



**Lokere & another (Suing as Executor of the Will of Lokoriongor Lokere) v Tong'kwang & another (Environment and Land Case 37 of 2022) [2025] KEELC 6092 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6092 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 37 OF 2022  
CK NZILI, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**BENSON LOSIALIMA LOKERE ..... 1<sup>ST</sup> PLAINTIFF  
JACKSON MNANGATI KORII ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS EXECUTOR OF THE WILL OF LOKORIONGOR LOKERE**

**AND**

**JULIUS TONG'KWANG ..... 1<sup>ST</sup> DEFENDANT  
CHINA NATIONAL AERO TECHNOLOGY INTERNATIONAL  
ENGINEERING CORPORATION ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiffs came to court through an amended plaint dated 16/4/2024. It was averred that the deceased Lokoriongor Lokere was the registered member No. 187, owning a share of land in Kanyarkwat Group Ranch, West Pokot County, identified on the ground as M/S 547, which devolved to the 1<sup>st</sup> plaintiff as the executor of his will, only awaiting formal subdivision and processing of titles in individual names.
2. The plaintiffs aver that the 1<sup>st</sup> defendant, without any lawful excuse or colour of right from them, entered into a lease agreement with the 2<sup>nd</sup> defendant to illegally enter into the suit premises, excavate, carry away murram and hardcore stones for road construction, whereof it continued to do so, despite protesting from them.
3. Further, the plaintiffs aver that on or about 21/1/2024, the 1<sup>st</sup> defendant, without any lawful excuse, entered into the suit land and, without any consent or approval, harvested several indigenous trees and damaged others, whose assessment by the County Forest Officer was Kshs. 150,000/=.



4. The plaintiffs aver that as a result of the defendants' trespass and illegal activities, the suit land has been left with deep gullies, is wasting away and was left with no compensation for the extracted materials. The plaintiffs, therefore, pray for:
  - a. Permanent injunction to stop any further trespass or denial of the right to quiet enjoyment.
  - b. General damages for trespass and destruction.
  - c. Damages for the illegally harvested trees as per the valuation report against the 1<sup>st</sup> defendant.
5. The 1<sup>st</sup> defendant opposed the suit through an amended statement of defence dated 21/5/2024, stating that the plaintiffs lack the capacity to mount the suit. The 1<sup>st</sup> defendant denies that M/S No. 547 exists, identifies the share of the deceased in Kanyarkwat Group Ranch as alleged or at all, since the entire ranch was yet to be subdivided or parcel numbers issued to individual members. The 1<sup>st</sup> defendant denies ever trespassing onto the suit land.
6. The 1<sup>st</sup> defendant admits that on 13/2/2022, he leased part of his father's family land with the consent of family members to the 2<sup>nd</sup> defendant, for purposes of excavating murram and rocks. It was averred that in February 2022, when the 2<sup>nd</sup> defendant embarked on the said activities, objection to the said lease, with the local area chief, and the officials of the Group Ranch, who confirmed to the 2<sup>nd</sup> defendant that the suit land was part of the land belonging to Longoria Dongokwang, his father.
7. The 1<sup>st</sup> defendant avers that the land leased to the 2<sup>nd</sup> defendant was not part of the land that had been the subject of a dispute between the plaintiffs' father and his father, which had hitherto been fully resolved by the group ranch officials in 2017, following which the two parties shared the land.
8. The 1<sup>st</sup> defendant denies entering into plot No. 187, which in any event is non-existent, or having harvested any alleged indigenous trees or damaged others as alleged or at all. The 1<sup>st</sup> defendant avers that the land where he harvested indigenous trees was part of land belonging to his father, a member No. 220 of Kanyarkwat Group Ranch, which has never belonged to member No. 187 where murram was extracted by the 2<sup>nd</sup> defendant.
9. The 1<sup>st</sup> defendant admits that there was indeed a land dispute over the suit land, where murram was being extracted, which land is occupied and or cultivated by him and his brother. The 1<sup>st</sup> defendant avers that the family of Ngoleyo and three of the 1<sup>st</sup> plaintiff's brothers were present when the dispute was heard and determined in favour of his father. The 1<sup>st</sup> defendant denies that the reliefs sought against him were legally tenable.
10. The 2<sup>nd</sup> defendant opposed the suit through a statement of defence dated 21/8/2023. It was averred that the 2<sup>nd</sup> defendant leased a total of 3 acres of land from the 1<sup>st</sup> defendant out of plot No. 220 and not No. 547 Kanyarkwat Group Ranch vide lease agreements dated 13/2/2022, 23/5/2022 and 6/11/2022.
11. The 2<sup>nd</sup> defendant avers that before entering into the lease agreements with the 1<sup>st</sup> defendant, it conducted due diligence by visiting the officials of the group ranch, whereupon its officers were issued with a copy of certificate of land ownership, as proof that Longoria Dongokwang, the father to the 1<sup>st</sup> defendant was a member No. 220 of the group ranch, hence the lawful owner of the suit land.
12. The 2<sup>nd</sup> defendant avers that the group ranch officials also supplied it with a layout sketch map dated 8/1/2021, indicating plot No. 220 and the neighbouring plots.
13. Further, the 2<sup>nd</sup> defendant avers that it thereafter took immediate possession of the leased parcels of land, enjoyed exclusive and quiet possession, with full knowledge of the plaintiffs and the general



public, until the murrum and excavated stones were depleted, vacated the land after successfully handing over the same to the landlord. The 2<sup>nd</sup> defendant avers that as at the filing of the suit on 13/12/2022, it had already vacated the land, hence it is wrongly sued. The 2<sup>nd</sup> defendant denies receiving any demand letter as alleged or at all.

