



**Laly v Magnate Ventured Limited (Civil Suit 682 of 2014)
[2022] KEELC 2879 (KLR) (23 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 682 OF 2014**

JA MOGENI, J

MAY 23, 2022

BETWEEN

SUKHDEV SINGH LALY PLAINTIFF

AND

MAGNATE VENTURED LIMITED DEFENDANT

JUDGMENT

1. This suit was instituted by the plaintiff by way of a plaint dated 28/05/2014 and amended on 17.10.2018 against the defendant. The plaintiff seeks general, special damages, mesne profits amongst other prayers.
2. The defendant has denied each and every allegation in the Plaintiff. In the alternative the defendant admits entering into a License Agreement with one Joseph Elijah Kariuki who he describes as the registered proprietor of Title Number Nairobi Block 93/1247. He states that the defendant duly erected and maintained a billboard at the present site from February 2013 but about January 2014. The Defendant received a letter from the Plaintiff's advocates alleging that the defendant has erected a Billboard on the plaintiff's parcel of land.
3. The defendant states that he engaged the plaintiff with a view to settling the matter in good faith on a without prejudice basis in order to establish the true boundaries but the plaintiff rushed to court and filed the instant suit. The defendant believes the plaintiff's suit discloses no cause of action and should be struck out with costs to the defendant.
4. The Plaintiff claims that the defendant unlawfully trespassed onto the suit properties without justifiable cause where it erected a commercial advertising Billboard on the suit property, under a Contract with a third-party through which the defendant received monies as Revenues for advertising in breach of the plaintiff's property rights.



5. Further the defendant has received unjust enrichment and unjustified profits through an illegality because he does not have lawful permission or legal authority to erect the Billboard on the Suit Property. Further the defendant receives advertising revenues as a result of its illegal actions and trespass through a contractual arrangement with a third party.
6. The suit proceeded for hearing on 10/03/2022 where the plaintiff called two witnesses and defendant had one witness.
7. PW1 Sukhdev Singh Laly is the plaintiff. He adopted his statement filed on 28/05/2014 as his evidence in chief and a number of documents which he wished to produce in evidence and these were marked as 1, 2, 3, 4, & 14 and as PWExh 1-5. The plaintiff testified that he became aware that the defendant, Magnate Venture Limited has put a billboard on his property in 2013 when one day he passed by his property and he saw the billboard. He inquired about the billboard and the security officer who was stationed on this property confirmed that the billboard had been on his property for four years. It was his testimony that since he had not given permission for anyone to erect a billboard on his property, he instructed his lawyers to write to the defendant.
8. The plaintiff testified that there was a lot of correspondence but no resolution. He stated that the defendants admitted erecting the billboard, but they never made attempts to resolve the issues. He stated that the billboard is still on the suit property from 2013 which is a period of 9 years and therefore he stated that he would like the court to order for payment of mesne profits but that if they agreed to talk, he was willing to hear the offer and they could settle the matter.
9. During cross-examination the plaintiff reiterated that he is the registered proprietor of Nairobi Block 93/1429. He testified that the billboard had been on the suit property for about four (4) years before he became aware of it in December 2013. He further stated that though the defendants had been saying one Elijah Kariuki gave them permission that he was not the owner of Nairobi Block 93/1429. He stated that he had seen the letter on page 17 of the defendant's bundle about multiple duplicate titles in the area where the plaintiff testified that his property is situated; that it had no bearing on his property which is the suit property. He testified and denied that he has ever received a letter from the Ministry of Lands in 2003 concerning his land nor a letter dated 11/03/2003 about his land.
10. In re-examination he restated that he became aware of the billboard in 2013 but that does not mean that that is when it was erected. He further contended that he made attempts to settle but this was thwarted. He denied knowing any one going by the name Joseph Elijah Kariuki. He testified that the billboard was on his land but the license agreement was with a different person. Further the billboard is still on his land, the suit property. On the issue about duplicity of titles he stated that at page 17 of the Defendant's trial bundle the issue is brought up but he states that he responded to this letter and his response is carried at page 28 of the plaintiff's bundle. He stated that though the letter from the defendant spoke about there being cases in court on the issue of duplicity, the letter did not cite any case number nor attach a copy of any duplicate title. He further stated that he did not know about letters from the Ministry of Land about the suit property and that he only got to know about it during the hearing of the case.
11. In the course of the plaintiff giving his evidence the Counsel for the defendant sought to cite the plaintiff for perjury but this was not possible since there is a clearly laid down procedure under Section 195 of the *Evidence Act* that the applicant should have followed.
12. PW2 – Alex Kimathi Zachary is an advocate of the High Court of Kenya. He adopted his witness statement dated 28/05/2014 as his evidence in chief. He gave an account of how he got wind that the plaintiff's land which is the suit property had a billboard erected on it by the defendant. He stated



