



Okwengu v Abala Wanga City Manager-Kisumu City & another (Environment and Land Case Civil Suit E006 of 2021) [2025] KEELC 6085 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6085 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT E006 OF 2021
SO OKONG'O, J
SEPTEMBER 18, 2025**

BETWEEN

MARY ASEMBO OKWENGU PLAINTIFF

AND

ABALA WANGA CITY MANAGER-KISUMU CITY 1ST DEFENDANT

COUNTY GOVERNMENT OF KISUMU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit against the defendants by way of a plaint dated 22nd January 2021. The Plaintiff averred that she was at all material times the registered proprietor of all those parcels of land known as Kisumu/Municipality Block 13/77 and Kisumu/Municipality Block 13/79 (hereinafter referred to as “the suit properties”) on which she had put up residential apartments. The Plaintiff averred that in January 2021, the Defendants circulated a list of properties, which they claimed to be public land and issued a notice that the same would be repossessed. The Plaintiff averred that on 20th January 2021, the Defendants' agents trespassed on the suit properties and put marks on the walls in red paint, giving the tenants in the properties 24 hours' notice to move out as the premises were to be Demolished. The Plaintiff averred that the suit properties were not public land and that the same had never been owned by the Defendants. The Plaintiff averred that the Defendants had not obtained a court order sanctioning the threatened eviction. The Plaintiff averred that the Defendants' invasion of the suit properties was illegal and that the said actions by the Defendants denied her access and use of the suit properties.
2. The Plaintiff averred that she suffered loss and damage as a result of the Defendants' said illegal notice and threat of eviction from the suit properties. The Plaintiff averred that her tenants, who were occupying the suit properties, panicked and started vacating the properties resulting in the loss of rent. The Plaintiff averred further that the suit properties were also defaced and that she suffered emotional disturbance and loss of reputation.



3. The Plaintiff sought judgment against the Defendants for;
 1. A declaration that the Plaintiff was the lawful owner of the suit properties.
 2. A permanent injunction restraining the Defendants by themselves or through their agents, officers, servants or otherwise from trespassing on, remaining on, wasting, Demolishing, evicting the Plaintiff, alienating, or otherwise interfering with the Plaintiff's peaceful use and occupation of the suit properties.
 3. General damages for trespass, and loss of use of the suit properties.
 4. Punitive/Exemplary damages against the 1st Defendant.
 5. Costs of the suit.
4. The 1st and 2nd Defendants filed a joint statement of defence and a counterclaim against the Plaintiff on 13th April 2023. The Defendants denied all the allegations made against them in the plaint save for, the description of the parties, the fact that they had circulated a list of the public land which they intended to repossess, and the jurisdiction of the court. The Defendants averred that the suit properties were hived off from public land without following the due process of alienating public land. The Defendants averred that the Plaintiff acquired the suit properties fraudulently. The Defendants prayed for the dismissal of the Plaintiff's suit and for judgment against the Plaintiff for;
 1. A declaration that the suit properties were acquired fraudulently by the Plaintiff.
 2. An order cancelling the titles of the suit properties.
 3. Costs of the suit and the counterclaim.
5. The Plaintiff filed a reply to defence and a defence to the Defendants' counterclaim, dated 16th June 2023. The Plaintiff joined issue with the Defendants in their defence, save for the admissions. The Plaintiff denied all the allegations made in the Defendants' counterclaim. The Plaintiff denied that the suit properties were hived off from public land illegally and fraudulently. The Plaintiff prayed that the Defendants' counterclaim be dismissed.
6. At the trial, the Plaintiff adopted her witness statement filed on 22nd January 2021 as her evidence in chief. The Plaintiff produced certificates of lease dated 3rd April 2006 and 21st April 2010 for the suit properties as P.EXH.1 and P.EXH.2, respectively. The Plaintiff also produced a bundle of photographs as P.EXH. 3 and a list of properties that had been targeted for demolition by the Defendants as P.EXH. 4. The Plaintiff stated that her building on the suit properties was marked for demolition. The Plaintiff stated that her ownership of the suit properties had never been challenged in any court. The Plaintiff stated that she was called by one of her workers who informed her that there were people on the suit properties claiming that her building thereon was to be Demolished. She stated that when she went to the suit properties, she did not find those people, but she found that they had written on the walls of the building that the building would be Demolished.
7. The Plaintiff stated that the Defendants later gave her a list of the parcels of land, the developments on which were to be Demolished. She stated that the suit properties were not on the said list. She stated that the Defendants subsequently came to the suit properties on several occasions and asked the tenants who were in occupation of the building thereon to vacate. She stated that some of the tenants moved out of the building on the suit properties, which had 9 apartment units. She stated that she lost rent when the said tenants left. The Plaintiff stated that she acquired the suit properties regularly. The Plaintiff urged the court to grant the prayers sought in her plaint.



