



**Paramount Engineering (2005) Limited v Farm Engineering Industries Limited & 5 others
(Environment & Land Case 367 of 2015) [2025] KEELC 4316 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4316 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 367 OF 2015
E ASATI, J
JUNE 5, 2025
(FORMERLY KISUMU HCCC NO 17 OF 2006)**

BETWEEN

PARAMOUNT ENGINEERING (2005) LIMITED PLAINTIFF

AND

FARM ENGINEERING INDUSTRIES LIMITED 1ST DEFENDANT

SWARANJIT SINGH BHURJI 2ND DEFENDANT

TARANJIT SINGH BHURJI 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

THE DIRECTOR OF SURVEY 6TH DEFENDANT

JUDGMENT

1. The suit herein was first filed in the High Court as Kisumu HCCC No. 17 OF 2006 in which the parties were Paramount Engineering Company Limited as the Plaintiff and Farm Engineering Industries Limited.
2. The suit was later transferred to the Environment and Land Court at Kisumu for hearing and disposal and assigned the current case number.
3. Over the years, the parties amended their pleadings severally culminating, on the part of the plaintiff, in the amended, amended, amended plaint dated 29th October, 2019 thereby bringing on board the 2nd to 6th Defendants and changing the name of the Plaintiff to Paramount Engineering (2005) Limited and for the 1st, 2nd and 3rd Defendants, the amended, amended Written Statement of Defence of the 1st Defendant and amended defence of the 2nd and 3rd Defendants dated 10th August, 2012. For the 4th,



5th and 6th Defendants, there was filed their Statement of Defence dated 1st February, 2021 denying the Plaintiff's claim.

The Plaintiff's Case

4. Vide the amended, amended, amended plaint dated 29th October, 2019 the Plaintiff claimed that it was the registered owner of a lease hold interest in all that parcel of land known as L.R. No. 18127 measuring 3.102 hectares or thereabouts (the suit land herein).
5. That the 1st Defendant is occupant of land parcel L.R. No. 18128 and that the 2nd and 3rd Defendants are owners of leasehold interest in land parcel L.R. No. 16145. It pleaded that in April, 1993, the 5th and 6th Defendants deemed it necessary to re-survey the area within what was the Municipality of Kisumu in which the properties the subject of this suit fall in order to harmonize records relating thereto and that as a consequence whereof, the survey plan F/R 227/71 for L.R. No. 16145 was cancelled having been superseded by survey plan F/R No. 235/96. That the survey F/R No. 235/96 re-established what had been L.R. No. 16099, 16145, 15714 and un-surveyed government land as L.R. No. 18125, 18126, 18127, 18128 and 18129 respectively with what was L.R. No. 16145 becoming L.R. No. 18128 adjacent to and bordering L.R. No. 18127.
6. The Plaintiff's complaint is that on diverse dates, the Defendants unlawfully and without any colour of right erected a fence which went beyond the boundaries and beacons separating the two parcels of land being R. No. 18127 and 18128 thereby interfering with and denying the Plaintiff the access, possession and use of approximately 3 acres (1.05477 Ha) of the Plaintiff's land and that the Defendants continue the acts of trespass.
7. The Plaintiff therefore seeks for;
 - a. a permanent order of injunction in mandatory terms requiring the 1st, 2nd and 3rd Defendants to remove the offending fence and to cease the acts of trespass complained of and in default that the 1st, 2nd and 3rd Defendants be ejected from the property.
 - b. An order of permanent mandatory injunction to issue against the 1st, 2nd and 3rd Defendants by themselves, their officers, agents and/or servants or otherwise to remove the offending fence/ boundary and to cease the acts of trespass complained of and in default that the 1st, 2nd and 3rd Defendants be ejected from the property.
 - c. Upon removal of the offending property/fence by the 1st, 2nd and 3rd Defendants, an order of permanent prohibitory injunction do issue against the 1st, 2nd and 3rd Defendants by themselves, their officers, agents and/or servant or otherwise trespassing on the Plaintiff's property Land Reference Number 18127.
 - d. General damages against the 1st, 2nd and 3rd Defendants for trespass and mesne profits.
 - e. The costs of this suit and interest thereon at court rates.
8. The Plaintiff called two (2) witnesses in support of its case.

