exclusive occupation of the same since they were allotted the suit Property on 19/6/2013 which has never sold nor transferred to anyone. But that the Defendant on the 12/8/2013 bought a different Parcel of Land from Keremensia Bisieri Motachi being L.R. No. Central Kitutu/Bogetaorio/2537. The Defendant has sought the transfer of his (Defendant) aforesaid parcel of Land Central Kitutu/Bogetaorio/2537 with the 1<sup>st</sup> Plaintiff's parcel of Land Central Kitutu/Bogetaorio/2837 but the 1<sup>st</sup> Plaintiff declined.
2. The Plaintiffs further averred that on 11/9/2022 at about midnight, property within the suit land were destroyed by gowns allegedly set and paid by the Defendant. This was constituted by decrolitine and intentional destruction causing irreparable fiscal loss and damage to their investment as a consequence of which the Plaintiffs seek for the following orders: -
  - (a) That the Honourable court makes a declaration that the conduct of the Defendant is a breach of the sanctimonious property rights of the Plaintiffs.
  - (b) A declaration that the 1<sup>st</sup> Plaintiff is the rightful owner of the suit property.



- (c) That the Honourable court be pleased to issue a permanent mandatory injunctive order restraining the Defendant by himself, servants, employees, agents or any other person acting under his instructions or his interests from entering, interfering with the Plaintiff's occupation and possession, otherwise dealing, entering, using, cultivating, residing, alienating and or in any other manner interfering with or dealing with the suit property.
  - (d) For special damages and general damages from the Defendant
  - (e) Interest at Court rates
  - (f) Costs of the suit.
  - (g) Such other or further relief as this Honourable Court may deem fit to grant.
3. Both Plaintiffs filed verifying affidavit but only Samuel Mokaya filed a witness statement alongside the Plaintiff. The 2<sup>nd</sup> Plaintiff claims to have filed his witness statement later on 12/10/2022 which can't be traced.
  4. Although the Defendant was served with the pleadings herein and summons to enter appearance and has always been served with Hearing Notice whenever the case is coming up for Hearing, and affidavit of service respectively filed, he has never entered appearance nor attending court for the Hearing of the case leading to the Hearing. On 14/6/2023, the 1<sup>st</sup> Plaintiff took the witness stand and testified that he is the registered proprietor of Central Kitutu/Bogetaorio/2837 which he inherited from his mother Cleremencia Bisieri Moteti in 2012. He further held that his mother had sold 0.24 Hectares to the Defendant which he abandoned. To support his ownership of the suit property, the 1<sup>st</sup> Plaintiff produced the following:
    1. Copy of the certificate of Title dated 19/8/2013.
    2. A copy of agreement of sale of land between his mother Clemencia Bisieri Motechi and the Defendant dated 12/8/2013.
    3. Copies of photographs taken after the demolition and destruction took place on 12/9/2022.
  5. The agreement dated 12/8/2013 which clearly defines the land sold to the defendant as Central Kitutu /Bogetaorio/2537 measuring 51 feet by 123 feet at Ksh. 300,000/- The 2<sup>nd</sup> Plaintiff testified that what the 1<sup>st</sup> Plaintiff testified in court was true.
  6. There being no defence to the suit nor anything to enter the Plaintiff's case the court granting Judgment in favour of the 1<sup>st</sup> Plaintiff in the following terms.
    - (a) That the Honourable court makes a declaration that the conduct of the Defendant is a breach of the sanctimonious property rights of the Plaintiff.
    - (b) A declaration that the 1<sup>st</sup> Plaintiff is the rightful owner of the suit property.
    - (c) That the Honourable court be pleased to issue a permanent mandatory injunctive order restraining the defendant by himself, servants, employees, agents or any other person acting under his instructions or his interests from entering, interfering with the plaintiff's occupation and possession, otherwise dealing, entering, using, cultivating, residing, alienating and or in any other manner interfering with or dealing with the suit property.
  7. As to special and general damages, special damages will not only be strictly proved but they must also be specifically pleaded. No special damages were pleaded and documents were produced to show the special damages. Since some photographs of some destroyed buildings but where maker did not appear



in court to shed more light. We cannot tell whether they are true for the suit land nor can the court be able to tell the value of the destruction. The special damages are therefore declined. As to the general damages, we are to told what the same are in respect of. But since there is a claim for trespass, trespass is actionable per se I will award the sum of Ksh. 100,000/- under this head. I will also award the costs of the suit to the Plaintiff but since the same was not defended, the same will be on the lower scale. I also award interest on the General Damages and Costs to the Plaintiff with effect from the date of this Judgment until full payment of the same.

**JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT 15<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HON. MUGO KAMAU**

**JUDGE**

In the presence of :-

Court Assistant – Brenda

Plaintiff – Ms Cheriuyot holding brief for Mr. Orangi

Defendant - No appearance.

