



Ayany v African Banking Corporation Ltd & 2 others (Land Case E007 of 2023) [2025] KEELC 4136 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4136 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE E007 OF 2023**

**E ASATI, J
MAY 8, 2025**

BETWEEN

ABSOLOM PETER O AYANY PLAINTIFF

AND

AFRICAN BANKING CORPORATION LTD 1ST DEFENDANT

LANDSCAN ASSOCIATES CO LTD 2ND DEFENDANT

THE ATTORNEY GENERAL (ON BEHALF OF THE KISUMU COUNTY REGISTRAR AND KISUMU COUNTY SURVEYOR, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT) 3RD DEFENDANT

JUDGMENT

1. The Plaintiff herein sued the Defendant vide the plaint dated 26th June, 2018. The suit was first filed as a commercial dispute in the High Court of Kenya at Kisumu, Commercial Case No.81 of 2018. It was later, vide court order dated 4th October, 2018 transferred to the Environment and Land Court for hearing and disposal.
2. The subject matter of the suit is two parcels of land known as Kisumu/Kasule/4950 and 4642 (the suit lands).
3. The Plaintiff claimed that he was the registered owner of the suit lands. That he used land parcel No. Kisumu/Kasule/4642 to secure a loan facility from the 1st Defendant. That the Defendants colluded to fraudulently alter, amend and/or interfere with Registry Index Map (RIM) of Kisumu/ Kasule Sheet 8 with the result that parcel number Kisumu/Kasule/4642 (the charged property) was moved from its position to a different position in the map and on the ground, thereby removing land parcel No. Kisumu/Kasule/4950 from the map all together. He therefore sought for the following relief from the Defendant:-



- a. Special damages for loss of income on cancelled contracts totalling to Kshs.74,056,716/-.
 - b. An order directed at the Kisumu County Surveyor and Kisumu Land Registrar to cancel the amendments to the Kisumu/Kasule/Registry Index Map sheet 8 effecting repositioning, removing, altering or in any other manner interfering with Kisumu/Kasule/4642, 4950 and 4737 made in 2018.
 - c. An order directed at the Kisumu County Surveyor and the Kisumu County Land Registrar for rectification of the Registry Index Map for Kisumu/Kasule sheet 8 reverting Kisumu/Kasule/4642 and 4950 to their original positions as at 2013.
 - d. An order of permanent injunction directed at the 1st Defendant, its agents, representatives or any other person acting under their directions from trespassing, interfering or in any other manner interfering with the Plaintiffs parcel of land known as Kisumu/Kasule/4950.
 - e. General damages for trespass onto the Plaintiff's parcel of land known as Kisumu/Kasule/4950.
 - f. Costs and interest
 - g. Any other relief that the court deems just and expedient.
4. The 1st and 2nd Defendant response to the Plaintiff's claim was comprised in the Statement of Defence dated 31st August, 2018 vide which they denied the Plaintiff's claim.
 5. The 3rd Defendant filed a Statement of Defence dated 30th May, 2021 also denying the Plaintiff's claim.

The Evidence

6. On behalf of the Plaintiff 2 witnesses testified.
7. PW1 was the Plaintiff. He adopted the contents of his witness statement dated 12th July, 2018 as his evidence in chief witness. He had stated in his statement that he was at all material times the registered owner of land parcel numbers Kisumu/Kasule/4950 and 4642 which border parcel number Kisumu/Kasule/ 4737. That the 1st Defendant offered him financial facilities amounting to an aggregate of Kshs.16,961,000/= to develop property on Kisumu/Kasule/4642 and that in exchange, the 1st Defendant was to prepare and register a legal charge over Kisumu/Kasule/4642 as security toward the said financial facilities.
8. That in the course of repayment of the loan, he discovered that the 1st Defendant opened a second account unknown to him which account fell into arrears. That this led to a dispute between him and the 1st Defendant which caused the 1st Defendant to issue various notices and demands and even attempting to put the charged property up for sale by public auction.
9. That instead of the 1st Defendant's agents and/or representatives proceeding to land parcel number Kisumu/Kasule/4642, they proceeded to Kisumu/Kasule/4950 where he carries on the business of a Hotel, Bar and Restaurant known as the Nile Resort and started placing notices that they intend to take over the premises and instructed the staff to start preparing to hand over the premises and the assets therein. That the actions of the 1st Defendant of threatening a takeover of premises not under charge amounted to trespass and have made him to suffer loss and damage.
10. That the 2nd Defendant in collusion with the Kisumu County Surveyor and Kisumu County Land Registrar under the instructions of the 1st Defendant fraudulently and unprocedurally did alter, amend and/or interfere with the Registry Index Map (RIP) of Kisumu/Kasule Sheet 8 with the result that



