



**Manair Limited v Fleet Logistics Limited & 3 others (Environment & Land Case 34 of 2018) [2024] KEELC 620 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 620 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 34 OF 2018  
OA ANGOTE, J  
FEBRUARY 8, 2024**

**BETWEEN**

**MANAIR LIMITED ..... PLAINTIFF**

**AND**

**FLEET LOGISTICS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SIGMA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff commenced this suit against the Defendants by way of a Plaint dated 29<sup>th</sup> January, 2018 seeking the following orders;
  - a. An order for injunction directed at the Defendants whether by themselves or through their servant, agent or employee restraining them from entering upon the premise on L.R. No. 20274 Grant No. I.R. 63991 or remaining thereon or from selling offering for sale or in any other way attempting to alienate the suit premise from the Plaintiff;
  - b. An order directed to the Chief Land Registrar to cancel Grant No. I.R. 63991 dated 28<sup>th</sup> January, 1994 over Land Reference No. 20274 in the name of Sigma Ltd and transferred on 19<sup>th</sup> October, 2015 to Fleet Logistics Ltd;
  - c. Damages for trespass;
  - d. Costs of the suit;
  - e. Interest on (c) and (d);



- f. Such other or further orders that may be necessary or as the court may deem just.
2. The Plaintiff averred in the Plaint that it is the registered Lessee of all the premises known as Land Reference No. 20274 (the suit property) under Grant I.R. 63991 from the Government and that it was issued with a Certificate of Lease on 29<sup>th</sup> September, 1995 pursuant to a transfer from Jackson I. Kalweo who was the initial allottee thereto.
  3. According to the Plaintiff, it has paid all rates and ground rent on the suit property; that it later established that the 1<sup>st</sup> Defendant has a lease on the suit property purportedly issued by the 4<sup>th</sup> Defendant upon transfer from the 2<sup>nd</sup> Defendant and that the suit property having been allotted to Jackson I. Kalweo was not available for allotment to the 2<sup>nd</sup> Defendant and in doing so, the 4<sup>th</sup> Defendant acted fraudulently.
  4. It is the Plaintiff's case that it has not had any dealings with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the Certificate of Lease dated 28<sup>th</sup> January, 1994 was obtained fraudulently and through misrepresentation in an attempt to dispossess it.
  5. The 1<sup>st</sup> Defendant filed its Defence on 2<sup>nd</sup> July, 2018 and denied each and every allegation in the Plaint. The 1<sup>st</sup> Defendant averred that vide a transfer dated 16<sup>th</sup> September, 2015 from the 2<sup>nd</sup> Defendant, for which it paid stamp duty, it became the registered owner of the suit property from 19<sup>th</sup> October, 2015 and its title is first in time and took precedence, and that it is the Plaintiff who fraudulently, irregularly and illegally acquired its title.
  6. According to the 1<sup>st</sup> Defendant, it conducted due diligence and confirmed that the 2<sup>nd</sup> Defendant was the registered owner of the suit property and had paid the requisite land rates and rent. The 1<sup>st</sup> Defendant further averred that it obtained the consent of the Land Registrar to transfer the suit property which it submitted together with the transfer and other completion documents to the Nairobi Land Registry for registration.
  7. It was averred by the 1<sup>st</sup> Defendant that in May, 2016, Kenya Railways compulsorily acquired the suit land among other properties; that vide Gazzette Notice dated 15<sup>th</sup> July, 2016, persons interested in the affected properties were invited to submit their claims for compensation, which it did and that the Plaintiff is not and has never been in possession of the suit property.
  8. It was averred that the hearing for interests on the suit property was held on 5<sup>th</sup> October, 2017 and 26<sup>th</sup> January, 2018 but the Plaintiff failed to present its claim and that the 1<sup>st</sup> Defendant has since registered a Lease with China Road and Bridge Corporation (K) Limited who has been on the suit property since 2016 for purpose of construction of the Standard Gauge Railway.
  9. In its Counter claim, the 1<sup>st</sup> Defendant prayed that the Plaintiff's suit be struck out with costs and sought for Judgement on the following terms:
    - a. A declaration that the 1<sup>st</sup> Defendant is the duly registered proprietor of Land Reference No. 20274 Grant No. I.R. 63991 and the Title dated 1<sup>st</sup> October, 1993 in the name of Sigma Ltd and transferred on 19<sup>th</sup> October, 2015 to Fleet Logistics is the due and proper title to the suit property.
    - b. An order directed to the Chief Land Registrar to cancel Grant No. I.R. 63991 over L.R. No. 20274 dated 1<sup>st</sup> April, 1994 in the name of Jackson Itirithia Kalweo transferred on 29<sup>th</sup> September, 1995 to Manair Limited.
    - c. General damages.



