



**Ogwora v Turungi (Environment & Land Case 188 of 2011)  
[2025] KEELC 4411 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4411 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 188 OF 2011**

**M SILA, J**

**JUNE 10, 2025**

**BETWEEN**

**JOSEPH PIUS OGWORA ..... PLAINTIFF**

**AND**

**SOPHIA TURUNGI ..... DEFENDANT**

**JUDGMENT**

1. This is now an old case that was commenced by way of a plaint filed on 19 September 2011. In the plaint, it is pleaded that the plaintiff is the registered proprietor of the land parcel Central Kitutu/Monyerero/1744 (parcel No. 1744) measuring 2.92 Ha and that the plaintiff obtained registration in his name on 24 November 2010. It is pleaded that the defendant is the registered proprietor of the neighbouring land parcel Central Kitutu/Monyerero/1746 (parcel No. 1746) measuring 1.10 Ha. It is averred that these two parcels of land emanated from subdivision of the land parcel Central Kitutu/Monyerero/127 (parcel No.127) which was in the name of Francis Ogwora Maraga. It is the plaintiff's case that upon subdivision, the two parties occupied their respective parcels of land until 20 August 2011, when the defendant trespassed into the plaintiff's land parcel No.1744 and started plucking tea leaves from the tea plantation on the said land. He added that the defendant has also commenced cultivation on a portion of his land thus depriving him use of it. In the plaint, the plaintiff seeks the following orders :
  - a. Declaration that the plaintiff is the registered and/or lawful owner of LR No. Central Kitutu/Monyerero/1744.
  - b. Permanent injunction restraining the defendant from trespassing, cultivating, plucking tea leaves, or interfering in any other manner or dealing with LR No. Central Kitutu/Monyerero/1744.
  - c. General damages for trespass.



- d. Costs of the suit.
  - e. Such other relief that the court may deem fit.
2. The defendant filed defence which she subsequently amended on 4 December 2018. In the amended defence, it is denied that the land parcel No. 1746 is registered in her name. It is pleaded that she is not the legal administrator of Cosmas Turungi Maraga (deceased) who is the one that was entitled to registration of this land. It is contended that since the two parcels of land share a boundary, then this court lacks jurisdiction to hear the dispute by dint of Section 18 of the *Land Registration Act, 2012*. It is otherwise denied that the defendant has forcefully entered the land parcel No. 1744 and commenced plucking tea leaves therein. It is further pleaded that the defendant is properly and justifiably on the land. It is pleaded that the subdivision of the land parcel No.127 was done by the plaintiff, without the knowledge of the defendant and other beneficiaries, with intention of disinheriting the beneficiaries of Cosmas Turungi Maraga and other family members. It is contended that the parcel No. 1744 was wrongly carved out contrary to demarcations on the ground and that this is where the defendant's late husband (Cosmas) is buried. It is added that it is the plaintiff who acted maliciously with the intention to defraud the defendant of her entitlement.
  3. At the hearing of the case, the plaintiff testified and called four witnesses. The defendant on the other hand also testified and called one witness.
  4. What I gather from the evidence of the witnesses and the documentary evidence produced is that the land parcel No. 127 was registered in name of Kemunto Maraga who obtained registration on 20 March 1973. This is certainly a first registration upon adjudication. She died on a date which was not provided but certainly prior to 1995 for there is evidence of a succession case over her estate being Succession Case No. 481 of 1995. From the evidence of the witnesses I have gathered that Kemunto Maraga had three sons, that is Francis Ogwora, Kengere Maraga and Cosmas Turungi. They are all now deceased. Francis Ogwora is the father of the plaintiff, whereas Cosmas Turungi was the husband of the defendant. Kengere Maraga was husband to Esther Nyanchera Opande Kengere who was the witness that testified on behalf of the defendant. When she testified, Nyanchera seemed to suggest that there were four children including one Onchera Maraga though the others mentioned three. But I do not think that it matters much whether they were three or four children of Kemunto.
  5. After Kemunto died, succession was filed, leading to registration of the parcel No. 127 in name of Francis Ogwora and Cosmas Turungi on 13 September 1996 upon transmission. This is entry No. 2 in the register. It was not long thereafter that Cosmas died, for he passed on, on 18 February 1998. I have seen entry No. 3 in the register, dated 20 May 2010, cancelling entry No. 2 vide court order dated 23 January 2002, issued in the succession matter, and entry No. 4 of even date now registering Francis Ogwora as proprietor, again pursuant to an order issued in the succession case. The parcel No. 127 was subsequently subdivided into four portions, that is parcels No. 1743, 1744, 1745, and 1746. These four parcels were all registered in name of Francis Ogwora on 17 November 2010 and it was insinuated that he was to transfer these parcels of land to the beneficiaries of Kemunto. One of the four parcels, that is the suit land, i.e parcel No. 1744, was transferred into the name of the plaintiff on 24 November 2010. Francis Ogwora died the following year, that is on 8 March 2011, and clearly this was before he could transfer the other parcels of land to the other beneficiaries. The plaintiff of course now asserts that the defendant has trespassed into his land parcel No. 1744 thus the orders that he seeks in the plaint. It is his position that the defendant should restrict herself to the parcel No. 1746.
  6. In the course of hearing the matter, it occurred to me that none of the parties had a ground report to indicate the actual occupation on the ground. I thus directed that the ground be visited by the Land Registrar and County Surveyor. The County Surveyor did visit the ground and he prepared



