



**Mount Robbin Limited v Toza (Environment and Land Case
51 of 2020) [2025] KEELC 5854 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 5854 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 51 OF 2020**

**LL NAIKUNI, J
MAY 29, 2025**

BETWEEN

MOUNT ROBBIN LIMITED PLAINTIFF

AND

ALI SALIM TOZA DEFENDANT

JUDGMENT

I. Preliminaries

1. The Judgement of this Honourable Court pertains to the suit instituted by Plaintiff, Mount Robbin Limited vide a Plaint dated 15th December 2020. It was against the Defendant.
2. It is instructive to note that the Summons to Enter Appearance dated 18th December, 2020 and pleadings were properly served in accordance with the contents of a six (6) Paragraphed Affidavit of Service dated 26th February, 2021 sworn by Cain Mingo Kundu, an Advocate of the High Court of Kenya having the conduct of this matter on behalf of the Plaintiff. Despite of this, there was no Defence filed as required under the provision of Orders 5 and 7 of the Civil Procedure Rules, 2010. Thus, it follows that the suit was unopposed. But being a land matter, and guided by the provision of Order 10 Rules 4, 5, 6, 7 9 and 10 of the Civil Procedure Rules, 2010, it proceeded as formal proof.

II. Plaintiff's case

3. From the filed pleadings, the Plaintiff refers to itself as a limited liability company incorporated under the *Companies Act* Cap. 486 of the Laws of Kenya. It was the registered proprietors of all that parcel of land known as LR Kwale/Tiwi Beach/13441 CR. No 19516 situated at Tiwi area within the County of Kwale (Hereinafter referred to as "The Suit Property"). It was the Plaintiff's case that the Defendant without any consent and or authority entered upon the suit parcel and illegally started excavating building blocks thereon. That from the year 2012 to date, the Defendant had continuously encroached



in the Plaintiffs land - the suit property herein and the excavations carried thereon have been confirmed by the Engineer of the then County Council of Kwale during a site visit.

4. According to the Plaintiff, the quarrying of the natural forming coral blocks from the suit property amounted to acts of trespass which was continuing by reason of which the Plaintiff had suffered loss and damage. Further that the Plaintiff had been deprived of the use and enjoyment of its property. The particulars of loss and damage were listed as follows:-
 - a. Loss of natural beauty of the property.
 - b. Increased depreciation of the property.
 - c. Decrease value of the Plaintiff's land.
 - d. Loss of peaceful unrestricted quiet enjoyment of the property.
5. The Plaintiff further stated that unless the Defendant was restricted from his actions, it would continue suffering loss and damage and the land continued to be degraded.
6. The Plaintiff prayed for Judgement to be entered against the Defendant for:-
 - a. A permanent injunction restraining the Defendant by itself, agents, servants or anybody acting on its behalf from trespassing on and continuing to excavate and remove coral blocks and or any other item from the Plaintiff's property.
 - b. General damages for trespass.
 - c. A sum of Kenya Shillings Two Million (Kshs. 2,000,000/-) being mesne profits.
 - d. Interest on [c] above at court rate until paid in full.
 - e. Costs and incidentals of this suit at courts rates.

III. The testimony adduced by the Plaintiff.

7. As already indicated above, the case by the Plaintiff proceeded as an undefended as formal proof under the provision of Order 10 Rules 4, 5, 6, 7, 9 and 10 of the Civil Procedure Rules, 2010. From the proceedings of 6th March 2025 before court, it was indicated that the Defendant was properly served. Indeed, there was an Advocate acting for the Defendant who appeared before court on several occasions being on 17th July 2023, 24th July, 2023 and 7th April, 2025 respectively. That the said Counsel indicated that the Defendant would be filing a defence but to date they had not complied as required by the provision of Order 7 and 11 of the Civil Procedure Rules, 2010.
8. In the given circumstances, it was only the Plaintiff who testified as PW - 1. The witness testified on oath in the English language. He identified himself as Nagib Tadjin a Canadian citizen. He informed Court that he was currently residing in Canada but previously lived in Kenya. He was the Managing Director of the Plaintiff. He adopted his witness statement dated 20th December 2020 and the list of documents dated 5th April 2023 as Plaintiff Exhibit Numbers 1 to 3 as his testimony in support of his case.
9. PW – 1 stated that the Plaintiff was the registered owner of the suit land. He produced the original Certificate of the Title Deed for the suit land marked as Plaintiff Exhibit number 1. The Plaintiff was using and in occupation of the suit land whatsoever.
10. He gave evidence that the suit property was next to the Defendant's parcel of land. However, the Defendant without the consent of the Plaintiff was exploring a quarry next to the land and the



interference was extensive. That the actions had further interfered with the value of the land and hence the instant suit and prayers before court. Thereafter, the Plaintiff's case was marked as closed.