- d. The costs of this suit.
  - e. Any other or further relief that the court may deem fit and just.
10. In response, the Plaintiff filed a Defence to the Counterclaim dated 16<sup>th</sup> March, 2022 and denied the allegations in the Counter claim. The Plaintiff specifically denied the allegations of fraud and illegality and the particulars laid out by the 1<sup>st</sup> Defendant, and averred that it is the 1<sup>st</sup> Defendant who fraudulently, illegally and irregularly acquired title over the suit property.
  11. In his Defence, the 4<sup>th</sup> Defendant stated that from its records, Grant No. I.R. 63991 L.R. No. 20274 was issued to Jackson Itirithia Kalweo for a term of 99 years from 1<sup>st</sup> April, 1994 and was registered in his favour on 2<sup>nd</sup> December, 1994 and that the suit property, depicted in Cadastral Survey No. F/R 251/60, was lawfully transferred to Manair Limited on 29<sup>th</sup> September, 1995 as I.R. 63991/2 under Presentation Book No. 1587.
  12. It was averred by the 2<sup>nd</sup> Defendant that the Deed Plan No. 190480 in respect of the suit property is dated 18<sup>th</sup> October, 1994; that there is no record of a Deed Plan of the same number annexed on the 1<sup>st</sup> Defendant's title at the Director of Survey's office or the office of the Chief Lands Registrar; and that the 1<sup>st</sup> Defendant's Deed Plan is a forgery.
  13. The 4<sup>th</sup> Defendant averred that by a letter dated 14<sup>th</sup> August, 1995, Jackson Itirithia Kalweo sought the consent of the Commissioner of Lands to transfer the suit property, which consent was granted vide the letter dated 17<sup>th</sup> August, 1995 and that the suit property was not allocated to the 2<sup>nd</sup> Defendant and any documents purportedly held by the 2<sup>nd</sup> Defendant are fraudulent. The 4<sup>th</sup> Defendant prayed that the Plaintiff's suit be allowed.

### Hearing and Evidence

14. The Plaintiff called its Director, Kaushik Manek, PW1, who testified that Jackson Kalweo is the original allottee of the suit property in respect of which the Commissioner of Lands executed Grant No. 63991 on 28<sup>th</sup> November, 1994 and that Jackson Kalweo wrote to the Commissioner of Lands on 14<sup>th</sup> August, 1995 seeking consent to transfer the suit land, which was issued vide a letter date 17<sup>th</sup> August, 1995.
15. PW 1 informed the court that records from the Chief Land Registrar's office shows that only one Grant was issued over the suit property to Jackson Kalweo for a term of 99 years commencing 1<sup>st</sup> August, 1994 and at an annual rent of KShs. 110,000 and that the records at the lands office shows that Jackson Kalweo transferred the suit property to the Plaintiff on 29<sup>th</sup> September, 1995 registered as I.R. 63991/2 via presentation No. 1587, which is the Grant currently held by the Plaintiff.
16. It was the evidence of PW1 that the Defendants never took possession of the suit property as the Plaintiff has been in possession since transfer of the land and that while the Plaintiff's Deed Plan was issued before the title was issued, the 1<sup>st</sup> Defendant's Deed Plan is dated 24<sup>th</sup> October, 1994 which is after the title was issued.
17. PW1 stated that the 1<sup>st</sup> Defendant hired goons to ensure the Plaintiff does not take possession of the suit property and is hell-bent on dispossessing the Plaintiff and selling the suit property to a third party; that the 1<sup>st</sup> Defendant has in fact dispossessed the Plaintiff despite the existence of an order of injunction and that the 1<sup>st</sup> Defendant's occupation of the suit property amounts to trespass.
18. It is the Plaintiff's case that there is a likelihood the 1<sup>st</sup> Defendant may claim compensation from the 3<sup>rd</sup> Defendant who is in the process of compulsory acquisition of the suit property; that the 3<sup>rd</sup> Defendant should be restricted from compensating anyone else except the Plaintiff and that with respect to the



Lease between the 1<sup>st</sup> Defendant and China Road and Bridge, the Plaintiff ought to be compensated for the loss of use as it has been unfairly denied its rights.