8. On cross-examination by the Defendants' advocate, the Plaintiff stated that she purchased the suit properties and had the titles for the same. She stated that she obtained development approvals for the building that she had on the properties.
9. On examination by the court, the Plaintiff stated that the building that was marked for demolition was on Kisumu/Municipality Block 13/77 and that Kisumu/Municipality Block 13/79 was vacant. She stated that all the tenants vacated the premises except two. The Plaintiff stated that the tenants came back after she removed the markings that had been made on the walls of the building about the impending demolition, and assured them that the building would not be Demolished.
10. The Defendants did not give evidence at the trial. After the close of evidence, the parties made closing submissions in writing. The Plaintiff filed submissions dated 25th March 2025. The Plaintiff submitted that she had proved that she was the lawful owner of the suit properties and that the Defendants had threatened to Demolish the same. The Plaintiff submitted that although the Defendants had claimed in their defence and counterclaim that the Plaintiff had acquired the suit properties illegally and fraudulently, no evidence was placed before the court by the Defendants to prove the allegation. The Plaintiff submitted that she was entitled to the reliefs sought. The Plaintiff submitted that she had demonstrated that the Defendants had expressed an intention of Demolishing the building on the suit properties. The Plaintiff submitted that she had made a case for the grant of an order of a permanent injunction restraining the Defendants from carrying out their threat. On the issue of damages, the Plaintiff submitted that as a result of the Defendants' threat to Demolish the Plaintiff's building, the tenants who were in occupation of the building vacated the property in fear. The Plaintiff submitted that she lost income in the process. The Plaintiff submitted that the Defendants' threat to Demolish the building on the suit properties was illegal and amounted to trespass. The Plaintiff urged the court to award her a sum of Kshs. 1,000,000/- as damages for trespass. The Plaintiff submitted that costs follow the event and prayed for the costs of the suit.
11. The Defendants filed submissions dated 18th August 2025. The Defendants submitted that the suit properties were public land and that the Plaintiff acquired the same unlawfully. The Defendants submitted that the burden was on the Plaintiff to prove that she acquired the suit properties lawfully, which burden she did not discharge as the Plaintiff merely produced certificates of title without the supporting allocation documents.
12. The Defendants submitted that they did not trespass on the suit properties as the properties were public rather than private land. The Defendants submitted that since the suit properties were not lawfully held by the Plaintiff as private land, the Defendants' entry thereon could not amount to trespass. The Defendants submitted that the Plaintiff was not entitled to the reliefs sought. The Defendants averred that their actions were based on a reasonable and lawful belief that the suit properties were public land. The Defendants submitted that the writing of the word "Demolish" on the walls of the building on the suit properties was a procedural step taken by the Defendants in furtherance of their statutory mandate to safeguard public assets. The Defendants submitted further that their entry into the suit properties was limited to writing the words "Demolish" on the walls and was not accompanied by physical occupation or destruction. The Defendants submitted that their actions did not constitute an actionable trespass that would entitle the Plaintiff to damages. On the issue of costs, the Defendants submitted that costs follow the event.