that the plaintiff instructed him to write to the defendant and he testified that the first letter was done on 19/12/2013 which was to alerting the defendant that there was no payment of the requisite and consent for the erection of the billboard. This letter the plaintiff testified is contained at page 25 of the plaintiff's bundle he produced this as Exhibit No. 6 and he also produced documents numbered 7,8,9,10,11, 12 and 13 to be marked and produced and PWExh 7-13.

13. He stated that the defendant responded to their letter dated 19/12/2013 through a letter dated 10/01/2013. He stated that in the letter the defendant had confessed to engaging with a third-party Mr Elijah Joseph Kariuki in the belief that he was the owner of the suit property. According to PW2 the contents of this letter dated 10/02/2013 was both an admission and a denial. Further he stated that the defendants in their letter were willing to have a meeting. He testified that he responded to their letter vide his letter dated 24/01/2014 in which he advised the defendant to appoint a surveyor so as to establish the location of the billboard, this letter is contained at page 28 of the plaintiff's bundle. He testified that their letter was not responded to and they wrote another letter dated 20/03/2014 which was another demand letter asking the defendant to make payment of the licence fees for the period when the billboard had been erected on the suit property.
14. He testified that the defendants wrote to the plaintiff through the 2nd plaintiff his lawyer by sending an email dated 27/03/2014 in which they stated that they had engaged a surveyor. He testified that the defendants wrote again on 31/03/2014 the letter is contained at page 31 of the Plaintiff's bundle, and they stated that they had erected the billboard in 2013 and not earlier and that they had contacted a third party one Joseph Elijah Kariuki who was representing himself in the instant suit because the suit property belonged to him. He testified that in their letter, the defendants were willing to negotiate with the true owner if Joseph Elijah Kariuki was not the owner of the suit property where the billboard was erected. Further PW2 testified that the defendants did not dispute that the billboard was erected but they were blaming a third party.
15. It was PW2's testimony that the defendant through the letter dated 16/01/2014 made a proposal for a licence agreement to avoid having the billboard demolished and through discussions the figure agreed upon was Ksh 40,000 a month which translated to Ksh 480,00 per annum. It is his testimony that the defendants never honoured their word and the plaintiffs wrote to them on 21/05/2014 and sent a final demand. Further he contends that there is a survey report at page 66 of the plaintiff's bundle showing the location of the billboard which is on the plaintiff's parcel of land the suit property about 23 meters from the boundary of the 3rd Party Joseph Elijah Kariuki
16. In cross-examination he confirmed that they were not hasty in moving to court since on behalf of his client who is the plaintiff they wrote and negotiated with the defendant who however did not follow through the agreement. He stated that on page 34 the letter stated that it was not in dispute that the plaintiff was the owner of the suit property. He further stated that they included a survey report which is on page 66 of their bundle and it is uncontroverted and that the defendant had promised to engage a surveyor. He also stated that there was an official search on page 21 of the bundle dated 11/12/2013 showing the plaintiff as owner of the suit property. In further cross-examination he stated that he was not in court as an expert witness but to confirm matters of fact within his knowledge
17. In re-examination he confirmed filing the survey report which he reiterated is uncontroverted and that it was served on the defendants on 10/12/2014. There being no other witness the plaintiff closed his case.
18. DW1- Maureen Kabui Wakahia the legal manager at the defendant's company adopted her witness statement dated 28/02/2022 as her evidence in chief. In support of her claim, DW1 produced as exhibits 3 items in the list of documents dated 8/07/2014. The documents included the Agreement