- Kisumu/Kasule/4642 (the charged property) was moved from its position in the map and on the ground thereby removing Kisumu/Kasule/4950 from the map altogether.
11. On cross-examination, he stated that it was the bank which hired a surveyor to cause the changes. That the suit was filed subsequent to the bank's suit for vacant possession of the property.
 12. PW2 was Patrick Opiyo Odero, a Surveyor. He produced a survey report which he had prepared in the matter. He testified that he got the 2013 version and the 2018 version of Registry Index Map of the area where the suit lands are situate. That the two maps were different while the situation on the ground remained the same.
 13. That while the structures developed show on one piece of land in one map, in the second map, the structures shown on a different parcel.
 14. That the effects of the changes were that parcel number Kisumu/Kasule/4642 which had a house is the one that was charged to the bank but after the changes of 2018, parcel No.4642 was moved to the site where the new hotel is. That should the owner default, the hotel will be sold. That parcel number Kisumu/Kasule/4950 had been expunged from the 2018 map.
 15. On cross-examination, he stated that he found out that parcel No.4642 was charged to the bank. That the Plaintiff did not tell him that he had taken construction loan from the bank and that he did not know where the construction loan was to be applied.
 16. On behalf of the Defence, two witnesses testified.
 17. DW1 was Joseph Kipkorir Sagwe, the Loan Recovery Manager with the 1st Defendant bank. He relied on the contents of his witness statement dated 15th February 2024 as his evidence in chief.
 18. He stated that pursuant to the Plaintiff's application for financial facilities, the bank approved the application and agreed to advance a term loan facility to the Plaintiff and for the creation of a legal charge, over the plaintiff's property title number Kisumu/Kasule/4642 and opening of a term loan account and a construction loan account in the name of the Plaintiff. That the Plaintiff accepted the terms of the letters of offer by the bank and subsequently the charge documents were prepared and executed all necessary documents by the Plaintiff as borrower as well as his spouse. That the charge documents were regular and legal.
 19. That the Plaintiff defaulted in servicing the amounts lent to him by the bank together with interest.
 20. That the Plaintiff is guilty of non-disclosure of every material facts that are critical and important for the court to adjudicate on the matter, especially the existence of Kisumu Land Case No.7 Of 2018(os) (now Kisumu High Court Civil Case No.10 Of 2019) awaiting prosecution and determination.
 21. He testified further that the bank being desirous of disposing of the charged property by way of public auction and/or private treaty to recover the outstanding debt in the account of the Plaintiff scheduled an auction on 2nd March, 2016 but the same could not proceed since the Plaintiff who is in occupation of the charged property thwarted the bank's attempts to take possession of the charged property by affixing notices. That thereafter the Plaintiff sent a threatening letter to the bank's Advocates indicating his unwillingness to allow entry or possession of the charged property. That the Plaintiff's actions prompted the bank to institute Kisumu Land Case No.7 of 2018 aforementioned.
 22. That the Plaintiff has failed to redeem his property as required by law and only brought up the issue of title No. Kisumu/Kasule/4950 to frustrate the bank's recovery process on its security.