Analysis and Determination

13. I have considered the pleadings and the evidence tendered by the Plaintiff in proof of her case against the Defendants. I have also considered the submissions by the advocates for the parties and the



authorities cited in support thereof. The issues arising for determination in this suit, in my view, are the following;

1. Whether the Plaintiff is the lawful proprietor of the suit properties;
 2. Whether the Defendants trespassed on the suit properties;
 3. Whether the Plaintiff is entitled to the reliefs sought in the plaint; and
 4. Who is liable for the costs of the suit?
14. I am satisfied from the evidence on record that the Plaintiff is the registered proprietor of the suit properties. The Plaintiff produced evidence showing that she was the sixth registered leasehold owner of land parcel, Kisumu/Block 13/77 and the fifth registered owner of land parcel, Kisumu/Block 13/79. The suit properties were owned by the Government of Kenya as the freehold proprietor thereof and were leased to the previous owners thereof for a term of 99 years with effect from 1st August 1992. The Plaintiff acquired the remainder of the terms of the leases on 30th March 2006 and 12th March 2010 for Kisumu/Block 13/77 and Kisumu/Block 13/79, respectively, from the then registered owners.
15. The Defendants claimed that the Plaintiff acquired the suit properties illegally and fraudulently. I agree with the Defendants that the Plaintiff had the burden of proving that she was the lawful owner of the suit properties. The Plaintiff produced in evidence certificates of lease for the suit properties in her name. I agree with the Defendants that these certificates of lease are not conclusive evidence that the Plaintiff is the lawful owner of the suit properties. They are, however, prima facie evidence of title. That means that in the absence of other evidence challenging the same, they are sufficient proof of ownership. In this case, the Defendants claimed that the Plaintiff acquired the suit properties illegally and fraudulently. The Defendants produced no evidence at the trial to prove the alleged illegality and fraud. The burden was on the Defendants to prove their allegations. The Plaintiff had no burden of proving that she did not acquire the suit properties fraudulently and illegally if the Defendants had not established a prima facie case of fraud and/or illegality against the Plaintiff, which, if not answered by the Plaintiff, would be taken by the court as true. The majority of the Supreme Court in Presidential Election Petition No. 1 of 2017, Raila Amolo Odinga & Another v. IEBC & 2 Others [2017] eKLR stated as follows on the evidential burden of proof in paragraphs 132 and 133 of the judgment:

“(132) Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and remains constant through a trial with the plaintiff, however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.

(133) It follows therefore that once the Court is satisfied that the petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidentiary burden shifts to the respondent, in most cases the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election. In other words, while the petitioner bears an evidentiary burden to adduce ‘factual’ evidence to prove his/her allegations of breach, then the burden shifts and it behooves the respondent to adduce evidence to prove compliance with the law...”



It is my finding that the Plaintiff is the lawful proprietor of the suit properties.

The Plaintiff's claim against the Defendants is based on trespass. The Plaintiff claimed that the Defendants' servants or agents entered the suit properties and told the residents that the building thereon would be Demolished as the properties were public land. The Defendants' said servants or agents thereafter wrote on the walls of the building on the suit properties the word "Demolish". The Plaintiff contended that the Defendants' servants or agents thereafter visited the suit properties from time to time, asking the occupants of the building thereon to vacate the same. The Plaintiff averred that due to fear of possible damage to their properties in the process of the threatened demolition, some of the Plaintiff's tenants on the premises vacated the same.

The Plaintiff produced photographs of the building on the suit properties. The photographs show the words "Demolish", "DEMO" and "X" written on the perimeter wall around the suit properties and the wall of the building on the suit properties. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page 923, paragraph, 18-01. I have found that the Plaintiff is the lawful owner of the suit properties. As the owner of the suit properties, the Plaintiff was entitled to quiet possession and enjoyment thereof. The suit properties were registered under the Registered [Land Act](#), Chapter 300 of the Laws of Kenya (now repealed). The Registered [Land Act](#) was repealed by the [Land Registration Act](#) 2012. Sections 27 and 28 of the Registered [Land Act](#) provide as follows:

- “27. 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;
 - 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 and expressed agreements, liabilities and incidents of the lease.
28. The rights of a proprietor, whether acquired on first registration or whether acquired 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 –

- a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b. unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

16. The two Sections have been reproduced in Sections 24 and 25 of the [Land Registration Act 2012](#) as follows:

“24. 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.

25. 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—

- a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee”.

