



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nurani v Laboso (Environment & Land Case 80 of 2017)  
[2022] KEELC 3704 (KLR) (11 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3704 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 80 OF 2017**

**MAO ODENY, J  
MAY 11, 2022**

**BETWEEN**

**FEIZAL SADRUDIN SHAMSUDIN NURANI ..... PLAINTIFF**

**AND**

**ISAAC KIBET LABOSO ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated February 20, 2017, the plaintiff herein sought the following orders against the defendant:
  - a) An order of eviction of the defendant, his servants and/or agents from the said land known as Pioneer/langas Block 1/642.
  - b) A permanent injunction restraining the defendant from trespassing onto the suit land as as [sic] Pioneer/langas Block 1/642.
    - a. Costs of the suit.
    - b. Any other relief that the court may deem just and fair to grant.
2. The plaintiff's case is that he is the registered owner of Pioneer/langas Block 1/642 (the suit property) having inherited the same from his late father who had bought the same from one Dartius Kiplagat Tenai Malel in 1985. That sometime in December 2016, the Defendant trespassed onto the suit property.
3. The defendant filed a defence dated April 20, 2017 where he averred that he is the registered proprietor of another parcel of land title No. Pioneer/Langas Block 1(Malel) 195.
4. The matter proceeded to full trial where the plaintiff called a total of 5 witnesses in support of his case. The defence case was closed on November 9, 2021 for lack of witnesses.



## Plaintiff's Case

5. PW1 Feizal Sadrudin Shamsudin Nurani adopted his statement dated February 20, 2017 and list of documents. He testified that he is the registered owner of the suit property measuring approximately 0.599 Ha together with the adjacent parcel known as Pioneer/langas Block 1/641. He explained that the two parcels of land were part of land known as Pioneer/langas Block 1/80 registered in the name of one Esther Chebet Malel. That the land Pioneer/langas Block 1/80 was subdivided into 11 portions with registration numbers ranging from 632 to 642.
6. PW1 further stated that the suit property together with plot 641 were purchased by his father who passed on in 1996 before the same could be transferred to him. Upon his father's demise, he was appointed the legal representative together with his sister and upon successful distribution of his father's estate, he was registered as the owner of the suit property. It was PW1's evidence that there was no one in occupation of the suit property until sometime in 2016 when he found the defendant therein.
7. On cross examination by Mr. Ngigi, PW1 stated that there was no agreement between himself and Esther Malel but there was a transfer.
8. PW2 Rose Jebichi Tenai also adopted her written statement dated September 25, 2017 and told the court that she is the widow of the late Dartius Kiplagat Tenai who sold the suit property to the Plaintiff's father. According to her the mother title was registered in the name of Esther Malel (now also deceased), her late husband's sister. She testified that her late husband sold 2 acres to the plaintiff's father and that the mother title was later subdivided and the portions bought by the plaintiff's father fell on number 641 and 642. She added that both her husband and the plaintiff's father passed on before the transfer could be finalized.
9. PW2 testified that transfer of the suit property to the plaintiff was done when Esther Malel was still alive. PW2 also stated that Plot Numbers 193 and 195 were not part of the subdivision of Pioneer/langas Block 1/80.
10. On cross-examination by counsel for the defendant, PW2 stated that she was not a witness to the agreement for the sale of 2 acres to the plaintiff's father but was aware that the husband sold the land. Further that there is a succession cause still ongoing in respect of the estate of the deceased husband.
11. PW3 Ezekiel Kongo Mwangi similarly adopted his written statement dated October 3, 2018 and testified that he was working as an assistant surveyor at Kiplan Surveyors when Pioneer/langas Block 1/80 was subdivided. He told the court that the land was subdivided into 11 plots with resultant numbers running from 632 to 642. He testified that Plot numbers 193, 194 and 195 were not part of the said subdivision and that the Registry Index Map (RIM) also showed the 11 plots that arose from Poiner/langas/block 1 (malel)80 .
12. PW4 Thomas Kiprop Kirui a surveyor who worked with PW3 to survey and eventually subdivide the plot no. 80 told the court that Esther Malel approached his assistant PW3, to survey the land whereby the land was subdivided into 11 plots with numbers running from 632 – 642 as per the exhibited map.
13. PW5 Sarah Chelimo Maina a Land Registrar at Uasin Gishu County, testified that the suit property was first registered in the name of Esther Chebet Malel for a lease term of 99 years from January 1, 1998. That this lease was however registered on October 19, 2016 and was transferred to Sadrudin S Nurani.
14. It was PW5's evidence that stamp duty was paid and that Plot No. 193 and 642 could not be referring to the same land since once a number is allocated under the Registered Land Act it does not change and



produced a certified copy of the green card and transfer documents. That all compliance documents were submitted with regard to the transfer of Pioneer/langas/block1/642 to the Plaintiff