14. At the trial, Benson Losialima Lokere testified as PW1. He relied on witness statements dated 23/10/2022 and 27/3/2025 as his evidence-in-chief. PW1 told the court that he is one of the children of the late Lokoriongkor Kokerem, who passed on on 18/8/2008, but had, by a will dated 4/5/2009, appointed him and the 2<sup>nd</sup> plaintiff as executors of his written will, to protect and preserve all his immovable properties.
15. PW1 told the court that the deceased was member No. 187 and owner of plot No. 547, measuring approximately 120 acres, that had been allocated to him by Kanyarkwat Group Ranch officials. PW1 told the court that between 2016 and 2017, the 1<sup>st</sup> defendant's father had a land dispute with them over plot No. 547, which was resolved by the group ranch officials, and ordered Mzee Tokokwany Longaria to vacate he disputed land within 12 months, whereby he complied and relocated his family.
16. PW1 told the court that in 2021, the 1<sup>st</sup> defendant, without any consent from them, leased out part of the suit land to the 2<sup>nd</sup> defendant to excavate murrum and stones for road construction, measuring approximately 4 acres, wherein it went in with heavy machinery, scooped murrum and stones therefrom, leaving deep holes and galleys on the site.
17. PW1 told the court that the 1<sup>st</sup> defendant does not own the suit land; otherwise, the 2<sup>nd</sup> defendant should have undertaken due diligence to verify the ownership before the agreement. Further, PW1 told the court that the management of the group ranch had a register of members which shows that of his late father. PW1 said that though the 1<sup>st</sup> defendant's father relocated from the disputed land, the 1<sup>st</sup> defendant and one of his brothers did not remove their structures as ordered by the group ranch official within 12 months and have remained thereon to date.
18. PW1 relied on a copy of a death certificate dated 21/10/2010, a will dated 4/5/2009, a certificate of land ownership issued on 7/3/2022, membership list, minutes from meetings held on 10/3/2022, 9/9/2016 and 15/6/2022, an agreement dated 13/2/2022 and photographs as P. Exhibits. No. 1, 2, 3, 4, 5, 6, 7, 8 and 9. Further, PW1 relied on a valuation report dated 31/1/2024, (PMF1.No. 10).
19. In cross-examination, PW1 told the court that he was the son of Lokere. He denied that the sketch map relied upon by the 1<sup>st</sup> defendant was authentic or reflective of the suit parcel of land and its localities. PW1 insisted that after the dispute was settled in 2017, the 1<sup>st</sup> defendant, just like his father, was supposed to vacate the land decreed to the late Lokere. Further, PW1 said that the site for murrum excavation belongs to his late father as per the resolution of the dispute in 2017, but he had vehemently declined to vacate. PW1 said that P. Exhibit No. 5 shows that the 1<sup>st</sup> defendant's father was given one year to vacate the disputed land.
20. Equally, PW1 said that P. Exhibit No. 6 shows that the area assistant chief was present when the dispute was resolved and parties directed to abide by the award, which the 1<sup>st</sup> defendant never challenged, hence there was no pending claim over the land by the 1<sup>st</sup> defendant, both to the area chief, group ranch members or elsewhere.
21. PW1 insisted that the 1<sup>st</sup> defendant was on the land illegally; otherwise, the disputed land is 187 and not 220. Further, PW1 insisted that the suit was filed while the excavation was going on, as shown by P. Exhibit No. 9, hence the court order issued on 13/12/2022. PW1 said that, from the lease agreement, the first entry occurred on 13/2/2022.



