



CKK Estate (1973) Limited v County Government of Kiambu & another (Environment & Land Case 96 of 2020) [2022] KEELC 14885 (KLR) (17 November 2022) (Judgment)

Neutral citation: [2022] KEELC 14885 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 96 OF 2020
JG KEMEI, J
NOVEMBER 17, 2022**

BETWEEN

CKK ESTATE (1973) LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF KIAMBU 1ST DEFENDANT

**KIMANI RANJI KAMAGURU (MEMBER OF COUNTY ASSEMBLY –
NDUMBERI WARD) 2ND DEFENDANT**

JUDGMENT

1. The Plaintiff sued the Defendants vide its plaint filed on the November 11, 2020 seeking the following orders;
 - a. A declaration that the Plaintiff, CKK Estate (1973) Ltd is the registered proprietor of LR No 134/8 and 134/4 entitled to the absolute ownership use and quiet possession of the suit premises.
 - b. A declaration that there is no public road or road access passing through the suit premises viz L R No 138/8 as per the judgement in ELC 428 OF 2017-, CKK Estate (1973) Ltd v County Government of Kiambu and James Gicheru delivered on December 5, 2018 by the ELC Court at Thika.
 - c. A declaration that the Defendants' trespass and destruction of the Plaintiffs private property was intentional willful and deliberate.
 - d. A permanent injunction restraining the Defendant's jointly and severally their servants, agents, employees and any person claiming or acting or developing a road through the suit premises or interfering in nay manner with the Plaintiff's quiet possession ownership and use of the suit premises.



- e. Kshs 2,594,880/- being the value of the 102 coffee trees destroyed.
 - f. General damages for trespass and lost income
 - g. Punitive and exemplary damages for trespass on account of repeated and contemptuous trespass
 - h. Costs of the suit with interest thereon at Court rates
 - i. Any other relief the Court deems fit to grant.
2. It is the Plaintiffs case that at all material times it is the registered proprietor of land reference No LR NO 134/8 and LR No 245/4 known as CKK Njunu Estate in Kiambu County. That the Defendant's agents and or employees trespassed onto the suit land without the consent of the Plaintiff and proceeded to create a road, dug up a section through the land with the intention of creating a public all- weather road resulting into destruction of 102 mature coffee trees leading to loss and damage to the Plaintiff.
 3. According to the application dated the February 11, 2021 the Plaintiff sought orders for the striking out of the 1st Defendant's statement of defence dated the December 9, 2020.
 4. At the hearing, the Plaintiff led evidence and presented two witnesses while the Defendants were absent despite evidence of service. The 1st Defendant was represented by counsel when the hearing date was fixed on the March 8, 2022.
 5. On July 19, 2022 Samuel Karuga Koinange, a director of the Plaintiff testified in support of the Plaintiffs case. He relied on his witness statement dated the October 1, 2020 and produced documents marked as PEX No 1-10. He stated that on the June 24, 2020 at around 4 pm he received a telephone call from his foreman namely Gilbert Nganga informing him that the 2nd Defendant in the company of other people had trespassed on to the suit land using motor vehicle No KBW 875X and earth moving tractor Registration No 22CG273A which he took photographs of as well as the activities that they were being undertaken which included interalia digging through the land and destroying coffee trees in the process. That a search was conducted by his advocate which revealed that the motor vehicle belonged to the 2nd Defendant while the tractor belonged to the County Government of Kiambu. That the driver of the earthmoving tractor dug up a section of the land with the intention of creating a road through the property and as result 102 coffee trees were destroyed. He produced a photograph that he claimed captured the activities and the destruction on the land. That he advised his foreman to report the invasion to the police station. Thereafter he retained the services of Circuit Valuers & Management Consultants registered valuers to inspect the premises and carry out a valuation and assess the damages on the land, which valuers returned a valuation of Kshs 2,594,880/-. He informed the Court that no compulsory acquisition has been done to warrant the taking of the portion of the land.
 6. PW2 - Gilbert Nganga stated that he is employed by the Plaintiff as an estate foreman where he also resides. He relied on his witness statement dated the October 1, 2020. Whilst narrating the events of the June 24, 2020, he stated that Defendants entered the suit land without any consent or authority using a motor vehicle No KBW 875X and earth moving tractor aforesaid whereupon the driver of the earth moving tractor was directed by the Defendants to dig up a section of the land with the intention of creating a road through the property. That in the process they destroyed 102 coffee trees. That the 2nd Defendant was present and in the company of other people. Using his phone, he took photographs and sent them to his employer, PW1. In addition, that he reported the matter to Kathpat Police Station on the May 26, 2020 under OB No 04/26/05/2020 as well as Kiambu Police Station under OB No 24/29/05/2020.