between the defendant and the Third Party, a copy of the certificate of lease of the Third Party and email correspondence between the defendant and the plaintiff. She stated that it was not possible for the defendant to enter into agreement with any other party because the Billboard is erected on a road reserve and they are already paying KENHA and County Government of Nairobi. She prayed that the plaintiff's case be thrown out since the area where the billboard is being claimed by four parties.

19. In cross-examination DWI testified that she had no document filed in court authorizing her to testify on behalf of the company and that besides the witness statement there were no other supporting documents she filed. She confirmed that there was no survey done before the defendant signed an agreement with Joseph Elijah Kariuki nor did the defendant carry out any search. The witness stated that the billboard was demolished but they had no proof to show before the court. She stated that the agreement was also not registered and that it expired in 2016 and then the defendant started paying Nairobi City County but there were no documents filed in court as proof of these payments. The defendant testified that they never adduced any evidence to show the plaintiff's property was on a road reserve. Having no other witness, the defendant closed their case.

Issues For Determination:

20. Having reviewed and/or considered the Plaintiff, the witness statements and the documents that were filed by and/or on behalf of the Plaintiff and having similarly considered the written submissions and the case law filed. The following emerge as the issues for consideration and determination;
- i. Whether the Plaintiff is the lawful proprietor of the suit land.
 - ii. Whether the Defendant has trespassed onto the suit land and/or whether the actions of the Defendant are lawful.
 - iii. Whether the Plaintiff is entitled to compensation on account of the trespass.
Whether the Plaintiff is the lawful proprietor of the suit property?
21. The Plaintiff and his witness testified and informed the court about his ownership of the suit property and it is uncontroverted that he is the proprietor of the suit property. He also produced documents in court in respect to the suit property being the certificate of lease and the copy of the certificate of the official search dated 26/01/2007 which bore the name of the plaintiff.
22. On the basis of the totality of the evidence adduced and in particular the certificate of official search, there is no dispute that the property belongs to and is registered in the name of the Plaintiff.
23. In the premises, the Plaintiff herein is the lawful proprietor of the suit property and same is therefore entitled to partake of and/or benefit from same, to the exclusion of all and sundry, unless the Plaintiff has granted consent and/or permission in favor of such other third party.
24. 25. In my humble view, the Plaintiff having established her right to the suit property, same is therefore entitled to the benefits accruing from and or attendant to the provision of Section 24 and 25 of the [Land Registration Act](#) 2012.
25. In case of [Ocean View Plaza Ltd v Attorney General](#) [2002] eKLR, the Honourable court observed that;
- “Allotment of land to a citizen or others protected under [the Constitution](#), which action is symbolized by Title Deeds, invests in the allottee inviolable and indefeasible rights that can only be defeated by a lawful procedure under Land Acquisition Act”



26. The plaintiff is therefore the lawful and legitimate owner of the suit property and its rights thereto, must be protected and/ or vindicated in accordance with the law.

Whether the Defendant has trespassed onto the suit land and/or whether the actions of the Defendant are lawful.

27. The PW1 and PW2 both testified that they exchanged correspondence with the defendant on several occasions including emails and even phone conversations clearly guiding and indicating to the defendant that the plaintiff is the owner of the suit property, and besides the Plaintiff also signalled to the Defendant that by virtue of the plaintiff being the registered owner of the suit property, they were willing to have a discussion on license agreement for the billboard.

28. All the letters, emails and phone conversations were responded to and acknowledged except for the letter dated 21/05/2014 which was a demand letter that was not responded to.