16. As mentioned earlier, the Defendants claimed in their defence and counterclaim that the Plaintiffs acquired the suit properties illegally and fraudulently, which claim was not proved. In their submissions, the Defendants contended that they entered the suit properties and wrote on the walls the



word “Demolish” in the honest belief that the same were public land and in exercise of their statutory duty to protect public assets. The Defendants did not tender any evidence at the trial in their defence against the Plaintiff’s claim and in proof of their counterclaim. The evidence adduced by the Plaintiff on how she acquired the suit properties was not challenged by the Defendants. The titles produced by the Plaintiff in evidence to prove her ownership of the suit properties were also not disputed by the Defendants. The Defendants admitted in their submissions that they entered the suit properties, and wrote on the walls of the building thereon and on the perimeter wall the words “Demolish”. The Defendants produced no evidence in support of their claim that the suit properties were public land acquired illegally and fraudulently by the Plaintiff. It is my finding that the Defendants’ entry into the suit properties and writing on the perimeter wall and the walls of the building thereon the word, “Demolish” were unjustified and amounted to trespass on the suit properties.

17. I have set out earlier in the judgment the reliefs sought by the Plaintiff in her plaint. From my findings above, I am satisfied that the Plaintiff has proved her claim against the Defendants. The Plaintiff is entitled to prayers (a), (b) and (c) of the plaint. In *Park Towers Ltd. v. John Mithamo Njika and 7 Others* 2014 eKLR, the court stated as follows:

“I agree with the learned judges that where trespass is proved a party need not prove that he suffered any specific damage or loss to be awarded general damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique circumstances of each case.”

18. In *Halsbury’s Laws of England 4th Edition Volume 45 para. 26 1503*, the authors have stated as follows on assessment of damages for trespass:

- “ a) If the Plaintiff proves the trespass, he is entitled to recover nominal damages even if he has not suffered any actual loss.
- b) If the trespass has caused the Plaintiff actual damage, he is entitled to receive such amount as will compensate him for his loss.
- c) Where the Defendant has made use of the Plaintiff’s land, the Plaintiff is entitled to receive by way of damages such an amount as would reasonably be paid for that use.
- d) Where there is an oppressive, arbitrary or unconstitutional trespass by a Government official or where the Defendant cynically disregards the rights of the Plaintiff in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded.
- e) If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, general damages may be increased.”

19. The Plaintiff did not prove that the trespass by the Defendants was oppressive and arbitrary or that it was accompanied by aggravating circumstances. The Plaintiff is therefore not entitled to exemplary damages. Although the Plaintiff claimed that she suffered loss of rent when some of her tenants vacated the suit properties, she did not prove the quantum of the rent lost. The Plaintiff had in its submission proposed an award of Kshs. 1,000,000/-. I will award the Plaintiff nominal damages. I am of the view that an award of Kshs. 500,000/- would reasonably compensate the Plaintiff for the loss and damage suffered as a result of the Defendants’ trespass.



Conclusion

20. In conclusion, I hereby enter judgment for the Plaintiff against the Defendants jointly and severally for;
1. A declaration that the Plaintiff is the lawful owner of the parcels of land known as Kisumu/Municipality Block 13/77 and Kisumu/Municipality Block 13/79.
 2. A permanent injunction restraining the Defendants by themselves or through their employees, agents, servants and/or whomsoever from trespassing on, remaining on, wasting, Demolishing the structures on, evicting, alienating or in any other manner interfering with the Plaintiff's peaceful use and occupation of the parcels of land known as Kisumu/Municipality Block 13/77 and Kisumu/Municipality Block 13/79.
 3. Kshs. 500,000/- as general damages for trespass.
 4. The Defendants' counterclaim is dismissed.
 5. The costs of the suit and the counterclaim.

DATED AND SIGNED AT KISUMU ON THIS 18TH DAY OF SEPTEMBER 2025

S. OKONG'O

JUDGE

Judgment read virtually through Microsoft Teams Video Conferencing platform in the presence of;

Mr. C. Onyango for the Plaintiff

Mr. Munuang'o for the Defendants

Ms. J. Omondi-Court Assistant