22. PW 1 said that after the 1<sup>st</sup> defendant refused to abide by the vacation notice of one year, no further action was taken against him after 2013, up to the filing of the suit.
23. Manasseh Ngetich, a Senior Forest Officer, testified as PW2 and produced a valuation report dated 30/1/2024 as P. Exhibit No. 10. PW2 told the court that he visited the site on 29/1/2022, in the company of the police, but in the absence of the group ranch members, village elder or area chief, who perhaps could have verified the ownership. PW2 confirmed that some of the excavated materials had been removed from the site; otherwise, his report contained original photographs that he took at the site. PW2 confirmed that there was evidence of excavated murrum and stones, covering about an acre of the land.
24. Julius Longurokwang testified as PW3. He told the court that, as per P. Exhibit No. 3, he was the chairman of the group ranch, whose rules included keeping of a group ranch register and other vital documents. PW3 told the court that P. Exhibit No. 4 has been under his custody. He said that plot No. 187, according to the group ranch register, belongs to the late Lokere, the father of the 1<sup>st</sup> plaintiff, while plot No. 220 belongs to the 1<sup>st</sup> defendant's late father. PW3 said that plot No. 455 does not appear or exist in the group ranch register.
25. In cross-examination, PW3 told the court that P. Exhibit No. 4 goes up to membership No. 255. PW3 said that the group ranch is divided into 9 villages. According to PW3, he was the one representing the village where the suit land is situated, hence was aware that the plaintiff's late father and the 1<sup>st</sup> defendant's late father were both neighbours and members of the group ranch. PW3 disputed the authenticity or accuracy of the sketch map relied upon by the 1<sup>st</sup> defendant; otherwise, as the chairman, he was not aware of its existence or source.
26. Further, PW3 said that he neither visited the excavated site nor did he receive any complaint over the same, save that he was certain that the site was far away from the 1<sup>st</sup> defendant's residence, or that of his father. PW3 confirmed that the earlier disputes between the two parties were handled by the previous group ranch committee, whose resolution was to subdivide the land among the disputants.
27. PW3 denied being approached by the 2<sup>nd</sup> defendant to ascertain or verify the locality and ownership of the excavation site before the leases were signed. PW3 said that he only received a complaint from the plaintiffs that the defendants were excavating murrum on the disputed land. PW3 said that he was privy to the police intervention before the matter was filed in court. PW3 said that the sketch map was suspect for lack of an author, sketch notes, signature and date.
28. Kisembei Kinyiole testified as PW4. He relied on a witness statement dated 14/2/2024 as his evidence-in-chief. As a member No. 17 of the group ranch allocation committee, PW4 told the court that he was aware of the resolved land dispute between the late Lokere and the 1<sup>st</sup> defendant's late father, whose verdict to vacate the land was ignored by the 1<sup>st</sup> defendant, yet his father moved out the entire family.
29. PW4 confirmed that the area chief was present during the resolution; otherwise, the 1<sup>st</sup> defendant did not lodge an individual complaint against the verdict after the boundaries were erected around the group by the award committee. PW4 denied that the 2<sup>nd</sup> defendant visited the group ranch officials to verify the ownership.
30. Julius Tokwokwang testified as DW1. He relied on a witness statement dated 25/1/2023 and 21/5/2024 as his evidence-in-chief. DW1 told the court that his father, Dongokwang Longoria, was member No. 230 of the group ranch, which allocated him two parcels of land in Nawapoi village covering both sides of the Apuo River. DW1 said that the late Lokoriongot Lokere was member No.



- 187, whose land is on both sides of Apuorond, but does not share a common boundary with their land; between them are two other parcels of land.
31. DW1 said that the site where excavation occurred is part of his father's 2<sup>nd</sup> parcel of land, which does not belong to the plaintiffs' father. DW1 said that he leased out the portion to the 2<sup>nd</sup> defendant following consent from his family members, only for the plaintiffs to complain to the group ranch and the area chief, who wrote to the 2<sup>nd</sup> defendant that the land belonged to his father.
  32. DW1 said that the excavation had stopped and the machines had been removed by the time the temporary order of injunction was issued. DW1 admitted that there was a land dispute between his father and the late Lokere over the 1<sup>st</sup> parcel of land, which was amicably resolved by the village elders and a common boundary was marked.
  33. Further, DW1 told the court that he was born and raised in Nawopoi village. DW1 confirmed that his late father had two wives. DW1 said that the outcome of the dispute was that the disputed land was subdivided to create a parcel for Lokoriong or Lokere land, out of his father's first parcel, and not the 2<sup>nd</sup> parcel, which he occupies together with his brother and their families. DW1 said that it is the 2<sup>nd</sup> parcel of land, which had a complaint, that he leased out to the 2<sup>nd</sup> defendant for murrum excavation. DW1 said that the only family that had lodged a claim on the land was Ngoleyoy, but the dispute was heard on 13/4/2012, in the presence of the 1<sup>st</sup> plaintiff's brother.
  34. DW1 admitted that between December 2023 and January 2024, he and his brother had allegedly cleared some portion of their father's land, part of the leased land, harvested some indigenous trees and made some posts, only for the plaintiffs to lodge a false claim with the police and the forest office, who visited the land. DW1 said that they explained to the two teams that the land did not belong to the plaintiffs; otherwise, the claim was false.
  35. DW1 relied on a copy of a sketch map, certificate of land ownership agreements dated 13/2/2022, ID card, letter from the group ranch dated 17/2/2022, minutes dated 28/9/2021 and 13/4/2012, photographs and OB report as D. Exhibits. No. 1, 2, 3, 4, 5, 6(a) and (b), 7(a), (b) and (c) and 8(a) and (b), respectively.
  36. In cross-examination, DW1 told the court that he was not a registered member of the group ranch, save that his father had authorised him to lease out the land to the 2<sup>nd</sup> defendant. He did not produce any power of attorney or authority in writing to that effect. DW2 admitted that the lease agreement did not have a plot No. 220. DW2 told the court that he lives on plot No. 220. DW1 told the court that he was not aware of an award, where his father had been ordered by the panel of elders to vacate the disputed land within one year; otherwise, if there was any such, it related to a different portion of the land.
  37. DW1 insisted that the sketch map showed the locality of the suit land, which he obtained from the village elder in charge of Nawopoi village. DW1 said that he did not know the maker of the sketch map. DW1 denied trespass and occupying by force land belonging to the plaintiffs, using fictitious documents. DW1 said that he was not a party to or a witness in the dispute that his father had with one Ngoleyoy; otherwise, he was in school then.
  38. DW1 told the court that he had express authority, though not in writing, from his father to lease out the land to the 2<sup>nd</sup> defendant, which portion was equally confirmed by the group ranch and the area chief as per D. Exhibits. No. 5 and 6. DW1 said that he signed D. Exhibit No. 3 as a representative of his family. Further, DW1 said that the suit land is yet to be subdivided or surveyed in favour of his father.
  39. Again, in cross-examination, DW1 admitted that previously there used to be a land dispute between his father and the late Lokere, where the disputed land was subdivided between the two, and his father