19. On cross-examination, PW1 testified that the Plaintiff reiterated that it is the owner of the suit property having purchased it from the original allottee; that he conducted due diligence through his advocates and confirmed that the land belonged to him and that although he did not have the application for allotment, he had seen the letter of allotment before purchasing the land.
20. It was the evidence of PW1 that he was not familiar with the conditions of the letter of allotment and was not aware if Mr. Jackson had complied with the conditions of the Grant; that the suit property was vacant and un-developed when the Plaintiff bought it and that he never attended the hearings before the National Land Commission but his advocate did.
21. To his court marked the 1<sup>st</sup> Defendant's case closed on 30<sup>th</sup> October, 2023 for failure to avail witnesses despite being aware of the hearing date. On the same date, the court proceeded with the 4<sup>th</sup> Defendant's case who called two witnesses.
22. DW1 was one Charles Ngetich, the Deputy Chief Land Registrar, working in the office of the Chief Land Registrar. DW1 stated that the process of registration of new Grants included making an application for allocation, confirmation of availability of the plot, issuance of a letter of allotment to the applicant, payment of the requisite fees, survey of the specific plot, issuance of the deed plan by the Director of Surveys, processing & execution of the new Grant by the Commissioner and registration.
23. DW1 stated that Grant I.R. 63991 for L.R. No. 20274, the suit land, was issued to Jackson Itirithia Kalweo for 99 years commencing 1<sup>st</sup> April, 1994, and registered in his favour as I.R. 63991/1 on 2<sup>nd</sup> December, 1994; that the suit land was transferred to Manair Limited, the Plaintiff, on 29<sup>th</sup> September, 1995 as I.R. No. 63991/2 presentation No. 1587 and that the office of the Chief Lands Registrar has no records in respect to the Grant purportedly registered on 2<sup>nd</sup> February, 1994 and the said document is a forgery on its face.
24. It was the evidence of DW1 that there is no way two Grants can have the same Inland Registry (IR) number for the same parcel of land but bear different dates of registration; that there is no record of Jackson Kalweo transferring the suit property to the 1<sup>st</sup> Defendant and that further, there is no record in the deed file relating to any transaction in respect of the alleged registration in favour of the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants.
25. According to DW1, from their records, the suit property is registered in favour of the Plaintiff and that the Plaintiff has established proprietary rights over the suit property.
26. The Assistant Director, Land Administration at the Ministry of Lands, DW2, stated that their office has no records in respect of the purported Grant exhibited by the 1<sup>st</sup> Defendant; that the Grant issued to Jackson Itirithia for 99 years from 1<sup>st</sup> April, 1994 is genuine; that the purported Grant to Sigma Limited is fraudulent and defective, with apparent errors on its face and that the 1<sup>st</sup> Defendant's purported Grant is erroneous, irregular and a nullity as the land was already lawfully alienated to Jackson Itirithia Kalweo.

## Submissions

27. The Plaintiff's counsel submitted that under Section 24 and 25 of the [Land Registration Act](#), a title is to be held as conclusive evidence of proprietorship; that the certificate of title is the end product of a process for acquisition of land, which process is as important as the title itself and that the Plaintiff has demonstrated due process was followed in acquiring its title.



28. Counsel for the Plaintiff submitted that the Plaintiff is the registered proprietor of the suit property and therefore Section 24, 25 and 26 of the [Land Registration Act](#) apply; that the Plaintiff was an innocent purchaser for valuable consideration without notice of nor was it a party to fraud and that in any event, no fraud was perpetrated between the Plaintiff and Jackson Kalweo. Counsel relied on the cases of *Daudi Kaptugen vs Commissioner of Lands & 4 Others* (2015) eKLR and *Mwangi James Njehia vs Janet Wanjiku Mwangi & Another* (2021) eKLR).
29. Counsel submitted that it was the evidence of the Chief Lands Registrar that they had no records of the title document exhibited by the 1<sup>st</sup> Defendant; that the same is a forgery on its face; that there is no way two Grants can have the same inland registry number for the same parcel of land with different dates of registration and that no evidence was presented to show that Jackson Kalweo transferred the suit land to the 1<sup>st</sup> Defendant.
30. It was submitted that the 1<sup>st</sup> Defendant did not demonstrate how it acquired the title to the suit property; that a title acquired through an irregular and fraudulent process is not valid in law and that despite interim orders issued on 17<sup>th</sup> September, 2020, the 1<sup>st</sup> Defendant has not only continued in trespass, but even leased the suit property to China Road and Bridge Corporation (K) Ltd.
31. Counsel submitted that the rent as per the Lease in the 1<sup>st</sup> Defendant's Bundle of Documents is KShs. 560,000 per month since 2016, which may have increased; that the 1<sup>st</sup> Defendant's actions has intruded and trespassed on the Plaintiff's land and continues to receive a benefit therefrom and that the Plaintiff is entitled to damages for trespass and interest thereon. Counsel relied on the cases of *Philip Ayaya Aluchio vs Crispinus Ngayo* (2014) eKLR and *Park Towers Ltd vs John Mithamo Njika* (2014) eKLR.
32. Counsel submitted that the value of the suit property is KShs. 500 Million; that the proposed award for continuous trespass is KShs. 100 Million and KShs 100 Million for compensatory damages. Reliance was placed on the cases of *Rhoda S. Kiilu vs Jiangx & Hydropower Construction Kenya Ltd* (2019) eKLR and *Kenya Power and Lighting Company Ltd vs Ringera & 2 Others, Civil Appeal E247 & E248 (Consolidated)* (2022) KECA 104 KLR.