7. With that the Plaintiff closed its case and Counsel for the Plaintiff informed the Court that she was not going to file any written submissions and urged the Court to determine the matter based on the evidence on record.
8. The key issue for determination is whether the Plaintiff has proven his case.
9. The case of the Plaintiff was not controverted given the Defendants were absent during the hearing despite service of summons. That said the Plaintiff however retains the onus to discharge the burden of proof however undefended the suit is. In the case of *Gichinga Kibutha v Caroline Nduku* [2018] eKLR, the Court held that:-

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

10. PW1 led evidence that it is the registered owner of the suit land known as Njunu Estate and produced a copy of the title for the suit land. A land owner is conferred certain clear interests by the act of registration. Registration vests in the land owner the absolute ownership of the land together with all rights and privileges attached to the land which include possession and quiet enjoyment of his tenement. The registered owner is also vested with the express interest rights described in the title together with all the implied and expressed rights and privileges belonging thereto and subject to the implied or expressed agreements liabilities or incidents of the title or lease. See section 24 and 25 of the [Land Registration Act](#).
11. The rights of a land owner are protected in law and can only be disturbed as provided by law. Unchallenged evidence was led that the length of the road dug out measures 306 metres. Anything outside the law is an illegality for which the law frowns on.
12. In this case in the absence of any evidence to the contrary I am satisfied based on the copies of title and evidence led before me that the Plaintiff is the absolute owner of L R No 134/8 and entitled to the use and quiet possession of the suit premises.
13. The cause of action of the Plaintiff is premised on a tort of trespass. Trespass is defined as Trespass is defined as 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.”
14. According 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.”
15. In the case of [Entick v Carrington](#) [1765] Lord Camden stated that;

“Our law holds the property of every man so sacred that no man can set his foot upon his neighbour’s close without his leave.”
16. A claimant in an action for trespass need not be an owner perse. He could also be in possession under licence. In the case of [M’Mkanya v M’Mbijiwe](#) [1984] KLR 761 trespass being a tort is a violation of the right of possession and the Plaintiff must show that he has the right to immediate and exclusive



possession of the property and he does not need to prove damage. If the Plaintiff has the right to possess and the Defendant intentionally entered the land without consent and authority of the Plaintiff even though under mistaken belief of ownership, the same amounts to trespass.

17. I have perused the Photographs on record on pages 22-33 of the trial bundle which shows the area dug and ploughed through the land including parts where coffee trees are being uprooted by the earth moving tractor. On page 34 and 35 are motor vehicle copy of records showing that the motor vehicle is registered in the name of the 2nd Defendant and the earth moving tractor belongs to the 2nd Defendant. The evidence of PW1 and PW2 having not been controverted and taken together with the photographs and motor vehicle searches goes to prove evidence of trespass in the absence of any consent and or authority of the Plaintiff to the Defendants to so enter the land. The Defendants having entered the land without any lawful or justifiable cause the Defendants actions amounted to trespass.
18. In the case of *Bakari v Kalumuna Mwanza* [1970] THCD N 229 the Court held that the law permits a fresh action for trespass every time one is committed. It is evident that the Plaintiff had sued the 1st Defendant alongside a Mr James Gicheru in a prior suit in ELC 428 of 2017 for trespass which form a series of actions of the 1st Defendants agents and servants which are not dissimilar to the current facts, the only divergence being the current trespass occurred in 2020 while in the previous suit it was 2007.
19. The Plaintiff pleaded special damages in the sum of Kshs 2,594,880/- being the loss of 102 coffee trees. The valuation report on page 60 of the trial bundle states as follows;