- vacated the 1<sup>st</sup> portion of the land in compliance with the award. He denied trespassing on the land, which his late father vacated following the resolution; otherwise, he has been on the land for 15 years. DW1 insisted that the land where the excavation site is situated falls under the 2<sup>nd</sup> portion and not the 1<sup>st</sup> portion, where his father had vacated.
40. Longoria Donokwang testified as DW2. He relied on a written statement dated 21/5/2024 as his evidence-in-chief. He told the court that he was the one who authorised his son DW1, to lease out the land to the 2<sup>nd</sup> defendant. DW2 acknowledged that he had a dispute over the land in 2013, when DW1 was in secondary school, against Lokoriongor Lokere before he vacated the portion where he lives to date.
41. DW2 said that he is member No. 220 of the group ranch. DW2 told the court that he has three wives and twenty-four children. DW2 confirmed that he lives separately from where DW1 has a homestead, about a kilometre away. DW2 appeared evasive, misleading and out to withhold vital details from the court, more so on whether he had a dispute with the late Lokere, if he was ordered to vacate the land, whether he vacated the land, and as to when his children, especially DW1, came to occupy the disputed land.
42. James Tukei testified as DW3. He relied on a witness statement dated 24/5/2024 as his evidence-in-chief. He confirmed that DW2 and the father of PW1 had a land dispute over the suit land, where he was an active participant, and the outcome was to subdivide the land among the disputants. DW3's name, unfortunately, was not in the list of the elders who handled the case.
43. Herma Nanjendo Okutoyi testified as DW4. She relied on a witness statement dated 23/5/2024 as her evidence-in-chief. She told the court that she was an assistant human resource manager with the 2<sup>nd</sup> defendant, who leased out 1 acre of land for murram excavation from the 1<sup>st</sup> defendant, out of plot No. 220, in February 2022, May 2022 and lastly in November 2022. DW4 said that before entering into the lease, due diligence was undertaken through visiting the official of the group ranch, who issued them with a copy of the certificate of land ownership in favour of DW1's father as the lawful member and owner of plot No. 220.
44. Equally, DW4 said that they were supplied with a sketch map dated 8/1/2021, showing the plot and the neighbourhood. DW4 said that the 2<sup>nd</sup> defendant took possession of the leased portion, and by the time the suit was filed, they had completed the exercise and handed over the suit land to the owner. DW4 relied on a copy of the layout plan, letter dated 7/6/2021, lease agreements dated 13/2/2022, 23/5/2022 and 6/11/2022, certificate of land ownership, letters dated 12/2/2022, 17/2/2022, and a board resolution dated 13/1/2022 as D. Exhibits. No. 9-16.
45. DW4 told the court that she neither visited the ranch group offices, the locus in quo, nor the chief offices, other than being a witness to the lease agreements. Further, DW4 confirmed that the lease agreements did not include the particulars of the parcel or the membership number, yet the particulars were a crucial part of the completeness thereof. DW4 said that she did not see any written authority from the owner, authorizing DW1 to sign the lease agreements on his behalf, save for the certificate of land ownership, which was not in the name of the 1<sup>st</sup> defendant.
46. At the close of the defence, parties were directed to file written submissions. The plaintiffs rely on written submissions dated 24/2/2025. It is submitted that the late Lokoriongor Lokere was the rightful share owner of land in Kanyarkwat group ranch, by virtue of membership No. 187 as per the evidence of PW1, 2 and 3 and the exhibits produced thereto. The plaintiffs submit that the onus was on the 1<sup>st</sup> defendant under Sections 107 and 109 of the *Evidence Act* to plead and prove that his father had two distinct parcels of land.