IV. Submissions

11. On 6th March 2024 while the Plaintiff was before court, Plaintiff's Counsel was directed to have the suit disposed of by way of written submissions. Subsequently, the Plaintiff complied and the Judgement date was reserved and delivered on 29th May, 2025 accordingly.

V. The Written Submissions by the Plaintiff

12. The Plaintiff through the Law firm of Conrad Law Advocates filed his written submissions dated 20th March 2025. Mr. Mingo Advocate commenced the submission by recounting the background details of the Plaintiff's case based on the filed pleadings herein. The Learned Counsel identified the following issues for determination:-
 - a. Whether the Defendant trespassed onto the suit premises without the authority of the Plaintiff.
 - b. Whether the Plaintiff was entitled to mesne profits derived from his property.
 - c. Whether the Plaintiff was entitled to the orders sought.
13. On the first issue of determination. The Learned Counsel submitted that it was not in dispute that the Plaintiff was the registered owner of the suit property and which information was within the Defendant's knowledge. To buttress on this point, the Plaintiff referred Court to the provisions of Sections 24 and 26 of the Land Registration Act No. 3 of 2012. That in the instant case the Plaintiff had produced a copy of the Certificate of title which established that the company was the registered owner of the suit property. The said evidence was not controverted.
14. The Plaintiff further submitted that the Defendant had continuously trespassed on the suit property as contrary to the provisions of Section 3[1] of the Trespass Act, Cap. 294. The Plaintiff maintained that the threshold for the provisions of Sections 107 and 108 of the Evidence Act, Cap. 80 had been met as the Plaintiff had demonstrated that the Defendant had continuously encroached, trespassed and was evidenced by the report and valuation of quarrying activities on the suit property dated 14th March 2019 and the report by the County Council of Kwale dated 21st December 2012.
15. The Plaintiff further stated that the site visit report dated 21st December 2012 clearly identified the Defendant as a trespasser and the person excavating on the suit property. The report stated that:-

“From the interview and the general behaviour of the family members found on site of the contention, the following information was gathered:

 - a. The person interviewed on phone through one of the family members phone, identified himself as Mr. Ali Salim Taza claimed:
 - i. He was born and brought up there.
 - ii. He did not have a building plan for the development;
 - iii. He did not have a title deed.
16. On whether the Plaintiff was entitled to mesne profits derived from its property. The Learned Counsel emphasised that the Defendant had been trespassing onto the suit land. That averred that it was the



Defendant who had been excavating on the suit property and the valuation report on the quarrying activities was to guide the court in assessing the general damages for trespass or mesne profits which the Plaintiff has claimed in their Plaintiff. On the measure of the general damages for trespass or Mesne profits, he relied on the case of “Phillip Ayaya Aluchio – Versus – Cripus 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 damages? It has been held that the measure of damages for trespass is the difference in value of the Plaintiff’s property immediately after the trespass or the costs of restoration whichever is less”

17. The Plaintiff had proposed a global figure of Kenya Shillings Two Million (Kshs. 2,000,000/-) and further placed reliance on the holding in the case of:- “Park Towers Limited – Versus - John Mithamo Njikia & 7 Others [2014] eKLR” cited in the case of “Avid Developers Limited - Versus - Blue Horizon Properties Limited & 2 Others [2021] eKLR”. Where the court held that where there trespass was proved, a party need not prove that he suffered any specific damages or loss in in order to be awarded damages. Damages shall be awarded depending on the unique facts and circumstances of each case.
18. With regard to mesne profits the Plaintiff referred Court to Section 2 of the *Civil Procedure Act*, Cap. 21 which defines and the same and referred the court to the court of appeal holding in the case “AG - Versus - Halal Meat Products Limited [2016] eKLR” which considered the aspect of when mesne profits should be awarded. Also that mesne profits must be pleaded and proved.
19. Lastly, the Plaintiff asserted that he had aptly proved that the suit property belonged to the company and that the Defendant had illegally trespassed upon the same. That in view of the same the Plaintiff has aptly demonstrated that it was entitled to the orders sought and the court should thus grant the same.

