



**Chira & 99 others v Kenya Power And Lighting Company (Environment and Land Case Civil Suit 94 of 2019) [2022] KEELC 15550 (KLR) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15550 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 94 OF 2019**

**JO MBOYA, J  
DECEMBER 20, 2022**

**BETWEEN**

**CHARLES MUKOMA CHIRA ..... 1<sup>ST</sup> PLAINTIFF**

**PETER NJUGUNA WANGUNYU ..... 2<sup>ND</sup> PLAINTIFF**

**JENIFER MUENI MBITHE & 97 OTHERS ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KENYA POWER AND LIGHTING COMPANY ..... DEFENDANT**

**JUDGMENT**

**Introduction and Background**

1. Vide plaint dated the March 13, 2019, the plaintiffs have approached the honourable court seeking the following orders;
  - i. A permanent injunction restraining the defendants, their agents, servants from any demolitions, dealings, subdividing, transferring and/or carrying out any transaction on parcels of land block Z, LR No: 11344/R situated at Kayole.
  - ii. General damages
  - iii. Costs of this suit plus interests therein at court rates.
  - iv. Any other or further relief court deems fit
2. Upon service of the plaint and summons to enter appearance, the defendant herein duly entered appearance and thereafter filed a statement of defense dated the May 29, 2019. For clarity, the defendant denied and disputed the claims at the foot of the plaint.



3. Following the close of pleadings, the subject matter went through the usual rigours of case conference and thereafter same was confirmed ready for hearing.
4. Suffice it to point out that the hearing was ultimately taken and both parties called their respective witnesses and produced assorted documentary exhibits. In this regard, it is appropriate to underscore that the plaintiffs' called two (2) witnesses.

### **Evidence By The Parties**

a. Plaintiffs' case:

5. The plaintiffs' case revolves ad gravitates around the evidence of two witnesses, namely, Peter Njuguna Wanguyu and Willy Kamau Macharia, who testified as PW 1 and 2, respectively.
6. According to PW1, same was a founder member and official of an association known as Komarock Youth Jua-kali Artisan Association, which was duly registered as a community-based organization (CBO) in the year 2002.
7. On the other hand, the witness also stated that prior to the formal registration of the youth group as a community-based organization, the group was formerly settled on a portion of land measuring 4 hectares, which land is situate between Spin Road and Kagundo road, respectively.
8. For clarity, the witness added that the group was settled on the said portion of land following the intervention of the former member of Parliament for Embakasi, namely, Hon David Mwenje, now deceased.
9. Other than the foregoing, the witness also testified that after same were settled on the impugned portion of land, the Ministry of Labor visited the youth group variously and assured same that the land in question would be formalized and registered in the name of the youth group.
10. Further, the witness testified that following their entry onto and occupation of the subject portion of land, the various members of the youth group have set up and established assorted workshops and light industries, from which same derive income and by extension a living.
11. Be that as it may, the witness added that despite their occupation and various investments on the portion of land in question, the members of the youth group have not been issued with any title documents over and in respect of the portion of land.
12. Nevertheless, the witness has testified that the various members of the youth group has continuously followed up with the respective government offices and departments for purposes of procuring and obtaining the requisite certificate of title.
13. Notwithstanding the foregoing, the witness testified that despite not having procured and obtained certificate of title over and in respect of the portion of land in question, the city county government of Nairobi has variously promised to commence and process individual ownership documents to and in respect of the various members of the youth group.
14. Other than the foregoing, the witness added that same has been in occupation and possession of the suit property ever since the year 1999. For clarity, the witness has added that during the impugned period, there are several children who have been born and brought up on the said land.
15. Further, the witness also added that during their occupation and possession of the suit property, same have also applied to Kenya Power to grant same electricity and indeed most of their premises and light industries are connected with electricity.



