



**Thimu Company Limited v Boniface (Environment and Land Case
E056 of 2023) [2025] KEELC 6040 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6040 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E056 OF 2023
CA OCHIENG, J
SEPTEMBER 17, 2025**

BETWEEN

THIMU COMPANY LIMITED PLAINTIFF

AND

SALOME WAIRIMU BONIFACE DEFENDANT

JUDGMENT

1. This suit was commenced by a Plaint dated 10th August 2023. The Plaintiff contends that it is the registered owner of land parcels Nos. LR Nairobi/Block 105 /8066 and Nairobi /Block 105/8067 hereinafter referred to as the ‘suit lands’. It is its case that the Defendant has trespassed and erected illegal structures thereon and committed other acts of waste, occasioning it great loss.
2. The Plaintiff prays that judgment be entered against the Defendant for:
 - a. An order of permanent injunction restraining the Defendant from trespassing, encroaching, dealing or in any way whatsoever interfering with the Plaintiff’s quiet possession of LR No. Nairobi /Block 105/8066 and Nairobi /Block 105/8067.
 - b. An order of eviction of the Defendant from LR Nairobi/Block 105/8066 and Nairobi/Block 105/8067.
 - c. Costs of this suit.
 - d. Any other relief deemed Just by this Honourable court.
3. The Defendant did not file her defence to oppose the instant suit.
4. The matter proceeded for hearing where the Plaintiff called one witness.

DIVISION - Evidence of the Plaintiff



PARA 5.

PW1 Kenneth Kamau Mureithi, who was one of the directors of the Plaintiff adopted his witness statement as his evidence in chief. He testified that the Plaintiff is the registered owner of the suit lands and that the Defendant had trespassed, alienated and erected illegal structures and committed other acts of waste thereon without the Plaintiff's permission. Further, despite demands to the Defendant to cease the said actions, she has persisted with the illegal acts to the Plaintiff's detriment.

PARA 6.

PW1 confirmed that the Plaintiff has Certificates of Title to the suit lands but the Defendant has fenced off both plots. Further, that the Plaintiff reported the invasion to the local chief and to Embakasi Ranching Company Limited but the Defendant did not heed to summons issued by both entities.

PARA 7.

The Plaintiff produced the following documents as exhibits: Certificates of Lease for the suit lands; Letter dated the 26th April 2023 written by Embakasi Ranching Company Limited; payment receipts dated the 28th September 2017 and 12th February 2017; demand letter dated 18th May 2023; Share Certificate No.3709 from Embakasi Ranching Company Limited.

Submissions

Plaintiff's Submissions

PARA 8.

The Plaintiff in its submissions relied on its pleadings, oral testimony and exhibits. It relied on the provisions of Sections 24 and 26 of the [Land Registration Act](#) to submit that a title document is prima facie proof of absolute ownership and that the same can only be challenged on grounds set out in section 26 of [Land Registration Act](#). It argued that since its Certificates of Lease had not been challenged by the Defendant, it remains the absolute owner of the suit lands. To buttress its averments, the Plaintiff relied on the case of *Murang'a ELC 453 of 2017 Margaret Njeri Wachira v Eliud Waweru Njenga* [2018] eKLR.

Defendant's Submissions

PARA 9.

The Defendant despite failing to participate in this suit, filed her submissions where she contended that she is the registered proprietor of the suit lands, which she paid for in July 1998 and February 1999 respectively to Embakasi Ranching Company Ltd, where she held shares. Further, that her Share Certificates to the suit lands were issued on 13th July 2004, which is more than six years before the alleged Certificate of shares were issued to the Plaintiff. She reiterated that she has been in possession of the said suit lands for more than twenty-seven years.

PARA 10.

She relied on the case of *Arthi Highway Developers Limited v West End Butchery Limited and 6 Others* [2015] eKLR to submit that since she was the first to be issued with Certificates of shares, she is entitled to the suit lands as where equities are equal, the first in time prevails. She also questioned the validity of the documents produced by the Defendant, contending that they failed to establish a root of ownership and to indicate that the Defendant conducted due diligence. To buttress her averments, she relied on the following decisions: *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR), *Funzi Development Ltd & Others v County Council of Kwale* [2014] eKLR and *Dina Management Ltd v County Government of Mombasa & 5 Others* (Petition (E010 of 2021 (2023) KESC 30 (KLR) (21st April 2023) (Judgment).



DIVISION - Analysis and Determination

PARA 11.

Upon consideration of the Plaintiff, testimony of the witness, exhibits and submissions, the only issue for determination is who is the legal and/or beneficial owner of LR No. Nairobi/Block 105/8066 and Nairobi/Block 105/8067 and if the Defendant has trespassed thereon.

PARA 12.

The Plaintiff claims to be the legal owner of LR No. Nairobi/Block 105/8066 and Nairobi/Block 105/8067 and produced Certificates of title to that effect. The Defendant did not file a defence, but alleged in her submissions that she paid for the suit lands in July 1998 and February 1999 to Embakasi Ranching Company Ltd where she held shares.

