



**Yunis v Yusuf (Environment and Land Case E358 of 2024)
[2025] KEELC 6090 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6090 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E358 OF 2024**

**JG KEMEI, J
SEPTEMBER 19, 2025**

BETWEEN

MUMTAZ AKHTAR MOHAMMED YUNIS PLAINTIFF

AND

HASSAN YUSUF DEFENDANT

JUDGMENT

1. The Plaintiff filed suit against the Defendant by way of a plaint dated the 30/8/24 seeking the following orders;
 - a. An order of permanent injunction restraining the Defendant whether by himself or through his servants, agents, employees, assigns or anybody claiming under him, pursuant to his instructions or whatsoever from entering, encroaching, trespassing, remaining on, using, constructing, damaging, wasting away and or in any way dealing or interfering in any manner with the Plaintiff's peaceful, quiet possession, enjoyment, use, interest and ownership of the property known LR No. 3734/294 (original number 3734/5/181) (hereinafter called the suit land) measuring 0.3274 hectares, delineated on land survey plan/Deed Plan number 54084 and situated along Chalbi Drive in Lavington within City County of Nairobi in the Republic of Kenya.
 - b. An Order directing registration of Inhibition on the property known as LR No. 3734/294 (original number 3734/5/181) measuring 0.3274 hectares, delineated on land survey plan/Deed Plan number 54084 and situated along Chalbi Drive in Lavington within City County of Nairobi in the Republic of Kenya to restrain registration of any dealings interfering with the Plaintiffs ownership or interest in the said parcel of land unless otherwise authorized by the Plaintiff or this Court.
 - c. General damages for trespass and malicious damage of the suit property.



- d. Costs of this suit; and
 - e. Any other relief that this Honourable Court deems fit.
2. It is the plaintiff's claim that at all material times to the suit, the Plaintiff and her deceased husband were the joint registered owners of the suit land, having acquired it in 1998. Since her husband's death in 2019, she has continued in peaceful and uninterrupted possession of the suit land to date, paying all outgoings, including land rates, as they fall due.
 3. On 22/8/2024, the defendant, accompanied by unidentified persons, unlawfully and forcefully trespassed onto the suit land, threatened violence, chased away the Plaintiffs' servants and night guard, and locked up the property. She filed a complaint at Muthangari Police Station under OB No. 46/22/08/2024 and later regained possession of the property.
 4. On 29/8/24, the Plaintiff obtained intelligence from the Land Registry and the police station that the defendant, despite not holding any title, was claiming the suit land and was responsible for forceful entry. The Plaintiff requests injunctions to prevent the defendant from engaging in illegal activities, which may be colluding with others aiming to interfere with the title of the suit land. The defendant has attempted to disrupt the ongoing conversion of the title from the old registration system to the block system. The court was urged to grant the prayers sought.
 5. Despite service of the summons to the Defendant by way of substituted service, the Defendant failed to enter an appearance or file a defence within the stipulated time, or at all.
 6. On 8/4/25, the Plaintiff's evidence was presented by Brian Julian De Souza, who introduced himself as the property manager of the land in question. He relied on his witness statement dated 30/8/24 as his primary evidence and submitted documents marked as PEX No 1-9 on pages 11-44 of the Plaintiff's trial bundle. The witness also produced a specific power of attorney dated 6/9/2024, registered as IP/A 78057/1 on 20/9/24 at the Lands Office. In this Power of Attorney, the Plaintiff granted the witness limited authority to file and sign pleadings related to the suit land and any other actions necessary to protect her rights in relation to the land.
 7. The witness reaffirmed his evidence as stated in the aforementioned witness statement, and stated that the Defendant was attempting to interfere with the ongoing conversion process of the suit land by manipulating the documents in his name and changing the suit land into a block system.
 8. The property has been owned by the Plaintiff and her deceased husband since 1978, as evidenced by the certificate of title presented in evidence. The suit land features an old residential house and is located at Chalbi Drive, Nairobi. It is enclosed with a fence and has a lockable gate, as shown by PEX NO 3 on pages 21-27 of the trial bundles. The property is protected by private guards and servants, and is maintained by the Plaintiff, with management conducted by PW1, the property manager. The Plaintiff also pays rates annually, as demonstrated in the trial bundles.
 9. The witness stated that trouble began on the night of 22/8/24 when unidentified persons broke into the property, removed the Plaintiffs' guards and servants, and locked the property. Alarmed by these events, the witness, acting on the instructions of the Plaintiff, filed a complaint with Muthangari Police Station the following day, vide OB No. 4622/8/2024, and regained possession of the suit land. When checking with the Land Registry regarding the property's status, which is undergoing conversion as per Gazette Notice No. 5743 published on 22/5/22, marked as PEX No. 6 in the trial bundle, he found that the Defendant had attempted to interfere with the process and register the title in their name. The defendant was claiming the suit land, hence the trespass.