47. Further, the plaintiffs submit that, whereas there is evidence that a dispute between the plaintiffs' late father and the 1<sup>st</sup> defendant's father culminated in his vacating the suit land, the 1<sup>st</sup> defendant seems to distort the outcome of the dispute, overwhelming evidence to the contrary.
48. The plaintiffs submit that as held in Daniel Otieno Migore -vs- South Nyanza Sugar Co. Ltd [2018] eKLR and in Independent Electoral & Boundaries Commission & Another -vs- Stephen Mutinda Mule & Others [2014] eKLR, parties are bound by their pleadings, the correct position is that the 1<sup>st</sup> defendant's father was a trespasser on parcel for member No. 187, who was ordered to relocate by the elders to his own land, hence the 1<sup>st</sup> defendant cannot justify his illegal occupation of the suit land and further avoid liability in this suit, by twisting or distorting the truth, after his own father complied and moved away from the suit land in line with the award.
49. It is submitted that the 1<sup>st</sup> defendant and DW2 were not reliable witnesses to be believed, especially given the foregoing submissions on the facts and circumstances of the lease. The plaintiffs submit that, in view of the said facts, the 2<sup>nd</sup> defendant did not demonstrate any due diligence carried out before entry into and excavation exercise started; otherwise, it is equally liable for the claim, having admitted the entry and excavation without the consent or approval of the recorded owner of the land.
50. The 1<sup>st</sup> defendant relies on written submissions dated 29/7/2025. It is submitted that the suit neither discloses a reasonable cause of action against the 1<sup>st</sup> defendant, nor have the plaintiffs discharged the legal burden by way of evidence to substantiate the alleged claim as required under Sections 107 - 109 of the *Evidence Act*. Reliance is placed on Mbuthia Macharia -vs- Ann Mutua Ndwiga & Another [2017] eKLR, and Hasbury's Laws of England 4<sup>th</sup> Edition, Vol. 17 para 13 and 14.
51. The 1<sup>st</sup> defendant submits that the plaintiffs did not controvert the assertion by the 2<sup>nd</sup> defendant that the suit was filed after it had vacated the suit land, otherwise, P. Exhibit 9, the photos were not accompanied by a certificate of electronic evidence as required by Section 106(A) and (B) of the *Evidence Act*, nor were the plaintiffs able to tell whether the photos referred to the suit land or a different parcel of land.
52. The 1<sup>st</sup> defendant submits that the court should take judicial notice that only membership numbers are available, since individual plot numbers are yet to be issued, for the group ranch; otherwise, M/S No. 547 is a creature of the plaintiffs, which does not appear in the membership list.
53. The 2<sup>nd</sup> defendant submitted that no surveyor's report was filed to establish the extent of the alleged trespass, if any, to the plaintiffs' land. The 2<sup>nd</sup> defendant submits that, given the glaring inconsistencies, the plaintiffs have failed to prove ownership of the said land, unlike the 1<sup>st</sup> defendant, whose evidence is corroborated by P. Exhibit No. 4.
54. Equally, the 2<sup>nd</sup> defendant submits that even if the court was to find the plaintiffs' claim tenable, still it had no interest other than what it had excavated and by the time the suit was filed it had vacated the land, having dwelt with the 1<sup>st</sup> defendant, whose father was the owner of plot No. 220, going by the due diligence it had undertaken before entering into the lease agreements.
55. The 2<sup>nd</sup> defendant submitted that the excavated stones and murrum were for the construction of the Namanjalala highway, which serves the general public, including the plaintiffs, hence no damages for trespass should be awarded in the circumstances. The 2<sup>nd</sup> defendant submitted that if the court is inclined to award any damages, then the 1<sup>st</sup> defendant is the one to personally pay the damages.
56. The court has carefully gone through the pleadings, evidence tendered by the parties and written submissions. The issues calling for my determination are:



1. Who is the bona fide recorded owner of the suit land, subject to the alleged trespass, encroachment, and commission of acts of excavation, destruction and damage.
  2. Whether the plaintiffs have proved any loss, damage and or denial of use, occupation and proceeds from the suit land.
  3. Whether the 1<sup>st</sup> defendant had  
+63.laid any rights or interests to confer on the 2<sup>nd</sup> defendant to enter, possess and utilise murrum or stones from the suit land.
  4. If the 1<sup>st</sup> defendant had rights or interests to use, cut, collect and deny the plaintiff's rights or interests over the suit land.
  5. Whether the plaintiffs are entitled to the reliefs sought.
  6. What is the order as to costs?
57. It is trite law that parties are bound by their pleadings and issues for the court's determination flow from the pleadings. The primary pleadings by the parties are the amended plaint dated 16/4/2024, the 1<sup>st</sup> defendant's amended defence dated 21/5/2024, and the 2<sup>nd</sup> defendant's defence dated 21/8/2023. The capacity in which the plaintiffs bring the suit was ably determined in the ruling delivered on 20/4/2023. The plaintiffs claim that the defendants trespassed into their late father's land, which constitutes a share in Kanyarkwat Group Ranch, situated in West Pokot, constituting M/S No. 547 owned under his membership number 187.
58. Equally, the 1<sup>st</sup> defendant is individually blamed for entering into the said land and cutting down indigenous trees, without any consent or approval of the holders of a will, after the late Lokoriongor Lokere passed on. The plaintiffs pray for general damages and a permanent injunction.
59. After the preliminary objection dated 19/12/2022 was determined, the 1<sup>st</sup> defendant amended his defence on 21/5/2024. He denied M/S No. 547, identifying the share of the deceased in the Kanyarkwat group ranch, since the entire land was yet to be subdivided and parcel numbers were not yet allocated to individual group ranch shareholders. The 1<sup>st</sup> defendant said that such a number does not exist.
60. He denied the alleged trespass, since what he leased to the 2<sup>nd</sup> defendant was his family land with the consent of family members. The 1<sup>st</sup> defendant did not specifically plead any membership number or specify who among his family members was a shareholder in Kanyarkwat group ranch, and the locality or particulars of the land which he leased out to the 2<sup>nd</sup> defendant and which portion or membership number was confirmed by the area chief and the officials of Kanyarkwat group ranch as belonging to his father Longoria Donyokwang, separate or distinct from plot No. 187 as pleaded by the plaintiffs.
61. Additionally, the 1<sup>st</sup> defendant did not plead that the parcel number that he had passed to the 2<sup>nd</sup> defendant comprised membership share No. 220, belonging to his father and which had been allocated to his father by the group ranch, and was under his occupation together with his brother at the time he leased part of it to the 2<sup>nd</sup> defendant.
62. Paragraphs 4, 5, 6, 7, 8, 8A, 8B, 8C and 8D of the statement of defence dated 21/5/2024 are therefore silent on the source, particulars, details, ownership or justification of use, occupation and ownership of a distinct or separate parcel or portion of land comprising membership No. 220. The only mention of the said membership number is in the witness statement dated 25/7/2023 and in D. Exhibit No. 2.