16. Be that as it may, the witness has further added that on or about the year 2019 the defendant herein threatened to evict and demolish their houses and business from the suit property on the basis that same were interfering with the electric cables and by extension that same posed a threat to electric power supply.
17. Other than the foregoing, the witness referred to the witness statement which was filed in court on the October 15, 2019. For clarity, the witness sought to adopt and rely on the said witness statement. In this regard, the witness statement in question was duly adopted as the further evidence in chief of the witness.
18. On the other hand, the witness also referred to the list and bundle of documents dated the March 13, 2019. For completeness, the witness sought to adopt and produce the named documents.
19. At the instance and request of the witness, the documents at the foot of the list dated the March 13, 2019, were admitted and produced in evidence as exhibits P1 to P4, respectively.
20. Other than the foregoing, the witness also referred to a supplementary list and bundle of documents dated the March 3, 2020. For clarity, the witness sought to produce the documents at the foot thereof.
21. Similarly, the documents at the foot of the supplementary list and bundle of documents were admitted and produced in evidence as exhibits P5 to P11, respectively.
22. On cross examination by counsel for the defendant, the witness stated that same was a founder member and an official of Komarock Youth Association. Besides, the witness added that the land in question was allocated to the association and not to the members.
23. Further, the witness also testified that it is the association who thereafter allocated the land to her members, including the witness.
24. Be that as it may, the witness admitted that the association does not have any certificate of title to the land in question.
25. On the other hand, the witness also testified that the city county government of Nairobi had allowed the association to demarcate the land to the members of the association.
26. However, the witness conceded that there was a disclaimer by the city county government to the effect that in the event the land was already reserved and committed, then the city county government will not be liable.
27. Besides, the witness testified that the plaintiffs herein had procured and obtained authority from Kenya Electricity Transmission Company Ltd *vide* letter dated the April 17, 2013.
28. Nevertheless, the witness stated and reiterated that neither the association nor the members thereof have been issued or granted any certificate of title over the suit property.
29. Whilst still under cross examination, the witness added that the land in question was allocated to the association by the member of parliament for Embakasi. Nevertheless, the witness added that same was not aware whether the member of parliament had the requisite capacity to allocate or alienate government land.
30. In short, the witness conceded that the suit property is government land, which has not been formerly alienated and allocated to the plaintiffs. Besides, the witness also confirms that neither the association nor her members have certificate of title.



31. The second witness called by the plaintiffs' is one Willy Kamau Macharia, who testified as PW2. For clarity, the witness herein stated that same resides at Komarock within the city of Nairobi.
32. On the other hand, the witness added that same is a retired banker and that as pertains to the subject matter, same duly recorded a witness statement dated the October 15, 2019. For clarity, the witness sought to adopt and rely on the witness statement dated the October 15, 2019 and which was duly filed before the court.
33. Other than the foregoing, the witness also referred to a list and bundle of documents dated the March 2, 2020 and which same sought to admit and produce before the court. In this regard, the named documents were duly produced as exhibits P12 to 15, respectively.
34. On cross examination, the witness stated that same purchased a portion of the suit property from one of the members of the association. In this regard, the witness alluded to a copy of the sale agreement which was produced as exhibit P12.
35. On the other hand, the witness also stated that same paid a total of Kshs 700, 000/= Only, as consideration towards purchase of the named portion of the suit property.
36. Notwithstanding the foregoing, the witness admitted that despite entering into the sale agreement, same does not have any certificate of title to show ownership of the portion of land which same had bought.
37. Whilst still under cross examination, the witness stated that same is one of the plaintiffs herein, however the witness conceded that the signature affixed against his name in the authority signed by the various plaintiffs' was not his signature.
38. On re-examination, the witness stated that the sale agreement which was entered into over and in respect of the named portion of the suit property, does not contain the purchase price which was (sic) paid at the foot of the sale agreement.
39. Nevertheless, the witness added that he paid the entire purchase price and that same has receipts to confirm the payment of the purchase price.
  - b. Defendant's case:
40. The defendant's case is similarly anchored and premised on the evidence of two witnesses. For clarity, one of the witnesses who testified as DW2, testified under the witness protection scheme and therefore his name was redacted.
41. Be that as it may, DW1 was one Joseph Kipng'etich Korir, who testified that he is an employee of the defendant, wherein same is employed as a surveyor. In this regard and by virtue of his portfolio, as a surveyor, the witness stated that same is therefore knowledgeable of and privy to the facts pertaining to the subject dispute.
42. Further, the witness added that same was instructed by the defendant herein to carryout and undertake an inquiry to establish and authenticate the extent of an encroachment upon the power lines, namely, 132KV Kamburu – Juja Lane.
43. It was the further evidence of the witness that in the course of carrying out the inquiry, same established that there was extensive encroachment onto the wayleave corridor and that various structures had been constructed beneath the electricity cables.