23. That the bank sent Landscan Associates Company Ltd to confirm the exact position of the charged property which was done and a Survey report dated 10th November, 2017 shared with the bank.
24. On cross-examination, he stated that the conclusion of the survey report by the 2nd Defendant was that the map had been corrected to reflect the position of the land on the ground.
25. That he did not know whether the Plaintiff was involved in the process of amendment of the map and that he did not know the effect of the amendment of the map on the property.
26. DW2 was Boniface Wanyama, a Surveyor trading as Landscan Associates Ltd. He adopted the contents of his witness statement dated 1st November, 2021 as his evidence in chief. He had stated in the said statement that in the month of November, 2017 he received instructions from the 1st Defendant bank to ascertain the position of land parcel number Kisumu/Kasule/4642 on the ground as well as on the map and whether it had a road of access.
27. That he visited the property which he found fenced with a stone wall and an electric fence which covered plot number Kisumu/Kasule/4737 and 4642. That he confirmed the position of plot number 4642 and prepared a Survey report dated 10th November, 2017.
28. That any alterations to the position of plot number 4642 and 4694 were made by the Records office at the Survey Office. That hence he was not in any way responsible for the mistake that had been earlier made in assigning them parcel numbers.
29. On cross-examination, he stated that he recommended some numbering to be done. That he is the one who went to the person in charge of numbering and P.I.D. at the survey office map section. That the officer amended the map while he (DW2) was there.
30. That the effect of what the officer did entailed deleting parcel number 4642 from where it was on the map and assigning it on the right position where it should be. That the officer inserted No.4694 where No. Kisumu/Kasule/4642 used to be. That it is proper to consult owners when doing amendments.
31. That he is not the one who authorized the amendments and that the amendments did not affect the acreage of the land.
32. No evidence was called by the 3rd Defendant.

Submissions

33. At the close of the evidence, parties filed submissions on the case.

Submissions for the Plaintiff

34. It was submitted on behalf of the Plaintiff vide the written submissions dated 2nd December, 2024 filed by Geoffrey O. Yogo Advocate that the evidence so far showed that the amendments were done on Kisumu sheet No.8 at the instance of the 1st Defendant.
35. Relying on the provisions of sections 15 and 16 of the [Land Registration Act](#) 2012, and the case of KSM ELC JR NO.E005 OF 2023 R -vs- Ex Parte George G.N. Otieno & Others Kisumu County Land Registrar and Others, Counsel submitted thus the law that provides that before any alteration is made to Registry Index Map which may result in deletion of a number from the RIM map, it must be made public and parties informed where there is a title involved and such alteration results in cancellation of the title, the court must first cancel the same after being moved appropriately by a party.



36. That there is no explanation as to why the procedure in section 15 and 16 of the [Land Registration Act](#) was not followed.
37. That according to the letters dated 14th February, 2013 and 14th October, 2014, it was clear that the property was for rental where rent from the building was to be used to pay the loan while the building the bank sought to sell after the amendment was a guest house.
338. That the consent of the spouse on the property being charged clearly showed that it was the matrimonial home not a guest house which is a commercial building.
39. Counsel urged the court to declare the Defendants' actions null and void. Counsel submitted further that the amendment changed the position of Kisumu/Kasule/4642 which was the charged property and took it to the commercial parcel of land where there is a guest house belonging to the Plaintiff. That this is not what was contracted for and hence was null and void.
40. Counsel submitted that there was a title deed for No. Kisumu/Kasule/4950 which had not been cancelled. That the title deed shows that the parcel was in sheet No.8, Kasule RIM Map. That the Defendants trespassed onto parcel No. Kisumu/Kasule/4950. That the Plaintiff is entitled to general damages for trespass to parcel No.4950 at Kshs.1,000,000 as adequate compensation for trespass.
41. That since the 1st Defendant left the charged property and started pinning notices on the gates of the parcel No. Kisumu/Kasule/4950 where the Plaintiff runs a business known as "The Nile Resort", the contracts that the Plaintiff had executed with various customers for long term usage of the Guest house for trainings were cancelled after the said clients got notice of the taking over of the premises.
42. That the cancelled contracts were worth Kshs.74,056,716/-. That the loss is attributed to the illegal actions of the Defendants. Counsel urged the court to allow the Plaintiff's claim with costs.