29. The issue pertaining to and/or concerning the Plaintiff's title to the suit property, has been variously drawn to the attention to the Defendant and despite the various indications, the Defendant herein, has never taken any steps and/or actions, to challenge and/or impeach the Plaintiff's title.

30. Suffice it to say, that the Plaintiff's title remains valid and lawful and therefore the Plaintiff should be free to access, occupy and have possession and use the suit property for her benefit, subject only to the limitations stipulated under the law and not otherwise.

31. 34. On the other hand, any third party, cannot enter upon and/or remain on the suit property without the consent and/or permission of the Plaintiff and in the event of any such actions, then the activities by and on behalf of such third parties would, no doubt amount to trespass.

32. Despite the Defendant knowing that the suit property belongs to and is registered in the name of the Plaintiff, he has declined to engage with the plaintiff and not brought down the billboard that is still illegally erected on the suit property and therefore continued to infringe on the right to land of the plaintiff.

33. The defendant's action constitutes an act of trespass as defined in accordance to the 10th Edition of Black's Law Dictionary trespass is defined as follows;

“an unlawful act committed against the person or property of another; especially wrongful entry on another's real property. Clark & Lindsell on Torts, 18th Edition on page 923 defines trespass as any unjustifiable intrusion by one person upon the land in possession of another. The onus is on the Plaintiff to proof that the Defendant invaded his land without any justifiable reason”.

34. The *Trespass Act* defines trespass under section 3 (1) of the Act as follows:

Section 3 (1) of the *Trespass Act*, Cap 294 provides that:

"Any person who without reasonable excuse enters, is or remains upon or erects any structure on, or cultivates or tills or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence."

Thus, trespass is an intrusion by a person into the land of another who is in possession and ownership

35. The issue of ownership is not in dispute, through the correspondence exchanged between the parties and the uncontroverted survey report it is confirmed that the suit properties are owned by the plaintiff.



Plaintiff never authorized the defendant to enter his land and erect a bill board. I am therefore inclined to find that defendant had trespassed on the suit property belonging to the plaintiff.

Whether the Plaintiff is entitled to compensation on account of trespass

36. It is not in dispute that the plaintiff is the lawful and legitimate owner of the suit property and the actions and/or activities by the Defendant amounts to trespass. Therefore, I need to consider whether the Plaintiff is entitled to compensation.
37. The law on trespass has now crystalized and there is clarity on the fact that once trespass is proven and/or established, then the party aggrieved by the trespass, is entitled to compensation in the form of general damages.
38. The court in case of *Park Towers v Moses Chege & Others* (2014) eKLR, held that;

“I agree with the learned Judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case. As observed in the cases referred to there is no mathematical or scientific formula in such cases for assessment of general damages. However in the case before me I consider that the suit properties are sizeable parcels sitting on nearly three quarters of an acre of land located in the Central Business District (CBD). This is a prime property in the City Centre and any unlawful act of aggression and/or intrusion that prevents the rightful owner of the property from enjoyment of his ownership rights of possession and use is to be frowned at and is punishable by way of an award of damages.”
39. The suit property measures 0.2528 Hectares it is situated off Mombasa Road in Nairobi County and is ideal for commercial ventures such as advertisement since the suit property is a few metres from Mombasa Road. Therefore, the suit property is certainly ideal for commercial processes like erection of bill boards.
40. 47. Be that as it may, the Plaintiff herein has not been able to commence and/or to carry out development activities over and in respect of the suit property, as a result of the activities by the Defendant herein, who is keen to ensure that no construction and/or development is undertaken.
41. For the period the defendant has continued trespassing on the land of the plaintiff, the plaintiff was constrained from making any use of his property. The defendant testified that they will not pay the plaintiff for use of their land since they are paying Nairobi County and KENHA. The suit property clearly belongs to the plaintiff and not to the two institutions that the defendant is paying. The defendant seems keen to continue trespassing on the land.
42. I am therefore persuaded that with the continued trespass the plaintiff should be awarded general damages for trespass. The issue however is: what is the measure of it? This question was answered by E. Obaga J in the case of *Philip Ayaya Aluchio v Crispinus Ngayo* [2014] eKLR where it was held as follows:

“The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure 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 – VS – Green Park Development Co.* 986 S. W 2d 500 (No. App. 1999).