44. Premised on the extent and level of encroachment onto the wayleave corridor, the witness testified that a report was made to the multi sectoral consultative committee on unsafe building structures. In this regard, the witness added that a decision was therefore made that the offensive structures that had encroached onto the wayleave corridors ought to be removed.
45. Other than the foregoing, the witness referred to and adopted his witness statement dated the January 23, 2020. In this regard, the witness statement was duly admitted as further evidence in chief of the witness.
46. On the other hand, the witness also alluded to a list and bundle of documents dated the October 25, 2019.
47. Suffice it to point out that the witness sought to admit and rely on the named documents. In this regard, the documents at the foot of the list and bundle dated the October 25, 2019, were admitted as exhibit D1 to D4, respectively.
48. On cross examination, the witness stated that same is a land surveyor, but however same has neither filed nor placed before the honourable court any evidence to confirm that he is a land surveyor.
49. Further, the witness testified that same has produced before the honourable court a survey report relating to the outcome of the exercise/inquiry that was carried out by himself along the Wayleaves corridor, which is the subject of instant suit.
50. For completeness, the witness has added that the survey report which has been filed and produced as an exhibit before the honourable court contains assorted pictures which were taken by himself during the course of the enquiry.
51. On re-examination, the witness testified that same is the one who prepared and drew the report in question.
52. Besides, the witness also added that the report in question was similarly signed by himself.
53. The second witness testified under the witness protection scheme. In this regard, the names of the said witness was withheld.
54. Nevertheless, the witness herein referred to his witness statement dated the January 24, 2022 and same sought to adopt the said witness statement. For clarity, the witness statement was therefore admitted as the witness evidence in chief.
55. Similarly, the witness also alluded to a list and bundle of documents dated the January 24, 2020 and same invited the honourable court to admit the documents as exhibits.
56. For coherence, the documents at the foot of the list and bundle of documents dated the January 20, 2020 were thereafter produced and admitted in evidence as exhibit P5 to 8, respectively.
57. On cross examination, the witness testified that same is a wayleaves officer, employed by the defendant company. On the other hand, the witness also pointed out that same is conversant with the plaintiff and that there have been various instances of power shortages and interruptions as a result of the offensive encroachment onto the wayleaves corridor.
58. Nevertheless, the witness herein admitted that despite testifying about various incidences of power shortages and interruptions, same however does not have any report speaking to such interruptions.
59. Other than the foregoing, the witness testified that it is himself who took the various photographs which have been produced before the honourable court.



60. On the other hand, the witness also testified that the various photographs were taken at Kayole Junction and besides the witness testified that the plaintiffs herein have been sensitized on the danger posed by the offensive encroachment onto the wayleaves corridor.
61. Other than the foregoing, the witness testified that after the sensitization, the plaintiffs herein were issued with a notice to vacate the wayleaves corridor in the year 2019. For clarity, the witness added that the notice in question has been duly produced and tendered before the honourable court.
62. On re-examination, the witness reiterated that the notice to vacate and move out from the wayleaves corridor was issued and duly addressed to the plaintiffs.
63. With the foregoing testimony, the defendant's case was duly closed.

#### **Submissions By The Parties:**

64. At the conclusion of the hearing, the advocates for the parties proposed to file and exchange written submissions. Consequently, the honourable court proceeded to and indeed granted liberty for the parties to file and exchange their respective submissions.
65. Suffice it to point out that the plaintiffs' herein proceeded to and filed written submissions dated the October 5, 2022, whilst on the other hand the defendant filed written submissions dated the October 17, 2022.
66. For completeness, the two sets of written submissions, details which have been alluded to in the preceding paragraphs forms part and parcel of the record of the honourable court. Consequently same shall be duly considered and taken into account.

#### **Issues For Determination**

67. Having reviewed the plaint and the assorted documents filed by and on behalf of the plaintiffs and having similarly reviewed the statement of defense and the various documents attached thereto; and having reviewed the oral evidence tendered by the parties and finally having considered the written submissions filed, the following issues are pertinent and thus germane for determination;
  - i. Whether the plaintiffs' herein have any ownership rights over and in respect of the suit property and if not, whether the plaintiffs' are entitled to an order of permanent injunction.
  - ii. Whether the plaintiffs' are entitled to general damages either as sought or at all.

#### **Analysis And Determination:**

Issue number 1

Whether the plaintiffs' herein have any ownership rights over and in respect of the suit property and if not, whether the plaintiffs' are entitled to an order of permanent injunction.