a report dated 18 June 2024. The plaintiff wished to rely on this report in support of his case and called the surveyor, Mr. David Lemaiyan, to testify on his behalf as PW-4. From the report, and Mr. Lemaiyan's evidence in court, it is discernible that the plaintiff is in occupation of about 0.4 Ha of the suit land i.e parcel No. 1744. She also occupies the land parcel No. 1746 where she has a homestead. The surveyor also confirmed that the grave of the husband of the defendant is within this parcel No. 1746 and not in the suit land as she had contended in her defence and in her evidence. There was some allegation coming from the defendant that the survey exercise was not conducted fairly and that she and her children were harassed and beaten by police officers. This was repulsed by Mr. Lemaiyan who testified that the exercise was not marred by any of such. He clarified that all that was there was a verbal exchange between a daughter of the defendant and the plaintiff, which situation was contained and the exercise proceeded peacefully. Indeed, when she testified, the defendant herself affirmed that the survey proceeded on very well.

7. The point that I pick from the evidence of the defendant and her witness is that the demarcation of the land was not in accordance with the ground occupation, and not in tandem with the directive of elders, in the manner that the land of Kemunto ought to have been demarcated and distributed to her beneficiaries. In her evidence, the defendant seemed to suggest that the dispute over where the boundary should be was there between her late husband and his brother Francis during their lifetime and that the father of the plaintiff (Francis) destroyed some fences that had been in existence for a long time. According to her the problem is because of this disruption of the old boundaries.
8. In his submissions, Mr. Nyambati, learned counsel for the defendant, did take considerable space to assail the manner in which the estate of Kemunto was distributed. He made arguments that not all beneficiaries were served to appear so as to give consent on the manner of distribution. He also urged that the plaintiff did not place material before court on the mode of distribution that was confirmed by the succession court and urged that he obtained title irregularly. I am afraid that I am not persuaded by these arguments.
9. If the defendant has an issue regarding the manner of distribution of the estate of Kemunto, that is a matter that she ought to have presented before the succession court. On whether the land was actually subdivided in accordance with the distribution, that is not an issue that the plaintiff needed to prove. Section 26 of the *Land Registration Act*, 2012, presumes that any title is prima facie a good title, meaning that the burden is upon the one asserting that the title is a bad title to so prove. It was therefore the burden of the defendant to show that the land was not distributed in accordance with what the succession court decided. In absence of such evidence, I must presume that the estate was distributed as ordered by court.
10. Mr. Nyambati also submitted that the estate was not distributed equally, but I do not have jurisdiction to interrogate the manner in which the estate was distributed, or make any determination on whether or not the estate of Kemunto was distributed fairly. That is the domain of the succession court and it appears that the succession court has made its orders. I cannot sit on appeal against such orders. The defendant cannot therefore be heard to assert that the land parcel No. 1744 should not have been demarcated and subdivided in the manner that was done, and that the distribution to Cosmas (her late husband) ought to have included the portion that is in dispute in this suit. It was mentioned that the subdivision went against the directive of elders. That again ought to have been raised in the succession court and I have no evidence of any objection raised to the manner of distribution of the estate. It follows therefore that the subdivision of the parcel No. 127 pursuant to the succession cause has not faced any legal challenge and I cannot void it. In fact, it is not even the plaintiff who subdivided the land, but his father, who appears to have acted as administrator of the estate of Kemunto.