43. In *Nakuru Industries Limited v S S Mehta & Sons* [2016] eKLR where the court faced such a similar situation it was held as follows:

“ A similar situation pertains in the present case. The exact value of the land before and after the trespass is not proved. However, I have found the defendants did trespass onto the plaintiff’s land and conduct some excavation. For this reason I award the defendant damages in the amount of Ksh 500,000/= (five hundred thousand only) plus interest and costs of this suit from the date of this judgment until payment in full.”

44. In the case of *Willesden Investments Limited vs. Kenya Hotel properties limited* NBI H.C.C. NO. 367 of 2000 (a case cited by the plaintiff), the court stated that;

“There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that K.Sh. 10 000 000 is a reasonable award for general damages”.

45. I have taken into account the fact that the land was not damaged per se but the plaintiff’s land was utilized for erection of the billboard without compensation and the plaintiff was not able to earn from is land despite its vantage location off Mombasa Road. I am of the view that an award of Kshs.5,000,000/- as general damages is sufficient on account of general damages and the fact that the suit property is a commercial property off Mombasa Road.

46. The court in the case of *Joshua Ngeno v Kenya Power & Lighting Company Limited & County Government of Kericho* [2021] eKLR the honourable Judge entered judgment and stated;

Judgment is however entered for the Plaintiff against the 1st Defendant wherein I award him Kshs 5,000,000/= (five million shillings only) plus interest from the date of this judgment until payment in full, as compensation of the infringement of his right to use and enjoy the suit property.

47. Notably the Plaintiff had also sought for special damages, mesne profits, payment of license fees at prevailing market rates since February 2013, general damages, eviction of defendant and removal of illegal billboard plus costs.

48. For special damages, it is trite law that special damages require to be specifically pleaded and proved. In this case, the plaintiff has not pleaded nor proved this claim through production of the valuation report and receipts. I hence decline to allow the claim of special damages.

49. For mesne profits it is also trite law that these have to be proved too through production of supporting documents. The rent paid by the defendant to the Third Party or the City County and KENHA is not proved through production of documents. The court is therefore not able to assess the mesne profits and I decline to award this too.

50. The defendant has no legal mandate to use the suit land in any manner. As such this prayer for eviction of the defendant from the land is meritorious and is granted in addition to the general damages.

Final orders

Judgment is hereby entered in favour of the plaintiff against the defendant in the following terms:

a. Declaration be and is hereby issued that the Defendant has trespassed and is continuing to trespass onto the Plaintiff’s property.



- b. General damages be and is hereby awarded in favor of the Plaintiff for the sum of Kenya Shilling 5,000,000/= only for trespass on land
- c. The Defendant herein having since erected a billboard on the suit property, namely L.R No. Nairobi/Block 93/1429, same be and is hereby directed to remove and/or otherwise, pull down the said bill board within the next 60 days from the date hereof and in default, the Plaintiff shall be at liberty to proceed and demolish the said bill board without further notice to the Defendant.
- d. In the event that the Plaintiff is disposed to carry out the demolition subject to the preceding paragraph, same shall be at liberty to apply to the Deputy Registrar for an order for provision of security, to be provided by the nearest police station and/or sub-county Police Commandant, for purposes of enforcement of and/ or Compliance with, the court orders
- e. The award of General damages in line with order [c] hereof shall attract interest at court rate from the date of judgment
- f. Costs of the suit are awarded to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT ON THIS 23RD DAY OF MAY AT NAIROBI 2022

.....

MOGENI J

JUDGE

IN THE PRESENCE OF:-

..... Plaintiff

..... Defendant

Mr Vincent Owuor...Court Assistant

