



**Honam Holdings Limited v Maithya & 2 others (Environment & Land
Case E013 of 2022) [2025] KEELC 3096 (KLR) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E013 OF 2022**

**A NYUKURI, J
APRIL 2, 2025**

BETWEEN

HONAM HOLDINGS LIMITED PLAINTIFF

AND

NZUKI MAITHYA 1ST DEFENDANT

ISAAC GITATA 2ND DEFENDANT

JONES KISYULA 3RD DEFENDANT

JUDGMENT

1. By a plaint dated 1st March, 2022 the plaintiff sought the following orders against the defendants;
 - a. A declaration that the plaintiff is entitled to exclusive use and unimpeded right of possession and occupation of all that piece of land known as Land Reference Number 12610/17 (original number 12610/3/14).
 - b. A declaration that the 1st and 2nd defendants whether by themselves, or their servants or agents and/or otherwise howsoever are not entitled to enter the suit property.
 - c. An injunction restraining the Defendants whether by themselves, their servants and or agents from selling, inspecting, invading, purporting to sell, advertising or in any way interfering with the plaintiff's ownership of the property known as Land Reference Number 12610/17 (original number 12610/3/14) in any way or at all.
 - d. An order of eviction be issued against the 1st and 2nd defendants, their servants, agents and others claiming through them and occupying the suit property and that such order be effected under the supervision of the Officer Commanding Station Athi River Police Station.
 - e. General damages for trespass.



- f. Costs to this suit together with interest thereon at such rate and for such period of time as this Honourable court may deem fit to grant.
2. The plaintiff averred that it was the registered proprietor of the parcel of land known as L.R NO. 12610/17 (original number 12610/3/14) situated in N.E of Athi River Township in Machakos County measuring 11.59 Hectares, (hereinafter referred to as the suit property). It further stated that it acquired the property from its director one Mr. Mungai Ngaruiya, who transferred the property to the plaintiff on 9th June, 2020, while Mr. Ngaruiya had purchased the same on 2nd June, 2005.
 3. That in 2013, there were invaders on the suit property who had began constructing thereon leading to their arrest when they turned violent and were subsequently charged in Mavoko Criminal Case No. 1293 of 2013. That another group of invaders began constructing a fence on the suit property, which led to charges against them vide Mavoko Criminal case No. 435 of 2014.
 4. The plaintiff further stated that the plaintiff's director found the 2nd defendant on the suit property claiming he had purchased a portion thereof from Syokimau Bright Homes Limited. It also averred that its director examined the 2nd defendant's share certificates and sale agreements and sought to search the said company, but found that the same did not exist. The plaintiff contended that it has never sold the suit property to Syokimau Bright Homes Limited, and that hence the purported sale by 2nd defendant is illegal.
 5. It further stated that the 2nd defendant was charged with the offence of forcible detainer vide Mavoko Criminal Case No. 836 of 2014 and found guilty and that his appeal in Machakos High Court Appeal Case No. 29 of 2019 was dismissed. It contended that despite the above, the 2nd defendant in collusion with the 1st defendant are now involved in subdividing the suit property and had begun constructing thereon without the plaintiff's consent. It accused the 1st and 2nd defendants of fraud.
 6. The defendants filed a defence dated 22nd July, 2024 denying the plaintiff's claim. They averred that they were strangers to the plaintiff's claim and argued that the plaintiff's suit was res judicata as the same claim had been heard and determined in ELC Case No. 986 of 2014. They denied having occupied the suit property or claimed ownership or subdivided the same and further denied particulars of fraud and misrepresentation attributed to them. The defendants also filed a Notice of Preliminary Objection dated 22nd July, 2024 against the suit alleging that the plaintiff's suit was res judicata.
 7. The Preliminary Objection was dismissed on 30th July, 2024. The case proceeded to hearing, by way of viva voce evidence. The plaintiff presented one witness and closed his case while the defendant closed their respective cases without presenting any evidence.

Plaintiff's evidence

8. PW1 was Mungai Ngaruiya a director and chairman of the plaintiff company. He adopted contents of his witness statement dated 1st March 2022 as his evidence in chief. His testimony was that the plaintiff was the registered owner of the suit property. That he was the previous registered proprietor of the suit property which he had purchased from the National Bank of Kenya by virtue of a decree of charge. That having been registered owner thereof on 2nd June, 2005, he transferred the same property to the plaintiff on 9th June, 2020. Further that in 2013 and 2014, there were invaders on the suit property whereof they were charged with criminal charges at Mavoko Law Courts vide Criminal Case Nos. 1293 of 2013 and 435 of 2014.