VI. Analysis & Determination

20. I have keenly assessed the filed pleadings filed by the Plaintiff herein, the written submissions, the authorities cited, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes. For the Honourable Court to reach an informed, Equitable and fair decision, it has condensed the subject matter into the following three (3) salient issues for its determination. These are namely: -
 - a. Whether the suit instituted by the Plaintiff against the Defendant has any merit whatsoever?
 - b. Whether the Plaintiff is entitled to the orders sought?
 - c. Who bears the costs of suit?

ISSUE No. a). Whether the suit instituted by the Plaintiff against the Defendant has any merit whatsoever?

21. Under this Sub – title, the Honourable Court will endeavour to assess whether the Plaintiff has been able to establish its case based on all the required legal standards. It is instructive to note that although the suit was undefended, the Plaintiffs had a duty to formally prove their case on a balance of probabilities as it is required by law. Particularly, on this front, the Court is guided by the doctrine of “the Burden of Proof” which is founded under the provision of Sections 107, 108 and 109 of the *Evidence Act*, Cap. 80 of the Laws of Kenya whereby it the Plaintiff to prove its case. They provide as follows:-

“Section (107); Burden of proof.



(1); Whoever desires any court to give Judgement as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exists.

(2); When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section (108); Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section (109); proof of particular fact.

The burden of proof as to any particular fact lies in the person who wishes the court to believe in its existence. Unless it is provided by any law that the proof of fact shall lie on any particular person.”

22. On this ground, I seek solace from the case of: “Kirugi and Another – Versus - Kabiya & 3 others (1987) KLR 347” the Court of Appeal held that:-

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”

23. Similarly, in the case of: “Gichinga Kibutha – Versus - 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.”

24. Be that as it may, based on the provision of Order 2 Rule 6 of the Civil Procedure Rules, 2010, parties are bound by their own pleadings. Specifically, the Plaintiff has sought for:-

- a. A permanent injunction restraining the Defendant by itself, agents, servants or anybody acting on its behalf from trespassing on and continuing to excavate and remove coral blocks and or any other item from the Plaintiff’s property.
- b. General damages for trespass.
- c. A sum of Kenya Shillings Two Million (Kshs. 2,000,000/-) being mesne profits.
- d. Interest on [c] above at court rate until paid in full.
- e. Costs and incidentals of this suit at courts rates.

25. Undoubtedly, the ownership of the suit property has not been an issue before the Court. Indeed, the Plaintiff has produced before court a copy of the title deed to the suit property herein demonstrating that they are the legal and absolute registered proprietors of the suit land with indefeasible right, interest and title vested in law. These are anchored under the provision of Sections 24, 25 and 26 of the [Land](#)



Registration Act, No. 3 of 2012. The provision of Section 24(a) of the Land Registration Act, No. 3 of 2012 provides for the interest conferred by registration. It provides:-

“Subject to this act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.”

26. The provision of Section 26 (1) of the Land Registration Act, No. 3 provides as follows:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner 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.”

Section 26 (2) provides that:-

“certified copy of only registered instrument signed by the registrar, shall be received in evidence in the same manner as the original”.

27. As may be observed, the law is extremely protective of title and provides only two instances for the challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme. The import of the provision of Section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, un-procedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of Section 26 (1) (b) is to protect the real title holders from being deprived of their titles by subsequent transactions. That is to say, this is where the Certificate of Title is doubtful, suspect or obtained by fraud or forgery unprocedurally, illegally or corrupt means or by mistake or omission as envisaged under the above provision of Section 26 (1) of Land Registration Act, No. 3 of 2012. See the cases of “Joseph Komen Somek - Versus - Patrick Kennedy Suter ELC Eldoret Appeal No. 2 of 2016 (2018) eKLR and Alice Chemutai Too – Versus - Nickson Kipkurui Korir & 2 Others [2015] eKLR”, where the Court held that:-

“It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme I do not see how a person with a perfectly good title should be deprived of his title by activities of fraudsters. It is in fact time to put down our feet and affirm that no fraudster, nor any beneficiary of fraudulent activities, stands to gain for his fraud, and no title holder will ever be deprived of his good title by the tricks of con artists.”