Submissions for the 1st and 2nd Defendants

43. Written submissions dated 6th February, 2025 were filed by Chris Maganga Advocate on behalf of the Plaintiff.
44. Counsel submitted that the issue between the parties is not for recovery of land but rather for boundary demarcation. Referring to section 3 of the [Trespass Act](#), Counsel submitted that a trespasser is one who remains in possession of the land against the will of the owner.
45. That in a case of trespass, the entry of the Defendant onto the Plaintiff's land must be unauthorized. That it was not disputed by the Plaintiff that he received due notices from the 1st Defendant informing him that the 1st Defendant was desirous of disposing of the charged property Kisumu/Kasule/4642 by way of public auction and/or private treaty to recover the outstanding debt in the account of the Plaintiff.
46. That the 1st Defendant needed access to the property which access the Plaintiff blocked thereby forcing the 1st Defendant to sue the Plaintiff in Kisumu Land Case No.7 of 2018 (Originating Summons) prior to the filing of the instant suit by the Plaintiff.
47. On damages claimed by Plaintiff, Counsel submitted that there was no evidence showing that the Plaintiff applied for the said tenders. That it is not possible for the court to determine whether the amount claimed were a fair estimate of the loss or not. That the Plaintiff has not proved his claim for special damages on a balance of probabilities. That the alleged trespass was not accompanied by aggravation upon which an award for exemplary damages may lie.



48. That award of general damages is in the discretion of the court. That what is in dispute is a boundary. That the court ought to reject the claim for general damages.
49. As to whether there is a boundary dispute between parcel number Kisumu/Kasule/4950 and the charge property No. Kisumu/Kasule/4642, Counsel submitted that where a dispute resolution mechanism is provided by statute, a party ought to exhaust them before proceeding to court. That section 18(2) of the [Land Registration act](#) prohibits the court from entertaining any action or other proceedings related to a dispute as to the boundaries of registered land unless to boundaries have been determined as provided in that section.
50. Counsel relied on the provisions of Section 19 of the [Land Registration Act](#), the case of George Kamau Macharia -vs- Dexka Limited (2019)eKLR, the case of Estate of Sonrisa Limited & Another -vs- Samuel Kamau Macharia (2020)eKLR, among other authorities and submitted that the Plaintiff had not provided any exceptional grounds which require the court to intervene nor has the Plaintiff established that the procedure laid down by the statute is not effective or adequate.
51. Counsel urged the court to dismiss the Plaintiff's suit with costs and to direct the parties to pursue the mechanisms established under the [Land Registration Act](#).

Issue for Determination

52. From the pleadings, the evidence adduced and the submissions made, the following emerge as the issues for determination: -
 - a. whether the dispute herein is a boundary dispute.
 - b. whether the amendments and/or alterations done to the Registry Index Map changed the position of land parcel No. Kisumu/Kasule/4642 (the charged property) from the position where it was on the map at the time of charging the property to the 1st Defendant to a different position.
 - c. whether the amendments and/or alterations were lawful
 - d. whether the Plaintiff is entitled to the relief sought.
 - e. what orders to make on costs.

Analysis and determination

53. The first issue for determination is whether the dispute herein is a boundary dispute.
54. In their submissions, the 1st and 2nd Defendant raised a jurisdictional issue and submitted that the jurisdiction of this court that it flows from the provisions of article 162(2) of [the Constitution](#) and Section 13(2) of the Environment and [Land Act](#). That section 18(2) of the [Land Registration Act](#) prohibits the court from entertaining any action or other proceedings relating to a dispute on boundaries of registered land unless the boundaries have been determined as provided in that section. That the dispute before court being a boundary dispute should be submitted to the Land Registrar who under the provisions of section 19 of the same Act has the mandate to fix boundaries to registered land.
655. Relying on the case of Speaker of National Assembly -vs- Karume (1992)KLR 21, Counsel submitted that where a dispute resolution mechanism is provided by statute, a party ought to exhaust it before proceeding to court. That there is nothing unique in the case which requires court's intervention.