9. That when he found the 2nd defendant on the suit property, the latter showed him share certificate and sale agreement and alleged to have purchased the suit property from Syokimau Bright Homes Limited but that a search for the said company did not yield anything.
10. He further stated that although the 2nd defendant was charged and convicted of forcible detainer, in collusion with the other defendants, he continued with subdividing the suit property, purporting to sell the same. He insisted that the plaintiff has never sold the suit property to the defendants herein.
11. He produced documents attached to the Plaintiff's list of documents dated 1st March 2022 as P. Exhibit Nos. 1 to 8 and documents attached to the plaintiff's supplementary list of documents dated 6th June 2024 as P. Exhibit Nos 9 to 15.
12. In cross-examination, he stated that he was the plaintiff in Case No. 986 of 2014 where he had sued Jefferson Ndigwa, Syokimau Bright Homes Ltd and Isaac Maina Gitata as they had trespassed on his land and that the case was concluded whereof the court held that he was the owner of the suit property and a permanent injunction was issued against the defendants in that suit.
13. The witness stated that the parties herein were different from the parties in ELC Case No. 986 of 2014 as the plaintiff herein was not the plaintiff in the said case. He confirmed that the suit property in the former suit was the same as in the current suit. He stated that prayers sought in this suit were different as the defendants chased away the plaintiff's worker in 2022 and began subdividing the plaintiff's land. That whereas he sought injunction in 2014, in this case the defendants have constructed on the plaintiff's property putting up a site office.
14. In re-examination, he stated that the 1st and 3rd defendants were not parties to the suit No. 986 of 2014. That marked the close of the plaintiff's case. The defence counsel informed court that the defendants did not wish to call any witness. The defence counsel therefore closed the defence case without presenting a witness.
15. Parties were directed to file written submissions in support of their respective cases. On record are the plaintiff's submissions dated 29th August, 2024. Counsel for the plaintiff submitted that the suit was not res judicata. They relied on section 7 of the *Civil Procedure Act* and the case of Benard Mugo Ndegwa v James Nderitu Githae & 2 Others (2016) e KLR and argued that the parties in the previous suit are not similar as parties in the current suit and that the alleged previous suit has not been determined. Counsel further submitted that the 2nd defendant had commenced fresh invasion of the suit property and that therefore the cause of action was different as he had now began constructing on the suit property.
16. On whether the defendant had breached the plaintiff's right to property, counsel relied on Section 26 of the *Land Registration Act* and the case of Margaret Njeri Wachira v Eliud Waweru Njenga(2018) eKLR and argued that title document is a prima facie evidence of ownership of land.
17. It was further contended for the plaintiff that the plaintiff being the registered owner of the suit property, was entitled to peaceful and quiet enjoyment of the land he owns and the court was referred to the case of Kamoye v Tipango & 2 Others (2024) eKLR.
18. Counsel argued that the plaintiff had proved being bona fide proprietor of the suit property and was therefore entitled to the orders sought.
19. On whether the plaintiff was entitled to general damages, counsel submitted that trespass is actionable per se without proof of actual damage. They submitted that as the defendants had constructed on the suit property and subdivided the same, and they ought to pay damages to the plaintiff. They argued



that the land was trespassed upon is 12 hectares and that the defendants' constructions have not been permitted by the relevant authorities. Counsel urged the court to award a sum of Kshs. 180,000,000/= for damages for trespass arguing that the land is valued at Kshs. 15,000,000/= per hectare.

20. On trespass, reliance was placed on the cases of Philip Agayu Aluchiro v Crispin Ngayo(2014) EKLR and Park Towers Ltd v John Mithano Njike & 7 Others (2014) eKLR among others which this court has duly considered.

Analysis and determination

21. The court has carefully considered the pleadings, evidence and submissions in this matter. As the defence of res judicata was determined before trial, that matter is no longer in issue. Therefore, two issues arise for this court's determination, namely;

- a. Whether the plaintiff is the lawful proprietor of the suit property; and
- b. Whether the defendants trespassed on the suit property.

22. Section 26 of the *Land Registration Act* provides for conclusiveness of title as follows;

Certificate of title to be held as conclusive evidence of proprietorship

- (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.

23. Therefore, registration of land vests in a proprietor absolute and indefeasible rights, unless it is proved that the acquisition of such registration was by fraud, misrepresentation, illegality, improper procedure or corruption; whether or not the registered proprietor was party thereto.