28. When a person's ownership to a property is called into question, it is trite that the said proprietor has to show the root of his ownership. See the case of "Hubert L. Martin & 2 Others – Versus - Margaret J. Kamar & 5 Others [2016] eKLR", where the Court held that;

"A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder."

29. Indeed, these are extremely genuine concerns and need to be critically addressed specifically but in a case by itself. Luckily, in this undefended suit, these were not the matters before this Court. That is the pith and substance of this Judgement. From the evidence on record the suit, the Plaintiff has proceeded to give both oral and documentary evidence in support of his claim. There is no doubt that the Plaintiff is the registered proprietor of the suit property as is evidenced by the title deed. The Plaintiff's title to the suit property has not been challenged in any way by the Defendant on any of the grounds enumerated in Section 26 of the Land Registration Act.

30. The letter dated 14th March 2019 has evidenced the quarrying activities on the suit property, attached and produced as evidence was a report by the Kwale County Council engineering department which conducted a site visit on the suit property and confirms the activities. It was also confirmed from the report that the Defendant owned the parcel adjacent to the suit property and had indeed trespassed on the same.

31. From this evidence it is clear that the disputed land belongs to the Plaintiff as was explained by the documents above herein.

ISSUE No. b). Whether the Plaintiff is entitled to the relief sought

32. From the filed pleadings, the Plaintiff has also sought for mesne profits and damages for trespass from the Defendant. In the given circumstances, the Court will be assessing each of these reliefs separately. The provision of Section 2 of the Civil Procedure Act Cap. 21 Laws of Kenya defines Mesne Profits as follows:-

"Mesne Profits", in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;

33. Mesne profits is defined as the profit of an estate received by a tenant in wrongful possession between the dates. It must be pleaded and proved.



34. In the case of “Attorney General – Versus - Halal Meat Products Limited [2016] eKLR” considered when mesne profits could be awarded. The court stated as follows:-

“It follows therefore that where a person is wrongfully deprived of his property he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another. See McGregor on Damages, 18th Ed. para 34-42.”

35. On the issue of whether there was trespass by the Defendant in the Plaint dated 15th December, 2020 and if an Order of Permanent Injunction should Issue, this Honourable Court has held that the title by the Plaintiff has not been challenged. Further, the Plaintiff has proved that the Defendants trespassed into the Plaintiff’s land, the next issue is whether as a result of the same; the Defendants should be permanently restrained.

36. To respond to this, the Principles on Injunction were established in the celebrated case of “Giella – Versus - Cassman Brown & Co. Limited (1973) EA 358”. I reiterate that the Plaintiff having produced a title document, I hold that the Plaintiff has indeed established a prima facie case and proved its case to the required threshold to warrant the grant of permanent injunctive orders sought. Consequently, I will proceed to find that the Defendants either by themselves, agents, servants and /or anyone claiming under the Defendants should be permanently restrained from entering, trespassing onto, cultivating, building structures thereon, interfering with and/or in any other manner dealing with the suit land

37. On the issue of whether the Plaintiff is entitled to General Damages as sought. From the foregoing, it is clear that the Plaintiff is the absolute, rightful and indefeasible owner of the suit property herein, I have also held that the Defendants are guilty of encroaching and trespassing onto the Plaintiff’s land. The said trespass denied the Plaintiff use, occupation, possession and enjoyment of said land. The Defendants on the other side have been using and enjoying the use of the unlawful actions. It is this loss of use and all the incidental rights that have been infringed by the Defendants that the Plaintiff now seeks compensation for.

38. In the case of “Duncan Nderitu Ndegwa – Versus - KP& LC Limited & Another (2013) eKLR” where P. Nyamweya J. held that: -

“.....once a trespass to land is established it is actionable per se, and indeed no proof of damage is necessary for the court to award general damages. This court accordingly awards an amount of Kshs 100,000/= as compensation of the infringement of the Plaintiff’s right to use and enjoy the suit property occasioned by the 1st and 2nd Defendants trespass”

39. In Halsbury Laws of England 4th Edition, Vol 45 at para 26, 1503, it is provided as follows:-

- (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 sum as would reasonably be paid for that use.
- (d) --
- (e) --



40. On the issue of general damages for trespass, the issue that arises is: what is the measure of it? This question was answered by E. Obaga J in the case of “Philip Ayaya Aluchio – Versus - Crispinus Ngayo [Supra)” 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 – Versus – Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).