Counsel prayed that the suit be dismissed and parties directed to pursue the mechanism established under the *Land Registration Act*.

56. However, a reading of the 1st and 2nd Defendant's written statements of defence dated 31st August, 2018 shows that the issue of the dispute being a boundary dispute hence within the jurisdiction of the Land Registrar was not raised in the said defence. DW2 a land surveyor did not testify that the dispute was a boundary dispute. A reading of the plaint clearly reveals that the claim was based on trespass.
57. Having read the pleadings, evidence and submissions, I find that the dispute herein is not a boundary dispute as defined in the *Land Registration Act*. Further, the suit lands belong to the Plaintiff hence there cannot be a boundary dispute.
58. The second issue for determination is whether the amendments and/or alterations done to the Registry Index Map changed the position of land parcel No.Kisumu/Kasule/4642 (the charged property) from the position where it was on the map at the time of charging the property to the 1st Defendant to a different position.
59. It is not in dispute that amendment was done at the instance of the 1st Defendant on the Registry Index Map of Sheet 8 Kisumu Kasule affecting the charged property and land parcel number Kisumu/Kasule/4950.
60. The Plaintiff pleaded in paragraph 13 of the Plaint that the result of the amendments and/or alterations of Registry Index Map (RIM) of Kisumu Kasule Sheet No 8 was that parcel No Kisumu/Kasule/4642 (the Charged property) was moved in the map and on the ground thereby removing parcel No. Kisumu/Kasule/4950 altogether.

The Defendants denied this claim.

61. PW2 testified that the RIM for 2013 for sheet No.8 was different from the one of 2018 which was the product of the amendment. That the impact of the changes was that while parcel No.4642 which had a house on it was the one that was charged to the bank after the changes in 2018, parcel No.4642 had been moved to the site where the new hotel is situate.
37. DW2 also Surveyor testified that he had been commissioned by the 1st Defendant to ascertain the position of the charged property No. Kisumu/Kasule/4642 on the ground and find out whether it was accessible. That he recommended some numbering. That he went to the survey office and witnessed the map being amended. That the effect of what he did entailed deleting No.4642 from where it was on the map and assigning it on the right position where it should be. That the Lands Officer inserted parcel No.4694 where parcel No.4662 used to be.
63. That the new position of No.4642 had a building already.
64. DW2 did not deny that the amendment caused parcel No.4950 to be deleted from the map. He stated that he was not aware that by the amendment, parcel No.4950 disappeared.
65. Taking into account the pleadings in the plaint and the evidence and particularly the evidence of the surveyors, it is clear that by the amendment done to the Registry Index Map (RIM) of Kisumu Kasule Sheet 8 by the Land Officer, at the recommendation of DW2, the position of the charged property was moved from where it originally was to the position parcel number Kisumu/Kasule/4950 thereby deleting parcel 4950 from the map altogether.
66. The next issue for determination is whether or not the amendment to the Registry Index Map was lawful.