The Case of the 1st, 2nd and 3rd Defendants.

9. Vide the Amended, amended defence of the 1st Defendant and the amended defence for the 2nd and 3rd Defendants dated 10th August, 2012, the 1st, 2nd and 3rd Defendant denied the Plaintiff's claim, they averred in the alternative that if they erected a fence between the two parcels of land then the same was within its boundaries.



The Case of the 4th, 5th and 6th Defendants.

10. The 4th, 5th and 6th Defendants denied the Plaintiff's case vide their Statement of Defence dated 1st February, 2021. No evidence was adduced and no submissions were filed on behalf of the 4th, 5th and 6th Defendants.
11. Two witnesses testified on behalf of the Defence.

Submissions

12. At the close of the evidence, parties filed written submissions on the case. Written submissions dated 15th April, 2024 and Further written submissions dated 26th October, 2024 were filed by the firm of Behan & Okero on behalf of the Plaintiff.
13. On behalf of the 1st, 2nd and 3rd Defendants written submissions dated 22nd October, 2024 were filed by the firm of M.M. Gitonga Advocates LLP.
14. The court has considered the written submissions filed.

Issues for Determination

15. From the pleadings filed, the evidence placed before court and the submissions made, the court finds the following to be the issues that emerge for determination;
 - a. whether or not the Plaintiff owns a parcel of land known as L.R. No. 18127 measuring 3.102 Ha as pleaded in the amended, amended, amended plaint.
 - b. whether land parcel L.R. No. 18127 shares a common boundary with land parcel L.R. No. 18128.
 - c. whether by erecting a wall between the two parcels of land, the 1st, 2nd and 3rd Defendants encroached onto the suit land thereby denying the Plaintiff access, occupation and use of a portion measuring 3 acres (1.5477Ha) of the suit land.
 - d. Whether or not the Plaintiff is entitled to the relief sought.
 - e. Costs of the suit.

Analysis and Determination

16. The first issue for determination is whether or not the Plaintiff owns a parcel of land known as L.R. No. 18127 measuring 3.102 Hectares or thereabouts as pleaded in the amended, amended, amended plaint.
17. The Plaintiff pleaded in paragraph 3 of the amended, amended, amended plaint dated 29th October, 2019 that it was the registered owner of a lease hold interest in all that parcel of land known as L.R. No. 18127 being a lease from the Government of the Republic of Kenya for a period of 99 years with effect from 1st April, 1992 and measuring 3.102 hectares or thereabout.
18. As part of its evidence in chief, the Plaintiff through PW1 Mr. Satwant Singh Dhanjal, one of its Directors produced a Grant I.R. 59205 in respect of L.R. No. 18127 dated 25th May, 1993 in favour of Paramount Engineering Works Ltd of Kisumu Post Office Box Number 295 for a period of 99 years from 1st April, 1992.
19. The Grant shows that the size of the land the subject matter thereof was 3.102 hectares or thereabouts.