15. That was the close of the plaintiff's case as the defendant did not tender any evidence.

### **Plaintiff's Submissions**

16. Counsel filed submissions and identified two issues for determination namely:
- a) Whether the plaintiff is the registered owner of land parcel No. Pioneer/langas/block1/642.
  - b) Whether the Defendant has trespassed upon and erected structures on land parcel No. Pioneer/langas/block 1/642.
17. On the first issue counsel submitted that the Plaintiff is the registered owner of land parcel Pioneer/langas/block 1/642 as he produced a Certificate of lease issued in his name for the subject land under the *Registered Land Act* cap 300 (now Repealed). Further that no evidence has been adduced to rebut that position.
18. On the second issue as to whether the defendant has trespassed on the suit land counsel relied on the definition of trespass as per Clerk & Lindsell on Torts, Sweet & Maxwell, 18th Edition, at p923, where trespass to land is defined as follows: -
- “Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another.”
19. Ms Odwa submitted that the defendant is a trespasser as he is on the plaintiff's suit land illegally and since there is no evidence to counter the plaintiff's claim, counsel urged the court to allow the plaintiff's claim as prayed.

### **Analysis and Determination**

20. The issues for determination in this case is whether the Plaintiff is the registered owner of the land parcel Pioneer/langas Block 1/642, whether the Defendant has trespassed on the land parcel Pioneer/langas Block 1/642 and whether the plaintiff is entitled to the orders sought for eviction and permanent injunction.
21. The plaintiff gave evidence and called 4 witnesses who corroborated his evidence. This evidence is uncontroverted. The plaintiff's evidence was supported by documentary evidence whereby he produced the sale agreement, transfer document and Certificate of Lease to prove that he is the registered owner of the suit land.
22. PW3 also confirmed that Plot numbers 193, 194 and 195 were not part of the said subdivision and that the Registry Index Map (RIM) also showed the 11 plots that arose from Poineer/langas/block 1 (malel)80.
23. Section 27 of the Registered Land Act (Now repealed) is replicated in Section 24 of the [Land Registration Act](#) recognizes the registration of a person as the proprietor of land to vest in that person the absolute ownership of that land together with all rights and privileges appurtenant thereto. Section 24 of the [Land Registration Act](#) No 3 of 2012 which provides as follows:
- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and



- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Section 25 (1) of the same Act further provides that:

1. The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
  - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

Section 26 of the same Act provides that:

1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
  2. A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
24. The plaintiff's title has not been challenged by the defendant or anybody else on any ground which include, fraud, illegality or unprocedural acquisition through corrupt means. If that was the case, then the court is empowered to impeach such a title. The plaintiff is therefore entitled to the protection of the said title under the Act and under article 40 of *the Constitution* of Kenya which guarantees the right to property of every person.
25. On the second issue as to whether the defendant is a trespasser on the suit property. The plaintiff testified that the Defendant entered into the suit property in December 2016 and he issued him with a demand notice to vacate but defendant has refused to do so necessitating the filing of this suit.



Section 3 (1) of the Trespass Act, defines trespass as follows:

“ 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.”

26. Trespass is also defined by the 10<sup>th</sup> Edition of Black’s Law Dictionary as;

“an unlawful act committed against the person or property of another; especially wrongful entry on another’s real property.”

27. The entry of the defendant into the suit land was not with the permission of the plaintiff and therefore the defendant’s continued occupation of the suit land amounts to trespass. In the case of John Kiragu Kimani v Rural Electrification Authority [2018] eKLR also in defining trespass relied on Clark & Lindsell on Torts, 18th Edition on page 923 which 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.”

28. The plaintiff took the court through an elaborate process on how he acquired the suit property, the subdivision and the issuance of certificate of lease which evidence the court finds to be credible.

29. Having found that the defendant’s occupation of the suit land amounts to trespass, it follows that the Plaintiff is also entitled to peaceful enjoyment of his property to the exclusion of the defendant. The plaintiff is therefore entitled to an order of a permanent injunction restraining the defendant from trespassing on the suit property. The plaintiff has met the principles for grant of injunctions as enunciated in the case of Giella v Cassman Brown & Company Limited 1973. E.A 358.

30. I have considered the pleadings, the evidence on record and submissions by counsel and find that the plaintiff has proved his case on a balance of probabilities. I therefore enter judgment for the plaintiff against the defendant in the following terms:

- a) The defendant, his servants and agents to give vacant possession to the plaintiff to land known as Pioneer/langas Block 1/642 within the next 30 days failure to which eviction to issue.
- b) A permanent injunction is hereby issued restraining the Defendant from trespassing onto the suit land as known as Pioneer/langas Block 1/642.
- c) Costs of the suit.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 11<sup>TH</sup> DAY OF MAY 2022.**

**M.A. ODENY**

**JUDGE**

**NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.**

