



REPUBLIC OF KENYA



**Onyango v Aloo & 3 others (Environment and Land Case E036 of 2022)
[2025] KEELC 6151 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6151 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE E036 OF 2022**

E ASATI, J

SEPTEMBER 18, 2025

BETWEEN

SILAS AMOLO ONYANGO PLAINTIFF

AND

JOHN ALOO 1ST DEFENDANT

KISUMU DISTRICT LAND REGISTRAR 2ND DEFENDANT

KISUMU DISTRICT LAND SURVEYOR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. Vide the plaint dated 23rd December, 2022 Silas Amolo Onyango sued the Defendants herein over parcels of land known as Kisumu/Konya/2567 and Kisumu/Konya/8007 and prayed for orders of:-
 - a. a permanent injunction restraining the Defendants, their agents, servants, representatives and/or assigns from trespassing, constructing and/or putting up illegal beacons thereof encroaching, interfering, issuing illegal threats, notices to vacate thereon, a eviction, alienating and/or demolition in any way and not to interfere with the Plaintiff's quite and peaceful occupation and enjoyment of the suit parcel of land No. Kisumu/Konya/2567 and Kisumu/Konya/8007 respectively.
 - b. a declaration that the encroachment thereto alienating, putting up beacons and issuing illegal notices to vacate is illegal and unlawful and void and that the Plaintiff is hereby declared the rightful legal occupant and/or registered owner of the suit parcel of land No. Kisumu/Konya/2567 and Kisumu/Konya/8007 respectively.
 - c. The 1st Defendant be evicted from the suit land No. Kisumu/Konya/2567 and Kisumu/Konya/8007 respectively.



- d. The Defendants be barred from the suit land No. Kisumu/Konya/2567 and Kisumu/Konya/8007 respectively unless with the consent of the Plaintiff to enforce the order of the court.
 - e. General damages
 - f. The costs of the suit and interest at court rate.
2. The Plaintiff's case was that he is the registered owner of land parcels known as Kisumu/Konya/2567 and 8007 (herein called the suit lands).
 3. That on 8th December, 2022, the Defendants colluded and secretly surveyed, sub-divided and shared the suit lands amongst themselves, encroached there onto thereby blocking the Plaintiff from peaceful enjoyment of the suit lands and that the Plaintiff has suffered irreparable loss and damage.

The Defendant's Case.

4. In response to the Plaintiff's claim the 1st Defendant filed, through the firm of D.O.E. Anyul & Company Advocates, the 1st Defendant's Statement of Defence dated 2nd May, 2023. The 1st Defendant denied the Plaintiff's claim and averred that the honourable court lacks jurisdiction because the Plaintiff's problem is a boundary dispute, that the suit as framed does not disclose any cause of action against the 1st Defendant and that the Plaintiff has no locus standi to institute and prosecute the claim as he is guilty under Section 45 of the Law of Succession Act Cap.160.
5. On behalf of the 2nd, 3rd and 4th Defendants, a Memorandum of Appearance was filed on 20th January, 2023.

The Evidence

6. Two witnesses testified on behalf of the Plaintiff. The Plaintiff who testified as PW1 adopted the contents of his witness statement dated 3rd December, 2022 in which he had reiterated the contents of the plaint as his evidence in chief.
7. He produced the documents listed on his list of documents dated 23rd December, 2022 as exhibits in support of his case as exhibits P1 to P19 namely; Affidavit dated 21st December 2022, Sketch map Kisumu Konya, Resurvey of Kisumu/Konya/8007 sketch map, Google earth and title Map, Title deed dated 29th January 2019, Daily Nation 22nd December 2022, Title deed dated 18th June 2018, Sale agreement dated 26th November 1998, acknowledgement dated 26th November 1999, acknowledgement dated 26th November 1998, City of Kisumu plan approval No. 61332, city of Kisumu Demand notice No1749, letter dated 3rd April 1990, green card dated 9th July 2013, official search dated 9th July 2013, letter dated 30th May 2013, letter dated 29th May 2013, Statement dated 3rd July 2013 and statement dated 2nd July 2013.
8. On cross-examination, the Plaintiff stated that it was the lands office to confirm the trespass and that he did not have a report of a Land Surveyor filed in court. That the structures showing on the photos presented by the 1st Defendant are on his land.
9. That he lost his title deed after he engaged a surveyor and that he reported the loss to the police station.
10. PW2 was one Joshua Owino Oyugi who adopted the contents of his witness statement dated 16th October, 2023 as his evidence.