20. The Plaintiff also produced a Beacon certificate dated 21st June, 2010 in respect of L.R. No. 18127 Kanyakwar.
21. It was submitted on behalf of the Plaintiff that the Plaintiff had established ownership of the property and its dimensions by producing the title documents, the beacon certificate and a survey report thereof. Counsel submitted that the Plaintiff was therefore for purposes of section 26 of the Land Registration Act the absolute and indefeasible owner of the suit property, entitled to the protection of its property rights under article 40 of the Constitution.
22. The 1st, 2nd and 3rd Defendant in paragraph 3 of their defence dated 10th August 2012 pleaded that they were strangers to the allegation that the Plaintiff was the registered owner of the suit land and put the Plaintiff to strict proof. DW1 testified vide his witness statement dated 12th February, 2019 and reiterated the contents of the defence. He stated that he was aware that there was a mosque that was established on the land that is adjacent to land parcel No. L.R. 16145 which does not belong to the Plaintiff. That before then the land had been vacant. That whereas the Plaintiff claimed that it acquired the land on 1st April, 1992, no explanation had been given why it took 15 years to lodge the suit claiming encroachment and recovery of land measuring approximately 3 acres.
23. From the documents produced as exhibits particularly the Grant, the Beacon certificate, and the survey report, it is clear that the Plaintiff owns land parcel No. L.R. 18127 measuring 3.102 Hectares.
24. The next issue for determination is whether land parcel number L.R.18127 shares a common boundary with L.R. No. 18128.
25. It was pleaded in paragraph 5 of the amended, amended, amended plaint that the two parcels of land share a common boundary.
26. The 1st, 2nd and 3rd Defendants vide paragraph 6 of their defence denied that the two parcels of land share a common boundary.
27. The evidence placed before court by PW2 one Charles Ameso Okoth Angira, a licensed Surveyor was that the two parcels share a common boundary. This was confirmed by DW2 a senior Surveyor who in his report dated 12th February, 2024 confirmed that the boundary between the two parcels of land was determined by a line which he identified as Kot2 – N2 on which, a according to him, both parcels lay.
28. Further, a letter dated 24th August, 2005 by the Municipal Council of Kisumu to the 1st Defendant and signed by one P.O. Nungo, Director of Planning, indicated that the Defendants' land was adjoining parcel No. LR. 18127. A copy of sketch plan attached to the said letter demonstrated the positions of the parcels of land on the ground and it shows that what separates the two parcels was a common boundary.
29. On the basis of the evidence placed before court, I find that the two parcels of land are adjoining on the ground and that they share a common boundary.
30. The third issue for determination is whether or not the 1st, 2nd and 3rd Defendants encroached onto the suit land thereby denying the Plaintiff access, occupation and use of a portion thereof measuring 3 acres (1.05477 Ha).
31. The Plaintiff pleaded in paragraph 6 of the amended, amended, amended plant that on diverse dates particulars of which are well within the Defendants' knowledge, the 1st, 2nd and 3rd Defendants unlawfully and without any colour of right erected a fence which was beyond the Defendants' own boundaries and beacons separating the two parcels of land being parcel number 18127 and 18128



thereby interfering with and denying the Plaintiff access, occupation and use of approximately 3 acres (1.05477Ha) of the Plaintiff's parcel of land and continues the acts of trespass.

32. PW1 in his testimony reiterated the contents of the plaint and stated that he knew the Defendants as his immediate neighbours with whom they share a common boundary. That the Defendants had encroached onto the Plaintiff's land and that he wished that they be ordered to remove the wall and fence from the Plaintiff's property. That the Defendants had encroached on the property by erecting a wall and had placed a barbed wire fence outside the wall. That he discovered the encroachment in the year 2005 when the Plaintiff wanted to build its fence. That the Plaintiff engaged the services of a Surveyor to show it where to put its fence. That the Surveyor carried out the survey and generated a report dated 16th August, 2005.
33. That the Municipal Council when contacted to remove the wall wrote a letter dated 24th August, 2005 requesting the Defendants to restore the original boundary.
34. PW2's evidence was that as a licensed Surveyor and physical planner he was requested by Kisumu Municipal Council to conduct a survey on a piece of land No. L.R. No. 18127. That he did the survey and generated a report which he produced as exhibit P6. That his findings were that a barbed wire fence had encroached on parcel No. 18127 by approximately 1.267 hectares or 3.13 acres. That both the wall and the fence are inside land parcel L.R. No. 18127.
35. On cross-examination, PW2 stated that after the survey his boss wrote to the owner of the neighbouring plot informing him of the encroachment. That the owner of parcel No. 18128 was not involved in the survey as it is only the owner of parcel No. 18127 who had complained.
36. It was submitted on behalf of the Plaintiff in respect of the issue encroachment that in the absence of valid and lawful document of title and of a current and certified survey plan, the 1st, 2nd and 3rd Defendants are presumed to occupy land bereft of valid document of title or surveyed dimensions wherefore they have insufficient evidence to rebut the Plaintiff's evidence on trespass.
37. Counsel submitted further vide the Further Submissions dated 26th October 2024 that the only evidence that the 1st, 2nd and 3rd Defendants have of the dimensions of the property L.R. No. 16145 is a Survey plan F.R. 227/71 which was cancelled and of which only a copy lacking any authenticity/certification was produced in court.
38. That it was the burden of the 1st, 2nd and 3rd Defendants to prove the authenticity of their title, the dimensions of their land and the legality of their occupation of the portion of the suit property which they entered upon in the year 2005.
39. The 1st, 2nd and 3rd Defendants, vide paragraph 8 of their defence denied that they unlawfully encroached onto the suit land or erected a fence or interfered with or denied the Plaintiff access, possession or use of the suit land. The 1st, 2nd and 3rd Defendants averred in the alternative and without prejudice that if at all they erected a fence separating the two parcels of land, then the same was within its own boundaries.
40. Vide the evidence of DW1, the 1st, 2nd and 3rd Defendants denied that they were aware of any encroachment. Their case was that they have possession of the land on which they had a workshop and toilets on half of the plot and set aside the rest for further development. That they conducted a survey and confirmed that the beacons were at the correct position.
41. The testimony of DW2 also a licensed Land Surveyor had no evidence on the issue of encroachment. He testified that survey plan No. 227/71 which created parcel number 16145 was cancelled and superseded with No. 235/96. That plan No. 235/96 was authenticated on 7th April, 1998. That he did