11. As pointed out by Mr. Mulisa, learned counsel for the plaintiff, the defendant never sued the plaintiff's father who carried out the subdivision, and neither has she presented any counterclaim herein for cancellation of the title of the plaintiff. In essence, the plaintiff's title is not under challenge.
12. There was also argument by Mr. Nyambati that this is a boundary dispute and that this court has no jurisdiction. There is no substance in this argument. What is before me is not a boundary dispute but a case of trespass. The plaintiff has come to court asserting that the defendant has trespassed into his land inter alia by plucking his tea and cultivating his land. He has not come to court to allege any boundary dispute. Indeed, his position is that the plaintiff ought to restrict herself to the parcel No. 1746 which he seemed to suggest is what was bequeathed to her late husband. It was also raised by Mr. Nyambati that the defendant cannot be sued because she is not registered as proprietor of the land parcel No. 1746. I again see no merit in this contention. The defendant is not being sued as the registered proprietor of the parcel No. 1746 but is being sued as a trespasser to the parcel No. 1744. It is immaterial whether the land parcel No. 1746 is registered in her name. And no, the defendant is not being sued here on behalf of the estate of Francis Ogwora, whose name still appears as proprietor of the parcel No. 1746 nor on behalf of the estate of Cosmas. The case here is that she has no business in the parcel No. 1744 belonging to the plaintiff and that she is a trespasser.
13. The boundaries of the suit land, i.e the parcel No. 1744 are well demarcated. They are visible from the Registered Index Map and if there was any doubt on the boundaries, the same were pointed out by the surveyor. I am afraid to inform the defendant that she is certainly in trespass of land belonging to the plaintiff to the extent shown in the survey report. She needs to respect the parameters of the land belonging to the plaintiff and has no right to trespass into it. I am in fact not too impressed by the defendant for she deliberately wished to mislead this court that the grave of her husband is in the plaintiff's land which has turned out to be false.
14. I have no reason not to enter judgment in favour of the plaintiff. The plaintiff is the registered proprietor of the suit land and it is him who is vested with rights over that land to the exclusion of all others, including the defendant. His rights are protected by Section 25 of the [Land Registration Act](#), which provides 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.
15. From the foregoing, as registered proprietor, it is the plaintiff who is vested with the absolute ownership of the suit land together with all rights and privileges appurtenant thereto. These include the rights to exclusive use, possession, and right to profits from the land, including the right to access and benefit from the tea that is planted thereon. The defendant has no right to trespass into this land, has no right to pluck the tea therein, or cultivate this land. The land belongs to the plaintiff, and it is him, or persons that he has permitted, who are entitled to be on the land or benefit from it.



16. In essence, I am fully persuaded that the plaintiff's case is merited. I do not see the place of prayer (a) in the plaint, i.e prayer for declaration of ownership, as I do not have a dispute over title. What I am ready to grant is prayer (b), which is an order of permanent injunction restraining the defendant from entering, being upon, trespassing into, plucking any tea, cultivating, or in any other way interfering with the plaintiff's quiet possession of the land parcel Central Kitutu/Monyerero/1744 measuring 2.92 Ha or thereabouts. There is a prayer for general damages. General damages are in the discretion of the court. The defendant clearly had no right to be on this land. She has continued to benefit for the duration of this case. Considering the size of the land, its user, and the duration of this case, I will award the plaintiff Kshs. 400,000/= as general damages for trespass. The said sum to attract interest at court rates from the date of this judgment till settlement in full.
17. I have agonised over the issue of costs given the relationship of the parties. But the defendant really had no grounds to oppose this suit and has put the plaintiff to expense in prosecuting the case. The defendant also rebuffed overtures to have the matter settled amicably at home. In those circumstances, I award costs of the suit to the plaintiff against the defendant.
18. Judgment accordingly.

**DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF JUNE 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. Otieno for the plaintiff

Mr. Nyambati for the defendant

Court Assistant : Michael Oyuko