63. The Land (Group Representatives Act Cap 287)( repealed), was an Act of Parliament to provide for the incorporation of representatives of groups who had been recorded as owners of land under the *Land Adjudication Act*. A member in relation to a group excludes a person who is under disability and includes the guardian of such a person. A guardian under the Act means a person responsible, whether under recognised customary law or otherwise, for protecting the interests of a person who is under a disability. An officer in relation to a group includes the chairman, deputy chairman, secretary or treasurer of the group or any member of the committee or body governing the group. A register means the register kept under Section 4 of the Act.
64. In this suit, the capacity of the plaintiff to protect the interests of the group member has not been disputed by the defendants. The plaintiffs relied on a register of members filed on 31/1/2020, duly certified by the District Land Adjudication and Settlement Officer, West Pokot District, on 21/8/2001 as P. Exhibit No. 4, showing the name of Lokoriongor Lokere, as member No. 187, who holds customary rights over the land.
65. A certificate of death was produced showing that he passed on, on 18/8/2009, after he wrote a will dated 4/5/2009, appointing the plaintiffs as the executors or trustees.
66. The plaintiffs equally called the chairman of the group ranch as PW3, Julius K. Longurokwang, the custodian of group ranch records and membership register, P. Exhibit. No. 4. PW3 confirmed that plot No. 187, according to the register, belongs to the late Lokere and was separate from plot No. 220. PW3 confirmed that the group ranch is divided into 9 villages, among them Naipangoi village, where plot No. 187 is situated, which he represents. PW3 faulted the authenticity of the sketch map relied upon by the defendants.
67. The powers of group representatives are set out in Section 8 of the Act. They include the right to hold any property, which they hold as such, and to exercise their powers as such, on behalf and for the collective benefit of all the members of the group, and to fully and effectively consult the other members of the group on such exercise. Section 10 of the Act provides that any dispute regarding the register between members shall be settled by the committee, and if not, shall be referred to the District Magistrate by any aggrieved party.
68. The plaintiffs have relied on minutes to show that there was a dispute with regard to the suit land as per P. Exhibits. No. 5, 6, and 7, which settled the matter, but the 1<sup>st</sup> defendant failed to abide by the same, yet DW2, his father, vacated the land in 2013. Minutes and the resolution fall within the context of Section 10 of the Act.
69. There is no evidence that the 1<sup>st</sup> defendant, aggrieved by the decision invoked, Section 10(2) of the Act and escalated the dispute to court for declaratory orders. DW2, his father, appeared evasive, contradictory and at most out to mislead or deny obvious facts that he vacated the suit land in line with the award, only for his two sons to remain therein. The footprints of DW2 are clear in P. Exhibits. No. 5 and 6.
70. PW3 confirmed the said proceedings, an award and a settlement by his predecessor committee, which was chaired by one Lomangura Lotumate, who, from the court records, had recorded a witness statement dated 23/11/2022, before he passed on. In his witness statement, he was emphatic that there was a resolution of the dispute in 2017, in which DW2 was ordered to vacate Lokoriongor's land and to move out to his portion. The witness statement indicated that DW2 brought down his structures on the disputed land within a year and relocated his family to his own land as ordered.