68. The plaintiffs herein have contended that same are the lawful and registered proprietors of a property known as Block Z, LR No 11344/R, situate at Kayole within the city of Nairobi.
69. Having contended and stated that same are the lawful owners and proprietors of the suit property, one would have expected the plaintiffs herein to produce and tender before the court documents speaking to ownership and title of the suit property.
70. However, in the course of their evidence, neither of the two named witnesses produced or tendered before the honourable court any evidence of title or at all.



71. To the contrary, PW1 contended that the suit property was allocated to and in favor of the plaintiffs by the former member of parliament for Embakasi Constituents, namely, Hon David Mwenje, now deceased.
72. On the other hand, PW1 further stated that the said member of parliament, also facilitated the settlement of the plaintiffs on the suit property. For clarity, the witness added that the plaintiffs' have been settled in the area since the year 1999.
73. Further, it was the evidence of PW1 that despite having been settled on the impugned portion of the suit property, neither the plaintiffs nor Komarock Youth Jua Kali Association, had been issued with any certificate of title over and in respect of the suit property.
74. Other than the foregoing, evidence was also tendered by PW1 that the officials of Komarock Youth Association as well as the plaintiffs herein, have variously attempted to procure and obtain certificate of title from the city county government of Nairobi, but to date no such certificate of title has ever been issued.
75. For coherence, it is imperative to take cognizance of the response by PW1 during his cross examination by counsel for the defendant. In this regard, the following excerpts are relevant;  

‘I was a founder member of Komarock Youth Association. It is the association that was allocated the land and who has allocated the land to me and the others. The association did not have the title to the land...I am aware that we carried out due diligence over the land. The diligence included talking to the official of Nairobi city county. The land was never transferred to the association. The association did not acquire title to the land’.
76. From the foregoing reproduction, there is no gainsaying that the suit property upon which the plaintiffs are laying a claim to, does not legally belong to the plaintiffs, either as claimed or at all.
77. Notwithstanding the foregoing, the plaintiffs had also contended that same were settled on the suit land and thereafter same were issued with letters of allotment by city council of Nairobi. However, it is imperative to note that no letter of allotment was ever produced or tendered in evidence.
78. Be that as it may, it is common ground that title to land can only arise after the issuance of the requisite letter of allotment, meeting the terms/conditions of the letter of allotment and ultimately procuring a certificate of title, under the relevant Law.
79. In the absence of the requisite certificate of title issued pursuant to and under the relevant statute, it is difficult to appreciate the foundation and basis of the plaintiffs' claim to the suit property.
80. To this end, it is appropriate to take cognizance of and to reiterate the holding of the Court of Appeal in the case of *Dr Joseph N. K Arap Ngok v Justice Moiyo Olekeiuwa* (1997)eKLR, where the court stated and observed as hereunder;

“It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.”



81. Other than the foregoing decision, it is also important to reiterate and endorse the holding of the court in the case of *Ocean View Plaza v The Attorney General* (2002)eKLR, where the honourable court stated and observed as hereunder;

“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*”.

82. From the foregoing observation, there is no gainsaying that the law recognizes and protects the holder of a title instrument over and in respect of a named property. consequently, he who has a lawful and legitimate title over the named property, shall no doubt attract and accrue the protection of the law.

83. Contrarily, he/she who is not in possession of the requisite certificate of title or such other legal instrument known to law, will certainly not procure, attract or obtain the protection under the law.

84. Put differently, the law protects a legal/equitable interests and rights over a known and stipulated property and not otherwise. In this respect, the plaintiffs have not demonstrated any such title or rights or at all.

85. In view of the foregoing, there is no gainsaying that in the absence of any certificate of title or any legally recognized instrument over the suit property, the plaintiffs herein cannot accrue or attract any protection under the law.

86. Other than the foregoing, I am reminded of the contention by the plaintiffs’ that same have been in occupation and possession of the suit property since the year 1999.

87. To use the words of PW1, the plaintiffs’ have been in occupation of the suit property for so many years. In fact, the plaintiffs’ have established light industries and such other businesses on the suit property and hence same provides the plaintiffs’ with a source of livelihood.

88. Despite the length of time that the plaintiffs’ may have been in occupation of the suit property, the bottom line remains that the suit property is public land.

89. In the premises, even though the plaintiffs’ may invoke and rely on the longevity and duration of occupation, possession and use of the suit property, it is common ground that such occupation cannot confer or invest in the plaintiffs any legal or lawful rights or at all.