“ Therefore 102 trees will produce 3060 kilos of coffee berries or 18360 kilos over a period of over 6 years period. Upon pulping these berries will produce 510 kilos of clean coffee per year or 3060 kilos of clear coffee over a 6 year period. Currently a 50 kilo bag of clean coffee is trading at US 400 OR US 8 per kilogram. Assuming the current exchange rate of Kshs 106 to the dollar, the value of the forgone kilos on clean coffee due to the damaged coffee trees is US Dollars 24,480.00 OR Kshs 2,594,880/-.”
20. The Defendants having failed to lead evidence in rebuttal, I am satisfied that the Plaintiffs have proved their claim as set out above and I proceed to so award.
21. It is trite that in trespass the claimant need not prove damages as trespass is actionable per se. In considering the quantum of damages to be awarded to a claimant the Court will consider what is reasonable in the circumstances going by the size of the land involved, the length of time the Plaintiff has been deprived of the land and the purpose for which the Plaintiff intended to use the land for. See the case of *Philip Aluchio v Crispinus Ngayo* [2014] eKLR, the Court 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”
22. The Plaintiff has demonstrated that they have suffered loss as a result of the Defendants' trespass onto the land and having considered the area affected, the crops destroyed and the general inconvenience to the Plaintiff, I award them Kshs 200,000/- on this heading.
23. The next heading of damages prayed for by the Plaintiff is that of exemplary damages. Exemplary damages should be awarded in two cases. 1st in a case of oppressive, arbitrary or unconstitutional action by the servants of government and secondly in cases where the Defendants' conduct has been calculated by him to make a profit for himself which may as well exceed the compensation payable to the Plaintiff.



Halsbury's Laws of England 4th Edition Volume 45 para 26 1503 provides as follows on computation of damages in an action for trespass:

- a) If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.
- b) If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
- c) Where the Defendant has made use of the Plaintiff's land, the Plaintiff is entitled to receive by way of damages such an amount as would reasonably be paid for that use.
- d) Where there is an oppressive, arbitrary or unconstitutional trespass by a Government official or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful conduct, damages may be awarded.
- e) If the trespass is accompanied by aggravating circumstances.

24. It is on record that the 1st Defendant was successfully sued in ELC No 428 of 2017 – [*CKK Estate \(1973\) Ltd v County Government of Kiambu and James Gicheru*](#) for trespass arising from similar facts as in this case. I note that the trespass cited in this earlier case occurred on the 25/9/2007. In the current suit the trespass was stated to have occurred on the 24/6/2020. In the judgment of the Court in ELC 428 of 2017 the Court found in para 19 as follows;

“As regards the 2nd issue, the evidence of PW1 was fortified by a Land Registrar (PW2), a manager of the Plaintiff (PW3) and a surveyor (PW4), all who confirmed that there was no public road of access approved to cross the suit property. PW4 presented an original deed plan (P Exhibit 2), a survey map FR No 19/13 (Exhibit 3), a survey map FR No 42127 (P Exhibit 4) and a survey map FR No 42/172(PExh 5). He further stated as follows:-

“There is no road of access through the suit land LR No134/8 as per Exhibits 1 to 5. There were no subdivision, surrender or compulsory acquisition to create a road of access thereof. (Emphasis added)

25. There is no evidence that the judgement has been vacated, appealed and or set aside.

26. In the absence of any rebuttal or contrary evidence as to the presence of an official road on the parcel of land, I agree with the finding of the Court.

27. Going by the earlier case against the 1st Defendant, it is clear that the 1st Defendant was aware of the judgement of the Court, it having been delivered on the December 5, 2018 where the Court was emphatic that there is no public road of access across the Plaintiffs land. The acts of the 1st Defendant in 2020 of trespassing on the land and purporting to create a road widening in my view was oppressive, arbitrary and illegal. To deter the repetition of this kind of conduct, I award the Plaintiff the sum of Kshs 350,000/- being exemplary damages against the Defendants.

28. In the end I enter judgement in favour of the Plaintiff against the Defendants jointly as follows;

- a. A declaration that the Plaintiff, CKK Estate (1973) Ltd is the registered proprietor of LR No 134/8 and 134/4 entitled to the absolute ownership use and quiet possession of the suit premises.
- b. A declaration that there is no public road or road access passing through the suit premises viz L R No 138/8 as per the judgement in ELC 428 OF 2017, CKK Estate (1973) Ltd v County



Government of Kiambu and James Gicheru delivered on December 5, 2018 by the ELC Court at Thika.

- c. A declaration that the Defendant's trespass and destruction of the Plaintiffs private property was intentional willful and deliberate.
- d. A permanent injunction be and is hereby issued restraining the Defendant's jointly and severally their servants' agents employees and any person claiming or acting or developing a road through the suit premises or interfering in any manner with the Plaintiffs quiet possession ownership and use of the suit premises.
- e. Kshs 2,594,880/- being the value of the 102 coffee trees destroyed.
- f. General damages for trespass in the sum of Kshs. 200,000/-
- g. Punitive and exemplary damages for trespass in the sum of Kshs 350,000/-
- h. Costs of the suit

29. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 17TH DAY OF NOVEMBER, 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Wanjiro for Plaintiff

1st Defendant – Absent

2nd Defendant – Absent

Court Assistant – Dominic

