



**Savannah Farms Limited v Nzioka (Environment & Land Case  
E076 of 2022) [2024] KEELC 1768 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 1768 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E076 OF 2022**

**A NYUKURI, J  
APRIL 11, 2024**

**BETWEEN**

**SAVANNAH FARMS LIMITED ..... PLAINTIFF**

**AND**

**KITUKU NZIOKA ..... DEFENDANT**

**JUDGMENT**

1. Savannah Farms Limited, the plaintiff herein instituted this suit by way of a plaint dated 19<sup>th</sup> October 2022, against the defendant seeking the following orders;
  1. A permanent injunction do issue restraining the defendant by himself, his agents, employees, families, relatives, servants and or any persons acting under his authority from burying the body of the late Beth Kituku and or any other body on land No Mavoko Town Block 3/2322 and from trespassing, entering, remaining in occupation, cultivating, constructing and or in any manner interfering with the plaintiff's ownership, occupation and possession of the property known as Mavoko Town Block 3/2322 situated within Athi River Machakos County.
  2. That an order of eviction do issue, evicting the defendant from the plaintiff's property known as Mavoko Town Block 3/2322 and that the same be executed by the OCS Athi River Police Station.
  3. General damages for trespass.
  4. That cost of the suit be paid by the Defendant.
2. The plaintiff claimed to be the registered owner of the property known as Mavoko Town Block 3/2322 (hereinafter referred to as the suit property) and that the defendant had trespassed thereon on 15<sup>th</sup> October 2022, with the intention of burying his late wife on the property. He alleged that the defendant had never lived on the suit property but was attempting to put up a temporary structure to purportedly



show occupation. Further, it is the plaintiff's case that even after reporting to the OCPD Athi River Police Station and the defendant being advised not to bury his wife on the suit property, he has refused to cease trespass and insists on burying his wife thereon. The plaintiff claims that the actions by the defendant are unlawful and injurious to the plaintiff, depriving the plaintiff quiet possession use and occupation of a portion on the suit property.

3. The defendant did not enter appearance or file any defence to defend the suit, despite being served accordingly. The matter proceeded for hearing with only the plaintiff presenting a witness.

### **Plaintiff's evidence**

4. Mr. Mungai Ngaruiya, a director for the Plaintiff, testified in court as PW1. He adopted his witness statement dated 19<sup>th</sup> October 2024 as his evidence in chief. In the said statement, he stated that on 15<sup>th</sup> October 2022, he received a call from his neighbour Mr. Kyalo with information that there was somebody putting up a temporary structure on the Company's land and that he travelled to the site on 17<sup>th</sup> October and confirmed that a structure was underway but there was no one on site, whereof he took photographs and reported to Athi River police station. He further testified that the trespasser was summoned to the police station on 18<sup>th</sup> October 2022 in the presence of PW1 and upon interrogation, the defendant alleged that he owned the portion of land and intended to bury his wife there and would proceed regardless of a dispute over the land. He produced the following documents in support of his case;
  - a. Title deed for Mavoko Town Block 3/2322
  - b. Certificate of official search and green card
  - c. Photographs of the of the area showing evidence of trespass
5. The plaintiff closed their case at this point and filed submissions in further support of their case.

### **Submissions by the plaintiff**

6. Counsel for the plaintiff filed submissions in support of their case on 7<sup>th</sup> February 2024. Their main argument was that the evidence of the plaintiff was uncontroverted and that the plaintiff had proved their case on a balance of probabilities. Reliance was placed on the case of *Daniel Kenga Katana & 4 others v Dzitu Toto Bokole & 3 others* [2022].

### **Analysis and determination**

7. The court has considered the pleadings filed by the plaintiff and the evidence adduced in support of their case together with their submissions. There being no defence filed against the allegations by the plaintiff despite service, the evidence by the plaintiff remains uncontroverted. The only issue for determination by this court is whether the plaintiff has proved ownership of the suit property and trespass thereon as against the defendant.
8. In the case of *Miller v Minister of Pensions* 1947 All E.R 372, Lord Denning in expounding what amounts to sufficient prove in a civil case puts this standard in the following terms: -

That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: We think it more probable than not; the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case is which the tribunal cannot decide one way



or the other which evidence to accept, where both parties' explanations are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.

9. In James *Muniu Mucheru v National Bank of Kenya Ltd* C.A Civil Appeal No 365 of 2017 [2019] eKLR, the Court of Appeal stated as follows: -

“Indeed, it is settled law that in civil cases the standard of proof is on a balance of probability. This is in effect to say that the Courts will make a finding based on which party’s version of the story is more believable.”

10. In the instant case, the plaintiff adduced evidence to show that he is the registered owner of the suit property by the title document, a fact that has not been challenged. A perusal of the title document reveals that the same was issued on 15<sup>th</sup> December 2009. The same plaintiff paid rates over the land, evidenced by a receipt dated 23<sup>rd</sup> March 2021 for Kshs 20,800.00.
11. This court is therefore guided by provisions of section 26 of the *Land Registration Act* of 2012 which provides with regard to parties holding titles to land as follows;

“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...”

12. There being no alleged or proved illegality, misrepresentation, fraud, want of procedure or corruption, in the acquisition of the title held by the Plaintiff, the court is satisfied that the plaintiff is the bona fide owner of the suit property. As for the prayer on damages, it is trite that trespass is actionable per se without proof of actual loss (See *Sebastian Otieno Omari & 4 others v Derek Otieno* [2018] eKLR.
13. Trespass has been defined as ‘any unjustified intrusion of one person upon the land in possession of another’ see; *Zacharia Onsongo Momanyi v Evans Omurwa Onchagwa* (2014) eKLR. In the instant case, there is evidence that the defendant intruded on the plaintiff’s land and even started the construction of a temporary structure, vowing to proceed even with a warning from the police. The intrusion as per the pleadings happened from the 15<sup>th</sup> of October 2022 whereas this case was filed on 19<sup>th</sup> October of the same year. Interim orders having been issued immediately, the plaintiff did not state that the trespass continued after issuance of the injunction. The court hence opines that an award of Kshs 200,000/= will be sufficient compensation.
14. In the end, this court finds and holds that the plaintiff has proved their case to the required standard and judgment is hereby entered for the plaintiff against the defendant as follows;



- a. A permanent injunction be and is hereby issued restraining the defendant by himself, his agents, employees, families, relatives, servants and or any persons acting under his authority from burying the body of the late Beth Kituku and or any other body on land No Mavoko Town Block 3/2322 and from trespassing, entering, remaining in occupation, cultivating, constructing and or in any manner interfering with the Plaintiff's ownership, occupation and possession of the property known as Mavoko Town Block 3/2322 situated within Athi River Machakos County.
- b. That the defendant is ordered to vacate and remove his structures from the plaintiff's property known as Mavoko Town Block 3/2322 within sixty days and in default, an eviction order to issue so as to remove him therefrom and the OCS Athi River Police Station to provide security during the eviction process.
- c. The defendant shall pay the plaintiff general damages for trespass in the sum of Kshs 200,000/=
- d. The costs of the suit shall be borne by the defendant.

15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 11<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.**

**A. NYUKURI**

**JUDGE**

In the Presence of;

No appearance for the plaintiff

No appearance for the defendant

Court Assistant – Josephine