67. The Plaintiff pleaded in paragraph 13 of the plaint that the 2nd Defendant in collusion with the Kisumu County Surveyor and Kisumu County Land Registrar under the instructions of the 1st Defendant fraudulently, unlawfully, unprocedurally and contrary to law did alter, amend and/or interfere with the Registry Index Map (RIM) of Kisumu Kasule Sheet 8. He itemized the particulars of fraud, collusion and illegality thereunder.
68. The Plaintiff further pleaded that the Defendants' actions were clearly against the law and *the Constitution* which provides that nobody can be deprived of his/her property without due process or compensation. That the said actions amount to trespass on the Plaintiff's parcel number Kisumu/Kasule/4950.
69. On their part, the Defendants denied the claim and submitted that the Plaintiff's dispute is a boundary dispute that should have been taken to the appropriate forum under the provisions of Section 18 and 19 of the *Land Registration Act*.
70. Section 16 of the *Land Registration Act* provides for power to alter boundary lines and to prepare new editions.
71. Section 16(a) provides that the rectifications or alteration should be done on an approved sub-division plan, approved combination plan or any other form of approved plan necessitating the alterations of the boundary which approval should be in the prescribed form and in accordance with any law relating to sub-division of land that is for the time being in force.
72. The Defendants did not disclose the law pursuant to which they initiated and effected the changes or amendments to the RIM. DW2 testified that he recommended for numbering to be done. No evidence was given that there was any approval for the numbering.
73. Section 79 of the *Land Registration act* limits the power of the Land Registrar to rectify a register to land and sub-section 2 thereof provides that;
- “No alternations affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent...”
74. The section also requires that notice of the intention to rectify the register be given to the proprietor. DW2 admitted that it was necessary to notify the owner of the land of the changes and or alterations. It is clear from the evidence that the owner of the affected lands was not notified of the alterations.
75. Article 40 of *the Constitution* protects the right to property and provides that no person shall be arbitrarily deprived of his property.
76. It is not denied that land parcel No.4590 belonged to the Plaintiff. That Plaintiff held title in respect thereof and that as a result of the amendment, the parcel was deleted from the map altogether. This was clearly in contravention of the provisions of Article 40 of *the Constitution* and Sections 24, 25 and 26 of the *Land Registration Act*.
77. I find that the Defendants' actions were not only arbitrary but also unlawful and in violation of the plaintiff's right to property.
78. The next issue for determination is whether the Plaintiff is entitled to relief sought.
79. The relief sought in the plaint include; special damages for loss of income on cancelled contracts totaling Kshs.74,056,716.



80. The Plaintiff pleaded in paragraph 15 of the plaint that the actions of the 1st, 2nd and 3rd Defendants amount to trespass on his parcel of land number Kisumu/Kasule/4950 and that he is therefore entitled to damages.
81. The Plaintiff testified that instead of the 1st Defendant's agents proceeding to the charged property parcel No. Kisumu/Kasule/4642 to place notices of the intended takeover of the property by the bank or sale by public auction, they proceeded to land parcel No. Kisumu/Kasule/4950 where the Plaintiff carried on the business of Hotel, Bar and Restaurant known as the Nile Resort and that while there they started placing notices of their intention to take over the premises and instructed the staff to start preparing to handover the premises and assets therein. That these actions made him to suffer loss and damages. He gave the particulars of the special damages in his witness statement as loss of income due to cancelled contracts amounting to Kshs.74,056,716, reduced hotel bookings and loss of good and long-standing staff due to job insecurity.
82. The law on special damages is that special damages must not only be specifically pleaded but must be strictly proved. See case of Hahn vs Singh Civil Appeal No. 42 of 1983 [1985], at p. 717 where the Court of Appeal held
- “Special damages must not only be specifically claimed but also strictly proved...for they are not the natural consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
83. In a bid to prove the claim for special damages, the Plaintiff produced the letter dated 17th November, 2017 from Events and Functions and addressed to the Nile Resort to the effect that the Nile Resort had been awarded a tender for period 2017 – 2021 financial year and that the tender sum was Kshs.16,486,716 for a duration was 5 years effective December, 1st 2017. The letter required that the addressee accepts the tender by 11th November, 2017. The second letter dated 10th April, 2018 from the same author was a cancellation of the tender.
84. He also produced another letter dated 10th October, 2017 from Women Fighting Aids in Kenya was a notification of tender award for a period of 3 years beginning February 2018 at a cost of Kshs.33,345,657. The letter required the Chief Executive the Nile Resort to the give acceptance of the tender upon which the author could pay a facilitation amount of Kshs.3 million. The next letter dated 12th April, 2018 from Women Fighting AIDS in Kenya was a notification of tender cancellation years 2018, 2019 and 2020.
85. And the letter dated 7th March, 2017 by Kisumu Elite Academy addressed to the Director Nile Resort was in respect of tender award for a duration of 3 years at a cost of Kshs.24,570,000 starting 9th March, 2017. The next letter dated 12th April, 2018 is a cancellation of tender for the period of 2017 – 2019.
86. For all these tender awards, no evidence was adduced that the addressee accepted the tender awards.
87. There was no evidence to show that indeed there was a tendering process which the Nile Resort won. There were no supportive documents for instance KRA returns to show that the plaintiff was in the said business and making the claimed income-for instance KRA returns. There is no evidence that any good and long-standing staff left the Plaintiff's employment as a result of the Defendants' actions or that hotel bookings reduced. I find that the claim for special damages has not been proved on a balance of probabilities.