71. The witness statement indicated that the 1<sup>st</sup> defendant later on invaded the plaintiffs' land, and leased out the same to the 2<sup>nd</sup> defendant, in a move amounting to provocation and breach of peace to the group ranch members.
72. D. Exhibit. No. 15 was disowned by PW3. It was not signed by him or an authorized officer thereto. The author, one Joseph Ngiroye, was not called to produce it by either of the defendants. None of the bona fide officials of the group ranch were called by the defendants to produce the exhibit as proof that there was due diligence, clear identification of the owner or locality of the excavated site. D. Exhibit No. 15 does not include a parcel, plot or membership number. It has no accompanying verification letter duly signed by the chairman, secretary or treasurer of the group ranch. The particulars of the membership number, plot number, size, extent, locality and dimensions are missing. Evidence that the signature appearing thereon was made by an authorized committee member or official of the group ranch is missing. The maker of D. Exhibit No. 14 was also not called to testify by the defendants.
73. As regards D. Exhibit. No. 9, similarly, the maker is not indicated, and the date and signature are missing. The producer of the document was not sure of where he sourced it from. The chairman of the group ranch, PW3, disowned the document. He who alleges must prove. It is the defendants who were alleged that the leases and the excavation related to plot No. 220 and not plot No. 187.
74. As indicated above, the 1<sup>st</sup> defendant did not plead any particulars that the excavation site was on plot No. 220 and not in plot No. 187. It is the 2<sup>nd</sup> defendant who pleaded plot No. 220 and not plot No. 547, upon which a certificate of land ownership was issued by the group committee, as proof that DW2 was the owner of the plot and was supplied with a layout sketch dated 8/1/2021. The 1<sup>st</sup> defendant did not plead those particulars. The defendants relied on those documents as critical to their case that there was no trespass or encroachment onto plot No. 187, since the same is distinct and separate on the ground from what the plaintiffs own or possess.
75. Trespass under Section 3(3) of the [Trespass Act](#) refers to unjustified entry into a private land of another, without his permission, consent, or justification and commission of acts of wastage. To prove trespass, one has to show evidence of immediate exclusive possession before the entry. See *M'ikiara M'rinkanya & another -vs- Gilbert Kabere M'mbijiwe* (supra). Trespass is actionable per se. It may be continuous as held in *Gakuria & another -vs- Mwangi & 4 others* [2025] KEELC 1014 (KLR).
76. The plaintiff has produced documentary evidence that the late Lokoriongor Lokere is a recorded member of the group ranch, who has a specific parcel of land, that had previous disputes with DW2, a father to the 1<sup>st</sup> defendant, and who vacated the land in 2013, following an award followed by an order by the group ranch officials in accordance with the law. The late Lokere and, by extension, the plaintiffs were entitled to immediate possession of the suit land. It was upon the 1<sup>st</sup> defendant to justify why he has retained the land despite earlier directives to vacate alongside his father, DW2. DW1 draws his ownership rights or interests from his father, DW2. He who has no good title to pass in the first instance gives none to his son.
77. Equally, the son had no better title or interest to pass to the 2<sup>nd</sup> defendant. Due diligence, under the Merriam Webster Dictionary, refers to the case that a reasonable person exercises to avoid committing a tort or harm to another person or their property. It refers to a careful investigation and analysis undertaken by a party before entering into a business transaction or agreement. It includes a thorough review of the relevant information to assess the potential rights, liabilities and legal compliance, in ensuring an informed decision-making.



78. The 2<sup>nd</sup> defendant in its list of witnesses listed several officers, including the chairman and secretary of the group ranch and the area chief. DW4 was not the one who conducted the due diligence or signed the leases. D. Exhibits. No. 11, 12 and 13 were not signed by DW2 as the alleged owner of plot No. 220.
79. The exhibits did not refer to plot No. 220 as the subject matter of the lease. The description of the lease is missing. DW1 said that he was not the owner of the leased land but DW2, yet the lease documents describe him as the owner. Authority to lease out on behalf of the owner is missing. The leases lack the seal or stamp of the 2<sup>nd</sup> defendant. The capacity of the person who appended the signature on behalf of the 2<sup>nd</sup> defendant is not indicated. None of the signatories on behalf of the 2<sup>nd</sup> defendant was called to testify.
80. The 2<sup>nd</sup> defendant has pleaded that it had already vacated the land by the filing of the suit on 13/12/2022. D. Exhibit. No. 13 was signed on 6/11/2022. Clause 2 of the lease sets the period was to run for one year from the date of signing the lease. Therefore, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are estopped in law from alleging one thing in D. Exhibit. No. 13 and saying otherwise, in the statement of defence and their witness statements, otherwise; from their own D. Exhibit No. 13, the lease was to run for one year from 6/11/2022, that is to say, up to 6/12/2023.
81. If the murrum stones and quarry had been depleted by early November 2022, as the defendants want the court to believe, it is illogical that the defendant would have signed D. Exhibit. No. 13 on 6/11/2022
82. In Rhoda S Kilu -vs- Jianxi Water and Hydropower Construction Kenya Ltd [2022] eKLR, the court held that trespass was an intrusion by a person into land of another who has possession, without reasonable excuse and remaining therein without consent of the occupier. The court held that, since the lands office had confirmed that the suit properties belonged to the plaintiff, who never authorized the defendant to enter her land or carry out acts of excavation, the said acts amounted to trespass, calling for general and special damages.
83. Given the evidence tendered by the plaintiffs vis-à-vis that of the defendants, it is obvious that the plaintiffs have, through oral and documentary evidence, proved both the possession and ownership. Locality and violation of their rights to use, possess, enjoy and own the suit land for the period the 2<sup>nd</sup> defendant made illegal entry as per D. Exhibits. No. 11, 12 and 13, courtesy of the 1<sup>st</sup> defendant, without their permission, consent, approval, or authority.
84. Liability on the part of the 2<sup>nd</sup> defendant is both admitted in the pleadings that they willingly, consciously and mistakenly went onto the subject land, courtesy of the 1<sup>st</sup> defendant, as if it were plot No. 220 and not 187. Had the 2<sup>nd</sup> defendant conducted due diligence, they would have known that the subject land had a past disputes, which was settled in favour of Lokoriongor Lokere, represented by the plaintiffs against DW2.
85. It remains curious why the 2<sup>nd</sup> defendant opted to deal with the 1<sup>st</sup> defendant instead of the DW2, based on the documents availed to them by the area chief and the officials of the group ranch. Why the 2<sup>nd</sup> defendant did not insist on the recorded owner of plot No. 220 being the landlord and signatory of the lease agreements, leaves no doubt in my mind to make an irresistible inference that the 2<sup>nd</sup> defendant was an innocent or bona fide lessee, who took all reasonable steps to ascertain, verify and authenticate the root title of the alleged landlord to rule out any misrepresentation, fraud and illegality in dealing with the property of the plaintiffs, otherwise; than in accordance with the law. A party that acts carelessly, negligently or recklessly before entering into a suit transaction cannot come to court to feign ignorance of the law and insist that it was mistaken, and if there was any liability, the same should be visited upon the 1<sup>st</sup> defendant.