24. In the instant case, the plaintiff presented title and search certificate together with sale agreement and transfer which demonstrated that it lawfully acquired the suit property which its director had purchased at a consideration, and since 2013, it remains the registered proprietor of the suit property. This evidence was not rebutted or challenged in any manner as the defendants never presented any evidence challenging the plaintiff's evidence. I am therefore satisfied that the plaintiff has proved that it is the lawful proprietor of the suit property.

25. Sections 24 and 25 of the *Land Registration Act* provides for interests conferred by registration and rights of a registered proprietor respectively as follows;

24. Interest conferred by registration

Subject to this Act—

- 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.
25. Rights of a proprietor
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.
26. Therefore, a registered proprietor of land has absolute ownership thereof and is entitled to enjoy quiet possession and use of such land without interference from third parties. In this case, the plaintiff has shown by photographs produced in evidence that the defendants have trespassed on the suit property and constructed thereon. The judgment in Machakos High Court Criminal Appeal No. 29 of 2019 show that the 2nd defendant's appeal against conviction of the offence of forcible detainer regarding the suit property was dismissed. Therefore, the defendants have no proprietary interest in the suit property, hence have no right to be on the suit property or in any way interfere with the same and their presence thereon is unlawful, without lawful justification and the same amounts to trespass. In the premises, the plaintiff is entitled to a permanent injunction to restrain the defendants from interfering with the suit property as well as an order of eviction against the defendants.
27. Regarding general damages for trespass sought by the plaintiff, it is trite that trespass is actionable per se without proof of actual damage. In the case of *Duncan Nderitu Ndegwa v KP&LC Limited & Another* [2013]e KLR the court held that once trespass to land is established, it is actionable per se and no proof of damage is necessary for the court to award damages for trespass.
28. In the instant matter, and from the plaintiff's evidence on record, it is clear that the defendants have trespassed on the suit property measuring about 12 hectares. The value of the property was not pleaded and the value of Kshs. 15, 000, 000/= per hectare was only mentioned in the plaintiff's submissions, where the plaintiff sought Kshs. 180, 000, 000/= for damages for trespass. Submissions, being mere persuasive arguments cannot be a substitute for pleadings and evidence and therefore the court will disregard the same and consider what was pleaded. It is not denied that the defendants have put up a site office on the suit property and continue with the subdivision of the property despite the conviction of the 2nd defendant of the criminal offence of forcible detainer. Considering that the suit property measures about 30 acres and the fact that the defendants have denied the plaintiff the use of its property since 2022 to date, a period of three years, I find that an award of the sum of Ten Million Kenya Shillings (Kshs. 10, 000, 000/=) shall be reasonable compensation for general damages for trespass.
29. In the end, I find and hold that the plaintiff has proved its case against the defendants on the required standard and I hereby enter judgment for the plaintiff against the defendants jointly and severally as follows;



- a. A declaration is hereby made that the plaintiff is entitled to exclusive use and unimpeded right of possession and occupation of all that parcel of land known as Land Reference Number 12610/17 (original number 12610/3/14).
- b. A declaration is hereby made that the 1st and 2nd defendants whether by themselves, or their servants or agents/or otherwise howsoever are not entitled to enter the parcel of land known as Land Reference Number 12610/17 (original number 12610/3/14).
- c. An order of permanent injunction is hereby issued restraining the defendants whether by themselves, their servants and or agents from selling, inspecting, invading, purporting to sell, advertising or in any way interfering with the plaintiff's ownership of the property known as Land Reference Number 12610/17 (original number 12610/3/14) in any way or at all.
- d. The 1st and 2nd defendants, their servants, agents and others claiming through them and occupying the parcel of land known as Land Reference Number 12610/17 (original number 12610/3/14) are ordered to vacate the said land in ninety (90) days of this judgment and in default, eviction orders to issue and the Officer Commanding Station Athi River Police Station shall provide security during the eviction process.
- e. A sum of Ten Million Kenya Shillings (Kshs. 10, 000, 000/=) is hereby awarded to the plaintiff being compensation for general damages for trespass. Interest thereon shall run from the date of this judgment till payment in full.
- f. Costs to this suit are hereby awarded to the plaintiff and shall be borne by the defendants.

30. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 2ND DAY OF APRIL, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

A. NYUKURI

JUDGE

In the presence of;

Ms. Wanja for the plaintiff

No appearance for the defendants

Court Assistant: M. Nguyai