not find the reason for cancellation of plan No 227/71. DW2 produced a report dated 12th February, 2024 in which he drew the conclusion that survey plan No. 235/96 should be cancelled as its presence negates other survey plans namely F/R 222/71, F/R 220/5 and F/R 308/101.

42. That the said survey should have been rejected and that if it is not cancelled and withdrawn, it would make surrender of 20meter road by L.R. 15714 and all the titles Numbers L.R. No. 15714/2-4, 5, 6-9 and 10 redundant.
43. DW2 recommended further that upon withdrawal by the Director of Survey of F/R 235/96 all the deed plans for L.R.18125 to 18129 be recalled and cancelled and the area be re-planned appropriately for any subsequent allocation or regularization.
44. It was submitted on behalf of the 1st, 2nd and 3rd Defendants that to prove trespass under Section 3(1) of the Trespass Act, it is imperative to first establish whether the Plaintiff is the occupier of the suit property and whether the Defendant have entered the Plaintiff's suit property wrongfully.
45. Counsel submitted that the Plaintiff had not placed any material before court to prove the alleged trespass. That the Chief Land Registrar who is the custodian of all records relating to land and who is a party to these proceedings did not affirm the Plaintiff's allegations of a resurvey done in the year 1993. Counsel relied on the case of Andrew Marigwa -vs- Josepha Ondieki Kibati ELC No. 116 OF 2016 to support this submission.
46. Counsel relied on the provisions of Section 23 of the Survey Act to submit on the pre-requisites of re-survey including the giving of notice to the owner and submitted that no evidence was produced by the Plaintiff to show that the said provision of the law was complied with in respect of the re-survey.
47. Counsel submitted that if the resurvey took place, the Chief Land Registrar should have called for the surrender of the 2nd and 3rd Defendant's original title for purposes of generating the new title.
48. That there was no signature on the inscribed word "cancelled" on the survey plan in accordance with the provisions of Regulation 109 of the Survey Regulations, 1994.
49. Counsel further relied on the provisions of Section 79 of the Land Registration Act on alterations affecting title of a property and submitted that the same was not complied with.
50. Counsel further submitted that while survey plan number 222/71 producing L.R. No. 16145 was authenticated by the Director of Survey on 24th April, 1992, survey plan No. F/R 235/96 does not bear any evidence of authentication and therefore cannot oust the validity of survey plan F/R 222/71. That in any event the survey plan under F/R 222/71 prevails over F/R 235/96.
51. That survey No. F/R 235/95 was prepared by a Surveyor called Mr. Makori who according to the testimony of DW2 is not a registered Surveyor in Kenya. Referring to the provisions of section 2 and 36 of Survey Act, Counsel submitted that only a licensed surveyor or government surveyor and no unqualified person can perform any survey which affects the determination of the boundaries or the location of survey marks.
52. That the 2nd and 3rd Defendant were the rightful proprietors of L.R. No. 16145 measuring 2.6 hectares whose boundaries were established in deed plan number 162318 issued by Director of Surveys on April 27th 1992.
53. Counsel submitted that the Plaintiff had failed to prove the alleged trespass or encroachment onto his land and urged the court to discharge the Plaintiff's allegations of trespass.