86. Both defendants, in my view, appear to have acted in cohorts and assumed the risk, hence are found jointly and severally liable for trespass and encroachment. As to damages, trespass is actionable per se, as held in *Kenya Power & Lighting Company -vs- Ringera* (supra). Calculating damages often involves considering the cost of repair, restoration, loss of use and any other consequential losses.
87. General damages are awarded for the infringement of the landowner's right to enjoy their property, even if no specific loss is proven. Special damages, on the other hand, must be specifically pleaded and proved. Exemplary damages arose where the trespass was malicious, oppressive and or reckless.
88. From the lease agreements, there was no provision for backfilling, levelling, or restoration of the site to its original status. The plaintiffs have pleaded that deep holes and gullies were left on the suit land by the 2<sup>nd</sup> defendant. PW2 and the photographs that were produced show that the site was left in a deplorable state, contrary to environmental laws governing the excavation of earth materials and the restoration of the site. The 2<sup>nd</sup> defendant cannot, in law, escape carrying out such remedial measures which are conditions precedent in the issuance of an Environmental Impact Assessment License.
89. The 2<sup>nd</sup> defendant did not plead or lead evidence that it carried out such restorative measures, contrary to the pleadings and evidence tendered by the plaintiffs, that the site was left in a dire state, calling for the intervention of this court under Articles 69 and 70 of *the Constitution*.
90. Elements of trespass include intentional entry without permission onto another's land and commission of acts of wastage. There is no evidence of a license to enter, given by the plaintiffs. The defendants have submitted on the doctrine of statutory authority, public interest and necessity.
91. Written submissions cannot amount to evidence or replace pleadings. The 2<sup>nd</sup> defendant did not plead such doctrines. Damages for trespass are the monetary award intended to compensate the land owner for the losses or harm suffered as a result of the trespass. The plaintiffs seek a permanent injunction and damages. There is evidence of a previous award requiring DW2 to hand over vacant possession or vacant land within a year.
92. The 1<sup>st</sup> defendant has admitted that he has been on the land for over 15 years. He fit the description of a self-proclaimed trespasser. The court finds the relief of a permanent injunction reasonable to award against him. Equally, Kshs. 200,000/=, for every year he has been on the land, is awarded against him, based on the accrued benefits he has reaped from the 2<sup>nd</sup> defendant for a year.
93. As regards the 2<sup>nd</sup> defendant, there was no evidence tendered on the value of quantity, quality, volume and murrum or stones that were excavated from the 3 acres of land. Judicial notice is taken of the cost per an 18-tonne tipper truckload in 2022, which ranged between Kshs. 9,500/= to Kshs. 15,000/=, going by the Cost Estimation Manual for 2019 for Road Maintenance Works by the Kenya Roads Board.
94. In the circumstances of this case, I award Kshs. 5,000,000/= as general damages against the 2<sup>nd</sup> defendant. See *Doshi & Company Limited -vs- Unibee Construction Company Limited & 2 others* (Civil Suit E241 of 2021) [2025] KEHC 11346 (KLR) (Civ) (31 July 2025) (Ruling). Costs of the suit to the plaintiffs.
95. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 17TH DAY OF SEPTEMBER 2025.**

In the presence of:

Court Assistant - Dennis



Samba for the plaintiff present

Kiarie for the 1<sup>st</sup> defendant present

Mwemeke for Kimani for the 2<sup>nd</sup> defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

