



REPUBLIC OF KENYA



**KENYA LAW**  
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**Purkel v Pasua & 5 others (Environment & Land Case E026 of 2022)  
[2025] KEELC 3444 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3444 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E026 OF 2022**

**MD MWANGI, J  
APRIL 25, 2025**

**BETWEEN**

**JOHNSON OLE PURKEL ..... PLAINTIFF**

**AND**

**SINKWA PASUA ..... 1<sup>ST</sup> DEFENDANT**

**JOHN PASUA ..... 2<sup>ND</sup> DEFENDANT**

**SEMPELIAN PASUA ..... 3<sup>RD</sup> DEFENDANT**

**PARSORE PASUA ..... 4<sup>TH</sup> DEFENDANT**

**KANYIOMPE PASUA ..... 5<sup>TH</sup> DEFENDANT**

**MISERENJA PASUA ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background.**

1. The Plaintiff initiated this suit by way of a plaint dated 22<sup>nd</sup> March 2022 filed in court on 23<sup>rd</sup> March 2022. He asserts that he is the registered absolute proprietor of all that parcel of land known as Title No. Kjd/Loodariak/221 (hereinafter referred to as ‘the suit property’) having been issued with a title deed on 4<sup>th</sup> July 1990. His case was that on or about the year 2002, the Defendants illegally and without any color of right trespassed onto and unlawfully occupied a portion of the suit property. Though the Plaintiff took steps to eject them from his land, they refused to vacate as requested by the Plaintiff.
2. The Plaintiff avers that sometimes in October 2006 he wrote to the Land Registrar requesting the determination of the position of the beacons on his property. Contemporaneously, the Plaintiff also engaged the services of a private surveyor but he was unsuccessful owing to frustrations from the Defendants.



3. In the year 2016, the Defendants blatantly and without the Plaintiff's authority erected a church building on the Plaintiff's land. With the intervention of the area chief, the land Registrar Kajiado North eventually conducted a site visit which resulted in the preparation of a survey report dated 5<sup>th</sup> October 2021. The report prepared by the Survey of Kenya at the Ngong Survey Office according to the Plaintiff indicates the extent of encroachment of his land and recommends that the Plaintiff should seek redress from court to evict the Defendants from the suit property.
4. The illegal trespass and occupation of a portion of the Plaintiff's land by the Defendants has deprived the Plaintiff use and enjoyment of his land. The particulars of trespass and damages are particularized at paragraph 19 of the plaint.
5. The Plaintiff prays for judgment against the Defendants jointly and severally for;
  - a. An order directing the Defendants whether by themselves or their servants, employees or agents or otherwise howsoever to vacate and deliver vacant possession of land title No. Kjd/Loodariak/221 to the Plaintiff.
  - b. A permanent injunction restraining the Defendants whether by themselves or their servants, employees or agents or otherwise howsoever, from remaining on or continuing in occupation of Title No. Kjd/Loodariak/221.
  - c. An order directing the officer commanding Kisamis Police Station to ensure compliance with this Honourable Court's orders.
  - d. General damages for trespass.
  - e. Nominal damages for trespass.
  - f. Interest on (d) and (e) at court rates.
  - g. Any other relief the court may deem just and expedient to grant.
6. The plaint was accompanied by the witness statement of the Plaintiff dated 22<sup>nd</sup> March 2022 which reiterated the averments in the plaint and a list and bundle of documents including the copy of the title deed in the name of the Plaintiff and the survey report dated 5<sup>th</sup> October 2011.

#### **Response by the Defendants.**

7. The Defendants filed a statement of defence dated 26<sup>th</sup> April 2022 filed in court on 10<sup>th</sup> May 2022, in response to the Plaintiff's claim against them. They denied the contents of the plaint particularly the claim of occupation of a portion of the Plaintiff's land. They asserted that they were in occupation of their own parcels known as Title Nos. KJD/Loodariak/220, 222 and 223 which are adjacent the Plaintiff's parcel of land. They put the Plaintiff to strict proof.
8. The Defendants insisted that the church building is built on their own portions of the land and not on the suit property as alleged by the Plaintiff. They too denied the particulars of trespass putting the Plaintiff to strict proof.