11. On cross-examination, he stated that he saw when the Plaintiff was buying the land although he did not sign the agreement. That the land was sold by one Alila who was a relative of the owner. That as at the time of purchase, the owner of the suit lands by the name of Onger Odongo was already deceased.
 12. On behalf of the 1st Defendant, 3 witnesses testified. The 1st Defendant who testified as DW1 adopted the contents of his witness statement dated 2nd May, 2023.
 13. He stated that he bought 2 parcels of land namely; Kisumu/Konya/9212 and 9213, fenced them and delivered building material thereon ready to construct his residential house. That the Plaintiff destroyed part of the fence. That he came to learn that the Plaintiff was claiming to have bought original land parcel number Kisumu/Konya/2567 which neighbours Kisumu/Konya/2569.
 14. That after purchase of his land, he took possession. That he has not caused sub-division of land parcel No. Kisumu/Konya/2567 and is not in occupation of No. Kisumu/Konya/8007.
 15. He produced documents as exhibits namely; copy of sale agreement dated 25th November 2022, copy of agreement dated 26th January 2023, copy of extract of Occurrence Book OB04/26/02/2023, copy of extract of Occurrence Book OB09/25/02/2023, copy of mutation form for land parcel NO. Kisumu/Konya/2569, copy of green card for land parcel NO. Kisumu/Konya/2567, copy of surveyor's report, copy of mutation form for the original land parcel NO. Kisumu/Konya/2567, copy of green cards for land parcel NO. Kisumu/Konya/8005, 8006, 8007, 9212 and 9213 and copy of Letters of Administration in respect of the estate of Odongo Onger.
 16. On cross-examination, he stated that he did due diligence when he was buying the land.
 17. On re-examination he stated that he never bought any part of land parcel No. Kisumu/Konya/2567. That he bought No. Kisumu/Konya/2569 and that all his activities were wholly in land parcel No. Kisumu/Konya/2569 and that he is occupying the resultant parcel numbers Kisumu/Konya/9212 and 9213.
 18. DW2 was Adem Stephen, a licensed Land Surveyor, he produced a ground report dated 20th April, 2023 in respect of the case.
 19. He testified that land parcel Numbers Kisumu/Konya/9211, 9212 and 9213 were as a result of sub-division of land parcel No. Kisumu/Konya/2569 which was done vide mutation serial No.04622675.
 20. That he found out that none of the parcels encroached onto parcel numbers Kisumu/Konya/8005, 8006, 8007.
 21. DW3 was Jannes Oremo Adongo. He adopted the contents of his witness statement dated 2nd May, 2023 as his evidence in chief. He stated that land parcel No. Kisumu/Konya/2567 is what was sub-divided to produce parcel numbers /Kisumu/Konya/ 8005, 8006 and 8007 registered in the name of the Plaintiff. That there is an ongoing case namely: Kisumu CMC EL Case No.064 of 2024 between him and the Plaintiff over the land.
 22. That land parcel number Kisumu/Konya/9212 and 9213 have not encroached in any way onto land parcel number 8005, 8006 and 8007.
- No evidence was called on behalf of 2nd, 3rd and 4th Defendants.