### **Analysis and Determination**

33. The court has considered the pleadings of the parties, the testimonies of the witnesses, the evidence placed before it and the Plaintiff's submissions. The issues that lend themselves for determination are as follows:
  - a. Who between the Plaintiff and the 1<sup>st</sup> Defendant has a good title over the suit property?
  - b. Whether the Plaintiff is entitled to the orders sought in the Plaintiff;
  - c. Who shall bear the costs of the suit?
34. The 1<sup>st</sup> Defendant filed a Defence and Counterclaim alleging that the Plaintiff's title is a forgery. The Statement of Defence and Counterclaim is a pleading, which constitute mere allegations. Such allegations cannot lead to the entry of judgment, unless they relate to an undefended claim or a liquidated claim, which was not so in the instant case.
35. The 1<sup>st</sup> Defendant did not call any witness to testify on its behalf or produce any evidence to prove its case. The said Defence and counterclaim therefore was not proved and remained as mere allegations.



36. In North End Tradign Company Limited (Carrying on the Business Under the Registered Name of) Kenya Refuse Handlers Limited vs City Council of Nairobi (2019) eKLR, it was held as follows:

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“ 18. In Edward Muriga Through Stanley Muriga vs Nathaniel D. Schulter Civil Appeal No.23 of 1997, it was held that where a defendant does not adduce evidence the plaintiff's evidence is to be believed, as allegations by the defence is not evidence.

19. In the case of Motex Knitwear Limited Vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No.834 of 2002, Lesiit, J. citing the case of Autar Singh Bahra And Another Vs. Raju Govindji, HCCC No.548 of 1998 appreciated that:-

“Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the evidence rendered by the 1<sup>st</sup> plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail’.”

37. Similarly, the Court of Appeal in Edward Mariga Through Stanley Mobisa Mariga vs Nathaniel David Shulter & Another (1979) eKLR stated as follows:

“The respondents filed a defence in which they denied the appellant's claim and averred that the accident was caused by the appellant's own negligence in that he suddenly ran across the road and in the process was hit by the motor vehicle. The respondents did not give evidence and so the only explanation as to how the accident happened was the version put forward by the appellant and his brother.”

38. In CMS Aviation Ltd vs Crusair Ltd (No.1) (1987) KLR 103, the court held as follows:-

“The pleadings in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments are not made on oath. Averments depend upon evidence for proof of their contents.”

39. Consequently, the 1<sup>st</sup> Defendant's Statement of Defence and Counterclaim herein remains unproved and the same cannot be considered by this court.

40. However, whether or not the 1<sup>st</sup> Defendant adduced evidence does not take away the Plaintiff's onus of proving its case as set out in the Plaintiff's case. This is because the Plaintiff's case is not a liquidated claim and should thus be proved to the required standard.

41. It is not contested that the suit land is registered in the name of the Plaintiff. Just like the Plaintiff's witness, the Chief Land Registrar, DW1, testified that the records at the office of the Chief Land Registrar shows that the suit property was originally allotted to Jackson Itirithia Kalweo and Grant no. I.R. 63991 issued in respect thereof.

42. It was the testimony of PW1 and DW1 that Jackson Itirithia Kalweo transferred the suit property to the Plaintiff and that the 1<sup>st</sup> Defendant's Deed Plan and title were a forgery.