#### **Evidence adduced at the hearing.**

9. This case proceeded to hearing with the Plaintiff testifying as a witness in his case. The Defendants in spite of service did not participate in the hearing of the case. They did not call any witness in support of their defence against the Plaintiff's case.



10. The Plaintiff wholly adopted his witness statement as his evidence in chief and further produced the nine (9) documents listed on his list of documents as exhibits in support of his case.

### **Submissions by the Plaintiff.**

11. Upon the close of the hearing, the court directed the Plaintiff to file written submissions. He duly complied and filed the submissions dated 3<sup>rd</sup> April 2025.
12. The Plaintiff submitted that he had proved ownership of the suit property by producing the title deed of the suit property. Further that the surveyor's report proved his claim of trespass against the Defendants. He pointed out that since the Defendants did not call evidence in support of their statement of defence, the averments therein remain mere allegations. He urged the court to find that he had proved his case against the Defendants.

### **Issues for determination**

13. From the analysis of the pleadings filed in this case, the ownership of the suit property was not in issue. The Defendants indeed acknowledged the Plaintiff's ownership of the suit property. What the Defendants have denied were the allegations of trespass against them insisting that they are in occupation of their own parcels of land which are adjacent to the Plaintiff's parcel.
14. The sole issue for determination then is whether the Plaintiff has proved the allegations of trespass against the Defendants. Secondly, and dependent on the outcome of the first issue is the issue whether the Plaintiff is entitled to orders sought against the Defendants. Finally the court will determine the issue of costs of the suit.

### **Analysis and determination**

15. The Plaintiff placed heavy reliance on the contents of surveyor's report dated 5<sup>th</sup> October 2021 as proof of his claim of trespass against the Defendants. The report which was produced as PE 7 describes the purpose of the survey as 'to ascertain the existence and acreage of the above parcel', that is Kjd/Loodariak/221. The observations recorded are to the effect there are no definite physical demarcations for the suit property. However, they were able to establish its boundaries. It was further observed that the particular site had some developments which apparently do not belong to the proprietor.
16. The conclusion in the report was that it seems to be a case of illegal occupation of the private property unless otherwise proven by the parties on the ground. The aggrieved party or complainant to seek court redress to remove the illegal occupant from the land.
17. This report in the court's opinion does not help the Plaintiff's case at all. As already noted, it was a report to ascertain the existence and acreage of the suit property. In this case however, neither the acreage nor the existence of the suit property is in dispute. I note that the report does not make reference to any church building on the suit property.
18. Amongst the other exhibits produced by the Plaintiff was a demand letter dated 15<sup>th</sup> November 2021 addressed to John Parsoi. It is the only demand letter exhibited. The Plaintiff did not bother to explain who John Parsoi was. None of the Defendants in this case is referred to as John Parsoi.
19. At paragraph 6 of his witness statement, the Plaintiff refers to pastor Ole Parsoi of Nasurn Baptist Church to whom he written to on or about 6<sup>th</sup> January 2016 requiring that they immediately cease the illegal construction on the suit property. According to that assertion it appears like pastor Ole Parsoi



of Nasurn Baptist Church is the trespasser who was erecting the church building. He has however not been sued as a Defendant.

20. The Plaintiff's allegation above raises the question of who exactly is trespassing into land. Is it Pastor Ole Parsoi or is it the Defendants?
21. The summons by the Land Registrar Kajiado North District which were produced as exhibits are on the other hand addressed to Pasual Ole Parsoi -222, Koley Ole Nena - 223 and Simon Kelenko Parsapayet - 220. None of these names appears in this case as a Defendant.
22. The burden of proof of the allegations of trespass was definitely on the Plaintiff. It matters not whether the allegations were controverted by the Defendants or not. As rightly held in the case of Gichinga Kibutha –vs- Caroline Nduku (2018) eKLR,  

“It is not automatic that instances where the evidence is not controverted the claimant shall have his way in court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”
23. The Plaintiff in this case has not discharged the burden of proof on a balance of probabilities. He has not proved the claim of trespass against the Defendants. His case must fail.
24. The Plaintiff's case against the Defendants is hereby dismissed but with no orders as to costs considering that the Defendants did not participate in the hearing of the case.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25<sup>TH</sup> DAY OF APRIL 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kiprotich for the Plaintiff

N/A by the Defendants

Court Assistant: Mpoye