Submissions

23. At the close of the evidence, parties filed written submissions in support of their respective cases.



24. On behalf of the Plaintiff, written submissions dated 2nd April, 2025 were filed by Emmah Mawinda & Company Advocates. On whether the 1st Defendant had encroached onto the Plaintiff's land it was submitted that there is a discrepancy on the mutation form for Kisumu/Konya/2569 that could not be explained by the Surveyor called by the 1st Defendant as a witness. That the original size of the parcel was 0.19 Ha but that the sizes of the resultant parcels from the sub-division are way bigger and that this goes to show that the Plaintiff's parcels have been encroached onto. That the Plaintiff's parcel has greatly been reduced.
 25. Counsel relied on the definition of trespass in 10th Edition of Black's Law Dictionary as is "an unlawful act committed against the person or property or another, especially wrongful entry on another's real property". Counsel submitted that trespass to land is actionable per se.
 26. Counsel submitted that the Plaintiff is entitled to the relief sought in the Plaint. Counsel relied on the decisions in Kenya Power and Lighting Company Ltd. -vs- Sherriff Molana Habib [2018]eKLR, Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others [2003]eKLR and Park Towers Ltd -vs- John Muthama Njika & 7 Others [2014]eKLR.
 27. And relying on the case of Jasbir Singh Rai & 3 Others -vs- Tarlochan Singh Rai & 4 Others [2014]eKLR, Counsel urged the court to enter judgement against the Defendants joints and severally as prayed for and award costs to the Plaintiff.
 28. On behalf of the 1st Defendant, written submissions dated 28th March, 2025 were filed by the firm of D.O.E. Anyul & Company Advocates.
 29. Counsel submitted that the Plaintiff had not taken out Letter of Administration in respect of the estate of Thomas Odong Onger which was in contravention of the provisions of section 45 of the [Law of Succession Act](#). Counsel relied on the case of Veronica Njoki Wakogoto (Deceased) [2013]eKLR where it was held that the effect of Section 45 is that property of a deceased person cannot be lawfully dealt with by anybody unless such person is authorized by law to do so, and that such authority emanates from a grant of representation and that any person who develops estate property without authority is guilty of intermeddling.
 30. That from the evidence of PW2, it was clear that the Plaintiff took possession and transferred title of the original parcel Kisumu/Konya/2567 into his name fraudulently.
 31. That the Plaintiff not being the lawful owner of the original parcel No. Kisumu/Konya/2567, the resultant parcels after sub-division namely; No. Kisumu/Konya/8005, 8006 and 8007 are illegal and that the court has jurisdiction under Section 45 of the [Law of succession Act](#) to cancel the same.
 32. Counsel submitted further that the Plaintiff's claim is not maintainable for the relief sought and should be dismissed with costs.
- No submissions were filed for the 2nd, 3rd and 4th Defendants.

Issues for determination

33. From the pleadings filed, the evidence tendered and the submissions made, the following are the issues that emerge for determination;
 - a. Whether or not the Plaintiff is the registered owner of land parcel numbers Kisumu/Konya/2567 and 8007 (the suit lands).
 - b. Whether or not the 1st Defendant trespassed onto the suit lands.



- c. Whether or not a cause of action has been disclosed against the 2nd, 3rd and 4th Defendants.
- d. Whether or not the Plaintiff is entitled to the relief sought.
- e. Costs.

