



REPUBLIC OF KENYA



**Njoroge v Wang’endu (Environment and Land Case E005 of 2022)  
[2025] KEELC 5113 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5113 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E005 OF 2022**

**JA MOGENI, J**

**JULY 3, 2025**

**BETWEEN**

**MARGARET WANJIKU NJOROGE ..... PLAINTIFF**

**AND**

**LYDIA NJERI WANG’ONDU ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff claims a proprietary right over all that parcel of land known as Thika Municipality Block 38/258 measuring 0.0428 Hectares “herein referred to as the suit land”. She avers that she was allotted the suit property by the Commissioner of Lands and was issued with a Certificate of Lease on 28/03/2018.
2. The Plaintiff has sued the Defendant and prays for Judgment against the Defendant for the following reliefs;
  - a. An order for the Defendant to forthwith relinquish possession and in default eviction of the Defendant, her servant and/or agents anybody else claiming through her from land parcel number Thika Municipality Block 38/258 together with mesne profits.
  - b. In alternative to (a) above the Defendant do pay commensurate compensation for value of land parcel No. Thika Municipality Block 38/258 pegged at a valuation as at Judgment date.
  - c. Costs of the suit.
  - d. Any other or further relief(s) as this honorable Court may deem fit to grant.
3. The brief facts of the Plaintiff’s claim against the Defendant is that she became aware that the Defendant has encroached on her suit property in 2018. That she later met her and she admitted and stated that she had a plot nearby and also that she had constructed on the Plaintiff’s plot by mistake.



4. That the Respondent presented a Beacon Certificate to the Plaintiff for another plot. That they held a meeting on 7/06/2024 and she agreed to compensate the Plaintiff and that the Plaintiff had minutes and the Respondent even signed but that she has not compensated the Plaintiff.  
The Plaintiff has stated that the compensation to the Plaintiff was on his terms.
5. So the Plaintiff prays that the Defendant has to relinquish possession and in default eviction of the Defendant and her servants and or agents. In the alternative the Defendant do pay commensurate compensation for value of land parcel No. Thika Municipality Block 38/258 pegged at a valuation as a Judgment date.
6. The Defendant's Counsel filed a Statement of Defence dated 6/12/2022 and a List of Documents dated 26/01/2023.
7. The matter was set for hearing on 2/10/2024 after Court Annexed Mediation collapsed. However on 2/10/2024 the Defendant stated that she was not ready to proceed with the hearing of the case and that she wanted to settle the matter since she was intending to dispose of one of her properties to pay the Plaintiff off. The Counsel for the Plaintiff declined the offer of the Defendant stating that the offer was unacceptable to his client, since it has been six months ago and nothing has happened.
8. The Court then fixed the hearing for 19/02/2025. However, on the scheduled date only the Plaintiff attended Court the Defendant did not attend Court. The Plaintiff testified as PW1 and she adopted her undated witness statement and List of Documents dated 23/12/2021 with three (3) documents PW Exhibit 1-3.
9. It was her testimony that she had sued the Defendant because she had constructed a permanent building on her plot which is parcel No. Thika Municipality Block 38/258 size 0.0428 hectares. That title was issued on 28/03/2018. She testified that the Allotment Letter was issued in 1988 but she procured title in 2018 and she also learnt that the Defendant had encroached in 2018.
10. She testified that she met with the Defendant and the Defendant admitted that she had a plot nearby and also that she confessed having constructed on the suit property. That she presented a Beacon Certificate to the Plaintiff for another plot and that they held a meeting on 7/06/2014 and the Defendant agreed to compensate the Plaintiff and they both signed the minutes but to date she has not been compensated despite the agreement that the compensation would be on the Plaintiff's terms.
11. During the hearing the Plaintiff produced the original copy of the title deed, Letter of Allotment including the minutes although the documents had not been filed among the ones produced which were only copies.
12. The Counsel of the Plaintiff at this point sought Court's leave to file a copy of the Letter of Allotment and Minutes of the Negotiations between the parties and the Court party granted him 7 days. Further the Court directed the parties to file submissions and a Judgment date was reserved.

### **Analysis and Determination**

13. Upon consideration of the Plaintiff's Complaint, Witness Testimony and Exhibits, the following are the issues for determination:
  - i. Whether an order of eviction should issue against the Defendant.
  - ii. Whether the Plaintiff is entitled to mesne profits.
  - iii. Who should bear the costs of the suit?