43. From the totality of the evidence and testimonies of the parties in this case, it is clear that the root of the 1<sup>st</sup> Defendant's purported Grant has been successfully challenged. The evidence before the court shows that the Plaintiff's title is the genuine one and the same should be upheld by this court.
44. The Plaintiff also sought for general damages for trespass. Having entered into the Plaintiff's land without permission or consent, the 1<sup>st</sup> Defendant's actions amount to trespass as envisioned under the Trespass Act. Trespass is actionable per se without proof of any damage as was held in the case of Park Tower vs Moses Chege & Others HC Civil suit No. 1825 of 1999 (2014) eKLR as follows:-
- “I agree with the learned judges that where trespass is proved a party needs not prove that he has suffered any specific damage or loss to be awarded damages. The court in such circumstances is under a duty to assess the damages awardable depending on the unique facts and circumstances of each case. As observed on the cases referred to there is no mathematical or scientific formula in such cases for assessment of general damages. However, in the cases before me, I consider that the suit properties are sizeable parcels sitting on nearly three quarters of an acre of land located in the central Business District. This is prime property in the city centre and any unlawful act of aggression and/or intrusion that prevents the rightful owner of the property from enjoyment of his ownership rights of possession and use is to be frowned at and is punishable by way of an award of damages.”
45. The Plaintiff is thus entitled to general damages for trespass payable by the 1<sup>st</sup> Defendant. The issue of determining damages for trespass was addressed in Philip Ayaya Aluchio vs Crispinus Ngayo (2014) eKLR as follows:
- “The plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damage? It has been held that the measure of damages for trespass is the difference in the value of the plaintiff's property immediately after the trespass or the costs of restoration, whichever is less. See Hostler – VS – Green Park Development Co. 986 S. W 2d 500 (No. App. 1999).”
46. The court has a duty to assess the damages awardable depending on the unique facts and circumstances of each case. In this case, the Plaintiff has proposed an amount of KShs. 100,000,000 as damages for the continued trespass and a further Kshs 100,000,000 as compensatory damages.
47. The 1<sup>st</sup> Defendant entered the land in 2015 after the impugned transfer. Reference was made to the Lease between the 1<sup>st</sup> Defendant and China Road and Bridge Corporation (K) Limited which was annexed to the 1<sup>st</sup> Defendant's Replying Affidavit dated 14<sup>th</sup> May, 2018 as Annexure YSM-10. The Lease was entered into between the 1<sup>st</sup> Defendant and China Road and Bridge corporation (K) Limited in 2016.
48. The said Lease is sufficient evidence to show that the 1<sup>st</sup> Defendant continues to receive a benefit therefrom and that the Plaintiff is entitled to damages for trespass and interest thereon. The Lease also gives this court a true reflection of quantum in respect of what the Plaintiff has lost, and continue to lose since the 1<sup>st</sup> Defendants acts of trespass on the suit property.
49. The said Lease shows the consideration as Kshs. 140,000 per acre. For the 4 acres, that comes to KShs. 560,000 per month. That is the figure that I shall use to award the Plaintiff damages for trespass, for a period of 8 years (2015 – 2023) which I assess at Kshs 53,760,000. An award of compensatory damages, in addition to damages for trespass will amount to double compensation, which is not allowed in law.
50. For those reasons, the court enters Judgement in favour of the Plaintiff as follows:-



- a. An order for injunction be and is hereby issued directed at the 1<sup>st</sup> Defendant whether by itself, servant, agents or employees restraining it from entering upon the premise on L.R. No. 20274 Grant No. I.R. 63991 or remaining thereon or from selling, offering for sale or in any other way attempting to alienate the suit premise.
- b. An order be and is hereby issued directed to the Chief Land Registrar to cancel any and all entries for Grant I.R. 63991 dated 28<sup>th</sup> January, 1994 over Land Reference No. 20274 in the name of Sigma Ltd and transferred on 19<sup>th</sup> October, 2015 to Fleet Logistics Ltd.
- c. Damages for trespass in the sum of Kshs. 53,760,000 to be paid by the 1<sup>st</sup> Defendant to the Plaintiff.
- d. Interest at court rates on the above amount to be paid by the 1<sup>st</sup> Defendant from 1<sup>st</sup> January, 2015 until payment in full.
- e. Costs of this suit and the counter claim are awarded to the Plaintiff and are payable by the 1<sup>st</sup> Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Mogeni and Ms Anyango for Plaintiff

No appearance for Defendants

Court Assistant: Tracy