Analysis and determination

- 34. The Plaintiff pleaded in paragraph 6 of the Plaintiff that he is the registered owner of the suit lands. He reiterated this in his evidence. He produced a copy of title deed dated 29th January, 1999 in respect of land parcel number Kisumu/Konya/2567 in his name. The title deed showed that the land measured 0.9 Hectares.
- 35. The Plaintiff also produced as exhibits; copy of title deed dated 18th June, 2018 in respect of land parcel known as Kisumu/Konya/8007 measuring 0.31Ha registered in his name, land sale agreement dated 26th November, 1998 showing that he bought land parcel No. Kisumu/Konya/2567 from one ALILA NYAMANGA at Kshs.340,000, a copy of register (green card) for L.R. No. Kisumu/Konya/2567 showing that the land was registered in his name on 22nd January, 1999 and title deed issued on 29th January, 1999 and a certificate of official search dated 9th July, 2013 for the same parcel showing that the land was registered in his name on 22nd January, 1999. Prima facie these documents show that land parcel number Kisumu/Konya /2567 belonged to the plaintiff at least as at 29th January 1999 when the title deed was issued in his favour.
- 36. In response, the 1st Defendant pleaded in paragraph 4 of his Defence that the Plaintiff cannot purport to be a registered proprietor of a non-existent title and a non-existent parcel of land. The 1st Defendant pleaded further in paragraph 5 of the same defence that the Plaintiff voluntarily and freely caused the sub-division of original land parcel No. Kisumu/Konya/2567.
- 37. The 1st Defendant produced a copy of register (green card) in respect of land parcel No. Kisumu/Konya/2567 showing that on 18th June, 2018, the title was closed on sub-division and that the resultant parcel numbers of the sub-division were Kisumu/Konya/8005 to 8007.
- 38. This was augmented by the evidence of the Surveyor (DW2) who gave explanation of the sub-divisions.
- 39. It is clear from the evidence placed before court that land parcel No. Kisumu/Konya/2567 no longer exists. It is not therefore correct as pleaded and claimed by the Plaintiff that the land belongs to him and has been encroached onto.
- 40. As regards parcel number Kisumu/Konya/8007, there is no dispute that the land which is one of the resultant parcels of parcel number 2567 belongs to the plaintiff. Although the 1st Defendant submitted that the subdivision was done fraudulently without Letters of Administration, the court finds that no evidence of fraud was presented against the plaintiff. The green card produced by the 1st defendant in respect of parcel number Kisumu/Konya 2567 shows that the land was registered in the name of one Alila Nyamanga on 4. 12. 1998 on transmission who in turn transferred the land to the plaintiff on 22.1. 1999. The land sale agreement produced by the plaintiff shows that he bought the land from Alila Nyamanga.
- 41. On issue number 1 the court finds that parcel number 2567 does not exist hence did not belong to the plaintiff as at the time of filing suit and that parcel number 8007 belongs to the plaintiff.
- 42. The next issue for determination is whether or not the 1st Defendant encroached onto the suit land.



43. Firstly, regarding land parcel No. Kisumu/Konya/2567 which is no longer in exists, a claim of trespass and or encroachment cannot be sustainable.
44. Although the Plaintiff pleaded and claimed in his evidence and submissions that the 1st Defendant had encroached onto his land, no evidence was adduced to this effect.
45. The Plaintiff produced no Surveyor's report to confirm that there was encroachment. When questioned about this in cross-examination, he stated that;

“ the lands office is the one to confirm trespass. I do not have report of land surveyor filed in court”.
46. The burden of proof under the provisions of Section 107 to 109 of the Evidence Act was on the Plaintiff to prove the claim of trespass.
47. I find that the Plaintiff has not discharged this burden. The findings in the Surveyor's report produced by DW2 were that there was no trespass. Although it was pleaded by and submitted on behalf of the plaintiff that the defendants sub-divided land parcel number 2567 and shared the land amongst themselves and that the size of the suit lands had been reduced by reason of encroachment, no evidence was placed before court to prove this.
48. Issue number 2 is determined in the negative as there is no evidence that the Defendants trespassed onto the suit lands in the manner claimed by the plaintiff or at all.
49. Regarding issue number 3, although the 2nd, 3rd and 4th Defendants were made parties in the suit, no cause of action was disclosed or proved against them.
50. Issue number 4 is whether or not the plaintiff is entitled to the relief sought.
51. The relief sought as highlighted at the onset of this judgement is for permanent injunction, eviction and general damages. Success of the claim was dependent on proof of ownership of the suit land and encroachment of the defendants on the suit land. These have not been proved. There is therefore no basis for a finding that the plaintiff is entitled to the relief sought.
52. In conclusion, the court finds that the Plaintiff has failed to prove his claim on a balance of probabilities. The suit is therefore hereby dismissed. Costs of the suit are awarded to the 1st Defendant.

Orders accordingly.

JUDGMENT DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 18TH DAY OF SEPTEMBER 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Mawinda for the Plaintiff.

Anyul for the 1st Defendant.

N/A for the 2nd, 3rd and 4th Defendants.