PARA 13.

Since the Plaintiff's title is under challenge, it had the burden to demonstrate the root of its Certificates of Lease in respect to the suit lands. Equally, the Defendant had an obligation to demonstrate her interest in the said suit lands. On proof of proprietorship, Section 26 of the [Land Registration Act](#) provides that:

“Certificate of title to be held as conclusive evidence of proprietorship

- (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.”

PARA 14.

In *Daudi Kiptugen v Commissioner of Lands & 4 Others* [2015] eKLR, it was held that:

“...The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

PARA 15.

Further, in *Dina Management Ltd v. County Government of Mombasa & 5 Others*, Pet. No. E010 of 2021, the Supreme Court stated thus:

“...Where the registered proprietor's root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that



the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”

PARA 16.

The Plaintiff tendered evidence that it is the registered proprietor of the suit lands. The Defendant never controverted the evidence of the Plaintiff but sought to argue her case through submissions. On perusal of documents produced by the Plaintiff which include Certificates of Lease for the suit lands; Letter dated the 26th April 2023 written by Embakasi Ranching Company Limited; payment receipts dated the 28th September 2017 and 12th February 2017 respectively; demand letter dated 18th May 2023; Share Certificate No.3709 from Embakasi Ranching Company Limited, I note the Plaintiff indeed attempted to demonstrate the root of its title.

PARA 17.

As per the letter dated the 26th April, 2023 from the vice Chairman of Embakasi Ranching Company Limited addressed to the DCI Ruai, he confirmed as follows:

“We refer to your letter dated 28th February, 2023 and wish to confirm that Thimu Company Limited Reg. No. 108144 is the owner of the above-mentioned plots as per our records, having acquired from Ziphora Wanjiku Murithi ID/No. 3630363(Deceased) through transmission.”

18. Further, from the Share Certificate No. 3709 issued by Embakasi Ranching Company Ltd, it confirms that the suit plots M. 382 and M. 383 were transferred to the Plaintiff by Kinyua Mureithi and Kenneth K. Mureithi, who are administrators of the estate of Ziphora Wanjiku Murithi as evident in the Certificate of Confirmation of Grant dated the 3rd May, 2016 issued in Nakuru HC Succession Cause No. 683 of 2013.

19. On rights of a proprietor, Section 24 (a) of the [Land Registration Act](#) stipulates as follows:

“Subject to this Act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.....”

20. In the case of Willy Kipsongok Morogo v 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](#).”

21. Based on the evidence before me while associating myself with the above cited decisions as well as the legal provisions quoted above, since the Defendant never demonstrated that the Plaintiff acquired the suit lands illegally or fraudulently, noting that the Plaintiff has demonstrated the root of its title by producing the Share Certificate, Certificate of Titles as well as documents from Embakasi Ranching Company Ltd confirming it is the owner of the suit lands, I find that the Plaintiff is indeed the absolute proprietor of land parcel numbers LR No. Nairobi /Block 105/8066 and Nairobi /Block 105/8067 and hence entitled to protection of the law in accordance with the provisions of section 24, 25 and 26 of the [Land Registration Act](#).

As to whether the Defendant has trespassed on the suit lands.

22. It was PW1’s testimony that the Defendant had trespassed on the suit lands, alienated them including erected illegal structures thereon and committed other acts of waste thereon without the Plaintiff’s



permission. Further, despite demands to the Defendant to cease the said actions, she has persisted with the illegal acts to the Plaintiff's detriment.

23. 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.

24. Further, Section 3 of the *Trespass Act* provides that:

“(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.

(2) Where any person is charged with an offence under subsection (1) of this section the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him.”

25. From the evidence tendered by PW1 which was uncontroverted, it has emerged that the Defendant has persisted in her acts of trespass. It is my considered view that since the Plaintiff has demonstrated it is the legal owner of the suit lands, the Defendant should hence be permanently restrained and evicted therefrom.

As to who should bear the costs of the suit.

26. Since the Plaintiff has been inconvenienced by the Defendant's defiance to move from the suit lands, I find that it is entitled to costs.

27. It is against the foregoing that I find that the Plaintiff has proved its case on a balance of probability and will proceed to enter judgement in its favour and make the following orders:

i. An order of permanent injunction be and is hereby issued restraining the Defendant from trespassing, encroaching, dealing or in any way whatsoever interfering with the Plaintiff's quiet possession of LR No. Nairobi /Block 105/8066 and Nairobi /Block 105/8067.

ii. An eviction order is hereby issued directed at the Defendant from LR Nos. Nairobi/Block 105/8066 and Nairobi/Block 105/8067, to be effected, after ninety (90) days from the date hereof.

ii. Costs of this suit is awarded to the Plaintiff.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2025.

CHRISTINE OCHIENG

JUDGE

In the presence of:

Wanjiru for Plaintiff

Court Assistant: Joan