41. In the case of:- “Willesden Investments Limited – Versus - Kenya Hotel properties limited NBI H.C.C. NO. 367 of 2000” 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 Kshs. 10,000,000/- is a reasonable award for general damages”.

42. The Plaintiff has proved on a balance of probabilities that the Defendants have trespassed on part of his parcel of land known as Kwale/ Tiwi Beach/13441 CR No 19516. In this case the Plaintiff has only provided this court with the value of the quarried blocks. Therefore, based on all the surrounding facts and inferences of this case, the court will proceed to award the Plaintiff a sum of Kenya Shillings One Million (Kshs. 1,000,000/=) as the nominal award of general damages in this case taking into consideration the duration of the trespass.

43. However where a party claims for both mesne profits and damages for trespass the Court can only grant one. In saying so, I refer to the case of:- “Maina Kabuchwa – Versus - Gachuma Gacheru (2018) eKLR” where the Court held that:-

“Where a party claims for both mesne profits and damages for trespass, the Court can only grant one.”

44. In this instant as the Court has already granted general damages for trespass. In the given circumstances, therefore, this prayer is declined.

ISSUE No. c). Who will bear the costs of the suit?

45. It is well established that the issue of costs is at the discretion of the Court. Costs mean the award that a party is granted at the conclusion of the legal action or proceeding in any litigation. The Black Law Dictionary defines cost to mean:-

“the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”. The proviso of Section 27 (1) of the Civil Procedure Act, Cap. 21 provides that costs follow the event. It as follows:-

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of



any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

46. Additionally, the provision provides for ‘costs of and incidental to all suit or application’ which expression includes not only costs of suit but also costs of application in suit as described by Mulla (supra) at 536. Furthermore, Rtd. Justice Richard Kuloba in his book *Judicial Hints on Civil Procedure*, 2nd Edition, 2005 at 95 notes that the words ‘the event’ means the result of all the proceedings incidental to the litigation. Accordingly, the event means the result of the entire litigation. The order as to costs as provided for under Section 27 remains at the discretion of the court.

47. The award of costs is therefore not cast in stone but courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the suit but also the circumstances of each case. In the case of:- “Morgan Air Cargo Limited – Versus - Evrest Enterprises Limited [2014] eKLR” the court noted that:-

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

48. In the instant case, the Plaintiff herein has successfully managed to establish its case. Thus, it entitled to the costs of the suit.

VII. Conclusion & Disposition

49. Ultimately, upon causing intensive analysis of the framed issues herein, the Honourable Court based on the principles of Preponderance of Probabilities and the balance of convenience, holds that the Plaintiff has been able to prove its case. For avoidance of doubt therefore, the Court proceeds to grant the following orders:-

- a. That Judgment be and is hereby entered in favour of the Plaintiff against the Defendant as prayed in the filed Plaint dated 15th December, 2020.
- b. That an order of a permanent injunction be and is hereby issued restraining the Defendant by itself, agents, servants or anybody acting on its behalf from trespassing on and continuing to excavate and remove coral blocks and or any other item from the Plaintiff’s property Kwale/ Tiwi Beach/13441 CR No 19516.
- c. That an order made to have the Defendant pay the Plaintiff a sum of Kenya Shillings One Million (Kshs. 1,000,000/=) as general damages for trespass.
- d. That the Plaintiff’s prayer for mesne profits be and is hereby declined.
- e. That the costs of the suit be awarded to the Plaintiff.

It Is Ordered Accordingly.

**JUDGEMENT DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS,
SIGNED AND DATED AT KWALE THIS.....29TH DAY OFMAY2025**

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HON. MR. JUSTICE L.L NAIKUNI,

Environment & Land Court

At

KWALE.

Judgement delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Shikule Advocate holding brief for Mr. Mingo Advocate for the Plaintiff.
- c. No appearance for the Defendant