88. Secondly, the Plaintiff sought for an order directed at the Kisumu County Surveyor and Kisumu Land Registrar to cancel the amendment to the Kisumu/Kasule/Registry Index Map Sheet 8 affecting repositioning, removing, altering or in any other manner interfering with Kisumu/Kasule/4642, 4950 and 4737 made in 2018.
89. On the basis of the evidence on record and particularly the evidence of DW2, I find that the Plaintiff is entitled to this order. Cancellation of the amendment will return the suit lands to the position that they were on the map as at the time of registration of the Charge. It will ensure the Plaintiff's property parcel No.4950 is secure. It will also enable the bank to proceed to realize the correct security that was charged to it.
90. The next relief sought is for rectification of the Registry Index Map (RIM) so as to revert the parcels to their rightful position.
91. The relief is related to number (b) above and on the basis of the evidence adduced, I find that the Plaintiff is entitled to it.
92. Prayer (d) in the plaint is for an order for permanent injunction to restrain the Defendant from further trespass or interfering with land parcel No.4950.
93. As parcel No. Kisumu/Kasule/4950 was not part of the transaction between the Plaintiff and the 1st Defendant, the Defendants' actions were not justified. I find that the grounds for issuing a permanent injunction have been demonstrated. An order of permanent is necessary so as to safeguard the said land against similar unlawful actions in future.
94. The next claim is for general damages for trespass. In the case of Duncan Ndegwa -vs- Kenya Pipeline HCC No.2577 of 1990 (Nairobi) it was held that;
- “The general principles as regards the measure of damages to be awarded in cases of trespass to land where damage has been occasioned to the land is the amount of diminution in value or the cost of reimbursement of the land. The overriding principles is to put the claimant in the position he was prior to the infliction of the harm”.
95. It is not denied that the Defendant did trespass onto land parcel No.Kisumu/Kasule/4950 and caused the Plaintiff to suffer loss.
96. In *Park Towers Ltd v. John Mithamo Njika & 7 others* (2014)eKLR the court held that:-
- “I agree with the learned Judges that where trespass is proved a party need not prove that he 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.”
97. The Plaintiff is entitled to general damages. The Plaintiff's advocates submitted for Kshs.1,000,000/- which in the circumstances of the case, I find reasonable and adequate.
98. Regarding costs, under section 27 of the *Civil Procedure Act* costs follow the event.
99. The result is that the court finds that the Plaintiff has proved his case on a balance of probabilities and hereby enters judgement in favour his favour against the Defendants jointly and severally for:
- a. An order directed at the Kisumu County Surveyor and Kisumu Land Registrar to cancel the amendments to the Kisumu/Kasule/Registry Index Map sheet 8 effecting repositioning,



removing, altering or in any other manner interfering with land parcel numbers Kisumu/Kasule/4642, 4950 and 4737 made in 2018.

- b. An order directed at the Kisumu County Surveyor and the Kisumu County Land Registrar for rectification of the Registry Index Map for Kisumu/Kasule sheet 8 reverting Kisumu/Kasule/4642 and 4950 to their original positions as at 2013.
- c. An order of permanent injunction directed at the 1st Defendant, its agents, representatives or any other person acting under their directions restraining them from trespassing, interfering or in any other manner interfering with the Plaintiffs parcel of land known as Kisumu/Kasule/4950.
- d. Kshs 1,000,000/- being general damages for trespass.
- e. Costs of the suit.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 8TH DAY OF MAY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Yogo for the Plaintiff.

Maganga for the 1st and 2nd Defendants.

N/A for the 3rd Defendant.