The written submissions

10. At the close of the hearing, the Plaintiff filed written submissions which I have read and considered. The Plaintiff submitted that the activities of the defendant on the land without the owner's consent amount to trespass. See the case of Rhoda S Kiilu Vs Jianxi Water and Hydropower Construction Kenya Limited (2019) EKLK. The Plaintiff has proved trespass and the attempts to interfere with the conversion of the suit land at the Lands Registry.
11. Further, that the suit and the claim have not been denied by the Defendant despite service of summons and the suit by way of substituted service.
12. On the question of permanent injunction, the court was pointed to the case of Kenya Power & Lighting Co Limited Vs Sheriff Molana Habib (2018) EKLK where the court stated as follows at para 8-9;

“8A permanent injunction, which is also known as perpetual injunction, is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties”

13. It was further submitted that the plaintiff, as the owner of the suit land, holds a registrable interest that is protected by law; therefore, a prima facie case has been established. The Plaintiff has also shown that there is a genuine threat from the Defendant in trespassing and disrupting her peaceful and undisturbed possession of the suit land, thus justifying the court's need to restrain the defendant by issuing a permanent injunction.
14. It was further submitted that damages are not and cannot be a substitute for the loss caused by a clear breach of the law, as in this case. The court was urged that the balance of probabilities favours granting the orders sought against the Defendant.

Analysis and determination

15. Having considered the pleadings, the evidence adduced at the hearing, and the written submissions along with all the material placed before the court, the key issue for determination is whether the Plaintiff has proven her case.
16. It has not been disputed that the defendant was served by way of substituted service; however, he failed to enter an appearance or file a defence. The Plaintiff's case, therefore, against the Defendant remains undefended. Be that as it may, the Plaintiff retains the onerous duty to prove her case, although the opponent has not made a show in the contest.
17. The adage, therefore, that he who alleges must prove. The provisions of Section 110 of the *Evidence Act* provide as follows;

“ 110 Proof of admissibility



The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence”

18. The Plaintiffs' case is that she is the registered owner of the suit land and that the defendant has trespassed onto the land and attempted to interfere with the process of land conversion from the old regime to the current block system by trying to register the title in his name without the authority and consent of the Plaintiff.
19. Section 3 (1) of the *Trespass Act*, Cap 294 provides that:

“ 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.”
20. Thus, trespass is an intrusion by a person into the land of another who is in possession and ownership. It is trite that trespass is actionable per se.
21. The Court of Appeal decision in the case of Kenya Power & Lighting Company Limited vs Fleetwood Enterprises Limited [2007] eKLR affirmed, among other things, that when trespass is proven, the affected party does not need to demonstrate that it suffered damages or loss resulting from the trespass in order to be awarded damages. Once trespass is established, the court is compelled to assess and award damages on a case-by-case basis. Additionally, the case of Duncan Nderitu Ndegwa vs. KPLC Limited & Another (2013) eKLR, cited for the holding, inter alia, that once trespass to land is proven, it is actionable per se, and no proof of damage is required for the court to award damages.
22. The court is satisfied, based on the certified copy of the title attached to the proceedings, that the plaintiff is the registered owner of the suit land. Therefore, it is law that, as a registered owner, she is entitled to the rights under the law, particularly those arising from Section 24 and 25 of the LRA, which state as follows;
 - “(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

S25. Rights of a proprietor

- (1) 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”

- 23. The Plaintiff’s witness presented unchallenged evidence that the defendant trespassed onto the land, prompting him to lodge a complaint with the police station and later recover possession of the land. The court finds that the Plaintiff has established a prima facie case in her favour.
- 24. Regarding the question of inhibition, section 68 of the LRA states that the court may make an order (hereinafter referred to as an inhibition) prohibiting for a specified period, or until the occurrence of a particular event, or generally until a further timeframe.
- 25. I have considered the totality of the instant case and I am satisfied that the orders of inhibition as sought by the plaintiff are founded and so I grant.

Final orders for disposal

- 26. In the end I find that the Plaintiff has proven her case and I proceed to enter judgment in the following terms;
 - a. An order of permanent injunction be and is hereby issued restraining the Defendant whether by himself or through his servants, agents, employees, assigns or anybody claiming under him, pursuant to his instructions or whatsoever from entering, encroaching, trespassing. Remaining on, using, constructing, damaging, wasting away and or in any way dealing or interfering in any manner with the Plaintiff’s peaceful, quiet possession, enjoyment, use, interest and ownership of the property known LR No. 3734/294 (original number 3734/5/181) (hereinafter called the suit land) measuring 0.3274 hectares, delineated on land survey plan/Deed Plan number 54084 and situated along Chalbi Drive in Lavington within City County of Nairobi in the Republic of Kenya.
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 - c. General damages for trespass in the sum of Kshs 150,000/-.
 - d. The orders for malicious damage to the suit property were not proven. It is declined.
 - e. No orders as to costs
- 27. Orders accordingly.



DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Kinyanjui HB for Mr Litoro

NA for the defendant

Ms Yvette - CA