### **As to whether an order of eviction should issue against the Defendant.**

14. The Plaintiff's claim is based on proprietorship of the suit land and entitlement to the rights in respect to ownership of land. She has produced documentary evidence in form of a title deed over the suit land in her name as proof of ownership.
15. The Plaintiff as PW1 tendered evidence to prove she is the registered proprietor of the suit land and she was issued with a Certificate of Title to that effect, which she produced as an exhibit. It was her testimony that the Defendant had encroached on the suit land and declined to heed her demand to vacate despite engaging even in negotiations. That the Defendant has proceeded to construct on the Plaintiff's land despite being aware that it does not belong to her.
16. Section 24 of the [Land Registration Act](#) No 3 of 2012 states that 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. Section 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of Court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to encumbrances charges or leases shown on the register and the overriding interests as stated in Section 28 of the Act.
17. Section 26 of the [Land Registration Act](#), 2012 provides;
  - “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, 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.”
18. In the case of *Willy Kipsongok Morogo vs Albert K. Morogo* (2017) eKLR the Court held as follows:

“The evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under Sections 24, 25 and 26 of the [Land Registration Act](#).”
19. The Courts are therefore mandated by Statute to consider a title document as prima facie evidence of ownership to land and a conclusive evidence of proprietorship to land that can only be challenged on grounds stipulated as above. In the present case the title produced by the Plaintiff shows that the suit land is registered in her name. That position was not challenged by the Defendant, in fact the Defendant failed to appear in Court to defend her case despite filing the pleadings in opposition to the claim in person since she had no Counsel on record.
20. Among the rights to be enjoyed by a registered owner of any land is the right for peaceful and quiet enjoyment of the land he owns, in other words the rightful owner to the land has a right to possession,



occupation and use of the suit land. The Plaintiff conducted evidence that shows that the Defendant has illegally taken possession of the suit land and is utilizing it for her own benefit, those actions of the Defendant amount to violation of the Plaintiff's right as guaranteed in *the Constitution* and must be stopped. It is the Plaintiff's case that the Defendant's occupation of her land is without her consent or legal basis. The Defendant failed to rebut the claim.

21. The dispute herein involves ownership of a parcel of land, and the specific prayers sought by the Plaintiff in the Plaint filed herein is for eviction orders to issue against the Defendant herein. These are clearly orders relating to the use, occupation and title to land and within the jurisdiction of this Court.

#### **As to whether the Plaintiff is entitled to mesne profits**

22. As to whether the Plaintiff is entitled to mesne profits Section 2 of the *Civil Procedure Act* Cap 21 of the 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.”

23. While Order 21 Rule 13 of the Civil Procedure Rules provides as follows:-

“ 13.

- (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—
  - (a) for the possession of the property;
  - (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;
  - (c) directing an inquiry as to rent or mesne profits from the institution of such suit until—
    - (i) the delivery of possession to the decree-holder;
    - (ii) the relinquishment of possession by the Judgment- debtor with notice to the decree-holder through the Court; or
    - (iii) the expiration of three years from the date of the decree, whichever event first occurs.
- (2) Where an inquiry is directed under sub rule (1) (b) or (1) (c), a final decree in respect of the rent and mesne profits shall be passed in accordance with the result of such inquiry.”



- 24. Except for pleading mesne profits, the Plaintiff did not furnish Court with any evidence on the period the Defendant had been on the land, the extent of encroachment and the loss she had suffered.
- 25. In the case of Peter Mwangi Mbuthia & Another v Samow Edin Osman [2014] eKLR, the Court of Appeal while dealing with the issue of mesne profits held as follows:-
  - “We agree with Counsel for the appellants that it was incumbent upon the Respondent to place material before the Court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”
- 26. Based on the evidence placed before me while associating myself with the legal provisions and decisions cited above, I find that the Plaintiff had failed to discharge her burden of proof to prove that she is indeed entitled to a claim of mesne profits and I will decline to award her the same.

**Who should bear the costs of the suit?**

- 27. Since the Plaintiff has been inconvenienced with the Defendant’s defiance to move from the suit land, I find that she is entitled to costs.
- 28. Having found that the Plaintiff has proven her claim on a balance of probability and established that the Defendant has no legal right to remain on the suit land based on the evidence placed before this Court, the Plaintiff’s claim succeeds and the Court makes the following orders;
  - a. The Defendant by herself, family members, employees, agents and whomsoever claiming under her be and is hereby directed to give vacant possession of LR. No. Thika Municipality Block 38/258 within 90 days from the date hereof, failure of which an eviction order will issue.
  - b. The Costs of the suit is awarded to the Plaintiff.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF JULY 2025.**

.....  
**MOGENI J**  
**JUDGE**

In the Presence of:

..... For Plaintiff  
 ..... For Defendant  
 Melita.....- Court Assistant.

.....  
**MOGENI J**  
**JUDGE**