90. Put differently, it is immaterial how long one has been in occupation and possession of public land. Such occupation and possession cannot confer any scintilla/ iota of rights to the occupant(s), or at all.

91. In this regard, it is important to reiterate the dictum in the case of *Faraj Maharus v J. B Martin Glasses Industries & 3 others* CA civil appeal No 130 of 2003 (Mombasa) (unreported) when it held at page 5 that;

“These were, firstly, the disputed land has at all material times to the suit been public land vested in the government under the *Government Lands Act* chapter 280, Laws of Kenya and its precursor, the Crown Lands Ordinance. Disposition thereof can only therefore be in accordance with that Act. There was no disposition to the appellant under the Act.

Secondly, that there can be no adverse possession on public or government land however long one may have been squatting thereon without let or hindrance from the government. Therefore, the appellant cannot benefit from the long period of his occupation of the disputed property.



Thirdly, the temporary occupation licence issued in 1926 could not oust the certificate of title granted under the *Registration of Titles Act*. The appellant does not possess title under the Act.

It is indeed settled law in Kenya that a temporary occupation licence to occupy government land is not sufficient to create or transfer title to the grantee or his personal representative. As was stated in *Runda Coffee Estate Ltd v Ujagar Singh*[1966] EA 564:

“It is the essence of a licence of this nature that it is personal to the licensee and creates no interest which can be disposed of by the licensee. As has been said well over 100 years ago, it creates nothing substantial which is assignable.”

We would agree therefore, with the learned judge that the licence to occupy the suit property came to an end upon the death of Effendi Maharus and his widow and as the appellant had nothing to show for the continued occupation of the suit land, his occupation as such amounted to trespass as against the registered proprietor.

92. In a nutshell, the length and duration of occupation and possession of the suit property, does not in any way confer title to the plaintiffs. Suffice it to point out that the doctrine of adverse possession does not apply to public land. See section 41 of the *Limitations of Actions Act*, chapter 22, Laws of Kenya.
93. Consequently and in the premises, I come to the conclusion that the plaintiffs’ herein have neither established nor proved any legal basis to warrant the grant of an order of permanent injunction.

## **Issue Number 2**

Whether the plaintiffs are entitled to general damages either as sought or at all.

94. Other than the prayer for permanent injunction, over and in respect of the suit property, the plaintiffs herein also sought for general damages.
95. However, it is not clear on what pretext or perspective that the plaintiffs herein are seeking general damages. For clarity, it has not been pointed out whether the impugned general damages are for trespass to the suit property or otherwise.
96. Despite the shortcomings in the pleadings filed by and on behalf of the plaintiffs, it is common ground that general damages can only be awarded to the registered and lawful owner of a property, whose rights have been violated, breached and or infringed upon.
97. Clearly, no award of general damages can issue or be granted to and in favor of a person who does not own the impugned property. In my view, such an award would be inimical to law.
98. As pertains to the subject matter, it would be recalled that the court has since found and held that the plaintiffs herein do not have any lawful title to and over the suit property.
99. In the premises, there is no gainsaying that the claim for general damages, has been made and mounted in vacuum. Consequently, same is not only pre-mature and misconceived but, is similarly untenable.

## **Final Disposition:**

100. Having duly analyzed and evaluated the totality of the evidence and the submissions that were placed before the honourable court, I come to the conclusion that the plaintiffs’ suit is not meritorious.



101. To my mind, the plaintiffs' herein had no known rights or interests to and in respect of the suit property. Consequently, same were/are not entitled to any legal protection, despite the length of time that same (sic) have been in occupation of the suit property.
102. Notwithstanding the foregoing, it is imperative to state and observe that despite the fact that the plaintiffs' do not have any legal title to and in respect of the suit property, same nevertheless cannot be evicted without due regard to the provisions of section 152 c of the *Land Registration Act*, 2012 (2016).
103. For convenience, the provisions of section 152 c of the *Land Act*, provides as hereunder;
- 152 c Eviction notice to unlawful occupiers of public land
- The National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing, by notice in the gazette and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.
104. Be that as it may, I come to the conclusion that the plaintiffs' suit merits dismissal. Consequently, same be and is hereby dismissed albeit with no orders as to costs.
105. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2022.**

**OGUTTU MBOYA,**

**JUDGE.**

In the Presence of;

**Benson - Court Assistant.**

**Ms. Grace Abalo for the Plaintiffs.**

**Mr. Muyuri for the Defendant.**