54. I have considered the pleadings, evidence and submissions made by both parties on the issue of encroachment.
55. The expert evidence on record in respect of encroachment is that PW2 who testified that after he conducted a survey on the suit land, he ascertained that the owners of the neighbouring land parcel number L.R. 18128 had encroached onto the suit land. PW2 testified that his report was based on survey plan FR 235/96 by a Surveyor called W.N. Makori and authenticated by the Director of Survey on 7th April, 1993.
56. The existence of the survey plan No F/R 235/96 was not denied by the Defence. Although DW2 claimed that there was no registered surveyor in Kenya by the name Makori, he did not produce any evidence to support this. He did not exhibit the register of surveyor's in Kenya as evidence. DW2 testified and not only acknowledged the existence of the survey NO F/R 235/96 plan but stated that according to the records, it cancelled and superceded survey plan No. 222/71. DW2 proceeded to point, out in his report, the defects or negative effects of the said survey plan No. 235/96 in relation to previous survey plana for the area and recommended for its cancellation. There is no evidence that his recommendations have ever been implemented or that the said survey plan has ever been cancelled or challenged in court. Even in these proceedings there was no counterclaim challenging the survey plan.
57. To the survey report by PW2 was attached a sketch map showing the positions of the suit land and the Defendants' land and the encroached area on the ground.
58. On the material placed before court, I find that the Plaintiff proved that the 1st, 2nd and 3rd Defendants encroached onto the suit land by erecting a wall and a fence that had the effect of hiving off part of the Plaintiff's land.
59. Although the court record shows that the Chief Land Registrar and Director of Survey were joined in the suit as the 5th and 6th Defendants at the instance of the court, no cause of action was directed against them. Secondly, not much assistance was achieved from them as they neither attended court nor testified. The Statement of Defence filed by the Attorney General on their behalf was a mere denial of the Plaintiff's claim.
60. The next issue for determination is whether or not the Plaintiff is entitled to the relief sought
61. Having determined that the Plaintiff is the owner of the suit land which shares a common boundary with the Defendants' land and that the 1st, 2nd and 3rd Defendants encroached onto the suit land and are continuing with the trespass, I find that the Plaintiff is entitled to the relief sought.
62. Regarding the claim for general damages and mesne profits the Court of Appeal in the case of Christine Nyanchama Oanda v Catholic Diocese of Homa Bay Registered Trustees [2020] eKLR held that,

“It is settled law that where a party claims for both mesne profits and damages for trespass, the court can only grant one and not both. Mesne Profits is defined as the profit of an estate received by a tenant in wrongful possession between the dates when he entered the suit property and when he leaves (See: Black's Law Dictionary 9th edition). Mesne Profits must be pleaded and proved.”
63. In Duncan Nderitu Ndegwa vs KPLC Ltd & another [2018]eKLR it was held that once trespass to land is established it is actionable per se and no proof of damages is necessary for the court to award general damages. Taking into account all the facts of the case and the fact that the plaintiff has denied access and use of the encroached portion of the suit land the court considers an award of Kshs 2,000,000/= (Kenya shillings two million only) to be adequate compensation.



64. For the foregoing reasons, the court finds that the Plaintiff has proved its case on a balance of probabilities and hereby enters judgement in favour of the Plaintiff and against the 1st, 2nd and 3rd Defendants for;

- i. An order of permanent mandatory injunction to issue against the 1st, 2nd and 3rd Defendants by themselves, their officers, agents and/or servants or otherwise to remove the offending fence/ boundary and to cease the acts of trespass complained of and in default that the 1st, 2nd and 3rd Defendants be ejected from the property.
- ii. An order of permanent prohibitory injunction restraining the 1st, 2nd and 3rd Defendants by themselves, their officers, agents and/or servants from trespassing on the Plaintiff's property Land Reference Number 18127 after removal of the offending wall/fence.
- iii. General damages of Kshs.2,000,000/- (Kenya shillings two million only).
- iv. Costs of the suit.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT Kisumu AND DELIVERED THIS 5TH JUNE DAY OF JUNE, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Okero for the Plaintiff.

Mikwa h/b for Gitonga for the 1st, 2nd and 3rd Defendants.

N/A for the 4th, 5th and 6th Defendants.

